COMMISSIONERS’ MANUAL

2012 EDITION

BACKGROUND INFORMATION
RULES AND PROCEDURES

AMENDED AND OFFICIALLY ADOPTED BY RESOLUTION NO. 65,570-N.S. (JANUARY 17, 2012)
MESSAGE FROM THE CITY CLERK:

Members of boards and commissions provide an invaluable service to our City. They advise the City Council on a wide variety of subjects by making recommendations on important policy matters. Over the years, the services and programs provided by the City have expanded. Without the assistance of the various boards and commissions, the City Council could give many complex and significant matters only a perfunctory review. The detailed studies and considered advice of boards and commissions are often catalysts for innovative programs and improved services.

Serving on a board or commission can be a rewarding experience for community service-minded residents. It is an excellent way to participate in the functioning of local government and to make a personal contribution to the improvement of our community. If we are to have government “of the people, by the people and for the people,” we must have the continued participation of the many dedicated board and commission members. Making local government effective and responsive is everybody’s responsibility.

On behalf of the City Council, I wish to thank each board and commission for their service and extend an invitation to all residents of the City to give serious consideration to serving on a citizens’ advisory body.
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A. CITIZEN PARTICIPATION

Berkeley’s system of boards and commissions provides a way for residents who have special experience or interests to participate in the City’s decision making process by advising the City Council on numerous issues.

The governmental decision-making process has other citizen participation mechanisms, such as speaking at public hearings, speaking before the City Council and its subcommittees, participating in neighborhood based organizations, petitioning and letter writing.

The City believes it is not only the right but also the duty of citizens to participate in planning for their future, and that the City has a responsibility to provide commissioners with the tools to carry out their charge. That responsibility includes skills training and useful written procedures. This handbook attempts to fulfill the latter requirement.

The board and commission system provides the opportunity to interact creatively with people of all ages, interests and backgrounds. Democracy can be realized when citizens are able to come together across neighborhood and economic lines to assist in making the community decisions that will shape all of their lives. While commissioners are themselves appointed from within the community, it is important that they in turn ensure that a wide variety of viewpoints from the rest of the community are considered when commissions make recommendations to the Council. Commissioners should treat these widely varying viewpoints of other commissioners and members of the public with respect so that all citizens are encouraged to participate in government.

The City of Berkeley enjoys a wide variety of Council-appointed citizen boards, commissions and committees which advise the Council on numerous issues. As citizen participation has evolved into a vital and integral part of local government, the number of commissions\(^1\) has steadily grown so that there are now approximately thirty-five such bodies functioning within the City of Berkeley, not counting the Board of Education or the Rent Stabilization Board, both of which are separately elected and independent of the City Council and which are not within the purview of this Manual.

B. COMMISSION ORIGINS

Commissions originate from four different sources: the Charter, Council action, vote of the people, and federal or state mandate. In a few instances, the Council appoints citizens to represent Berkeley on regional committees.

\(^1\) Throughout this manual, the word "commission" is used to denote all boards, commissions and committees.
• **Charter**
  The present Charter, first adopted in 1909, initially authorized a Personnel Board, a Civic Arts Commission, a Welfare Commission, and a Board of Library Trustees. References to specific commissions, except for the Board of Library Trustees and the Personnel Board, were deleted from the Charter in 1974.

• **Tenure of Commissions**
  **Indefinite Tenure**
  The overwhelming majority of commissions are created to perform defined duties within a sphere of interest for an indefinite period of time by ordinance or resolution. From time to time, the Council, perceiving the need for a new and specialized body, creates a new commission.

  **Limited Tenure**
  From time to time the Council establishes a commission or task force for a specific purpose and a limited period of time. The Council may extend the tenure of a commission.

• **Federal and State Mandate**
  Certain commissions are required by federal or state law. In such cases the purposes and duties are specified by federal or state law, and appointments are made either by the City Council or by individual Councilmembers in accordance with the Fair Representation Ordinance, Berkeley Municipal Code §§ 2.04.030 – 2.04.070 and 2.04.080 - 2.04.130.


• **Voter Initiative**
  Two bodies derive authority from ordinances resulting from measures adopted by the voters. These are the Fair Campaign Practices Commission and the Police Review Commission. These two commissions are exempt from attendance rules cited in Chapter II but are bound by rules contained in each of their initiative ordinances, the Conflict of Interest program and procedural rules devised to meet State open meeting standards.

• **Miscellaneous**
  There are several advisory bodies not usually created by the Council to which the Council may appoint only one or two members. The remainder are appointed by other agencies. Usually these advisory bodies are county-wide or regional in nature. Appointees may be Councilmembers, staff members or citizens. This category includes, but is not limited to: the Mosquito Abatement District Board, Two-By-Two Committee (City-School), Four-by-Four Committee (City-Rent Board), Alameda County Waste Management Commission, Association of Bay
Area Governments, and League of California Cities (East Bay Division). These bodies are not subject to the guidelines in this handbook. Despite the wide variety of sources of authority, all commissions listed above share a common characteristic, which is that some or all members are appointed either by the Mayor, subject to confirmation by the Council, by the Council as a whole, or by each individual Councilmember.

C. COMMISSION FUNCTIONS

Commission activities are varied but generally fall into four categories. Any particular commission may belong to one or more of the types listed below and all boards and commissions belong to the fourth type.

Quasi-Judicial

Certain commissions have the authority to make binding decisions which require or restrict the action of individuals. For example, the Zoning Adjustments Board grants or denies variances and use permits under the Zoning Ordinance. The Housing Advisory Commission may order a structure in violation of the Housing Code to be repaired or demolished. Aggrieved parties have the right to appeal to the City Council. Other commissions with quasi-judicial powers are the Fair Campaign Practices Commission, the Landmarks Preservation Commission, and the Planning Commission. In addition, Zoning Ordinance amendments proposed by the Planning Commission have the force of law without immediate Council confirmation and without a right of appeal.

Administrative

The Board of Library Trustees manages the library and is empowered to appoint, discipline and dismiss Library employees.

Advisory to the City Manager

The Personnel Board conducts hearings on unrepresented employee grievances and makes recommendations to the City Manager, who is the only person authorized to hire, discipline or fire employees. Similarly, the Police Review Commission investigates complaints against police officers and advises the City Manager of its findings.

Advisory to Council

All commissions advise the City Council concerning policies and programs. For example, the Parks and Recreation Commission advises the Council regarding public parks and recreation facilities’ needs and programs. The Animal Care Commission makes recommendations to the Council concerning the care, treatment and control of animals. The Planning Commission prepares recommendations to Council on physical/economic development.
D. **ANALYTICAL PROBLEM SOLVING APPROACH**

It is important for those who recommend policy, operational, and other improvements in City government to use an **analytical problem solving approach**. This pertains not only to commissions, but to staff people, executives and others who wish to seriously improve municipal services. As resources decline, systems become more complex, and the public becomes more and more accustomed to the world’s highly competitive consumer oriented economy, all municipalities and this city government must adapt. In order to determine priorities, to select the best forms of service and the best methods of providing those services, to provide financial, personnel and technical resources to make those services work effectively, an analytical approach needs to be taken prior to advocacy and mobilization of support. A shorthand approach includes:

a. **What is the problem we are trying to solve, and if we probe deeper, is the apparent problem a symptom or is there really a deeper problem?**

b. **What general approaches could be used to solve the problem?** Avoid single solution answers.

c. **Of the possible approaches, which is the best one and why?**

d. **How will the selected approach or solution work?** What personnel, financial, and other resources are necessary to make it work? Where will these come from: If there are insufficient resources, what other equally valued programs or activities should be reduced or eliminated to free up the resources required?

e. **Have all those who will actually have to implement the proposal had input and do they agree?**

f. **Does the proposal meet legal requirements and has the City's budget office indicated that the financial part of the proposal is, in fact, feasible and workable?**

g. **Can the proposal be proven to work by putting it on a standard schedule for implementation?**

If each proposal or recommendation brought to the City Council is thoroughly tested against these criteria, or something similar, wasted time and effort will be avoided and the Council may be much more likely to approve recommendations rather than sending them back for laborious staff analysis.

Commissions should take special care to ensure that they remain within their subject area purview and the constraints of their enabling legislation.
CHAPTER II. SERVING ON A COMMISSION

A. MEMBERSHIP

1) Application Procedure

Commission appointments are made in most cases by individual Councilmembers and sometimes by the Council as a whole. A comprehensive list of current boards and commissions and the applications to apply are available in the City Clerk Department. This information may also be obtained through the City’s website at www.cityofberkeley.info/commissions. Completed application forms should be returned to the City Clerk. The City Clerk will forward the applications to each member of the City Council. Councilmembers will contact applicants in whom they are interested to discuss appointment or other participation opportunities.

2) Appointments

Appointments to most commissions are regulated by BMC §§ 2.04.030 – 2.04.070 and 2.04.080 - 2.04.130 - the Fair Representation Ordinance, a voter initiative adopted in 1975 which requires commissions of nine, or multiples of nine, and which allows each individual Councilmember to make an equal number of appointments. Most commissions created by the Council are governed by the Fair Representation Ordinance.

Commissions that are responsible for appointing members to other commissions must follow the same rules for appointments as Council appointees. Furthermore, these appointments to other commissions that arise from membership on a parent commission are terminated if the commissioner is terminated or resigns from the parent commission.

The appointment process begins when a Councilmember submits an appointment form and an Affidavit of Residency to the City Clerk. The City Clerk determines that the person is eligible to serve and processes the appointment. The Clerk then notifies the Commission Secretary that the appointment is valid. Participation of commissioners not deemed eligible by the Clerk may likely result in nullification of commission actions.

After a new commissioner is appointed, the City Clerk Department will mail a packet of important information to the commissioner. If the appointment is made less than two days prior to the first meeting of service, the commissioner may make arrangements to pick up the packet in person, or obtain the materials from the Commission Secretary.

3) Terms of Office

Most Berkeley Commissioners have both “term minimums” and “term maximums.” The term minimum ensures that regardless of the date of appointment, a
commissioner cannot be replaced by a councilmember prior to the first day of December in the year in which they were initially appointed.

If the appointing councilmember dies, resigns, or is recalled prior to December 1st, the term minimum of appointees of that Councilmember expires on the date of death, resignation or recall. (BMC Section 2.04.075)

Commission members whose terms have expired may continue to serve of their own volition after December 1st until they are replaced. In such cases, the commissioner retains full voting rights until a new commissioner is appointed.

Each vacancy on a commission is to be filled through appointment or reappointment by the Councilmember to whom the vacancy is credited. In the case of newly elected first-time Councilmembers, the appointee of the newly elected Councilmember shall replace the appointee of the Councilmember from the same Council district who was not re-elected, and the appointee of a newly elected Mayor shall replace the appointee of the outgoing Mayor.

A temporary appointment may not be made to a vacant seat on any board or commission. All appointees to vacant seats are eligible to serve in accordance with provisions of Berkeley Municipal Code Section 2.04.075

Except for the commissions established by initiative, commissioners shall serve not more than eight consecutive years on a commission, notwithstanding interruption of service due to the following: (BMC 3.02.040)

- Absence from the commission due to termination for excessive absences; from missing three consecutive meetings or 50% or more regular meetings in a six-month period (BMC 3.02.020);
- Absence from the commission due to any leave(s) of absence (BMC 3.02.030);
- Absence from the commission due to termination pursuant to the provisions of the City’s Conflict of Interest Code, for failure to file the required Statement of Economic Interests, and subsequent re-appointment.

**Example:** A commissioner began his term on April 1, 2005, He was terminated for attendance on July 1, 2008 and reappointed on October 1, 2008. The eight year limit for this commissioner still expires on April 1, 2013 despite the three months he was “off” the commission in 2008.

Commissioners that have served the maximum of eight years on a certain commission shall not be eligible to serve on that same commission until a two year break in service has occurred. (BMC 3.02.040)
4) **Residency Requirements**

As required by BMC Section 2.04.140, members of commissions appointed by the Council or individual Councilmembers, shall be residents of the City unless the member is required by federal or state law or the ordinance establishing the commission to represent a specified organization, agency, group, category or profession. The secretary of the commission shall report to the City Clerk in writing within one week after receiving notification from a member that he/she is no longer a resident of Berkeley. The termination of the commissioner shall expire on the date the fact is received by the City Clerk. If however, a member states they are temporarily moving out of Berkeley and fully intend to reestablish residency in Berkeley within six months, they may continue to serve on the board or commission. At the end of the six months, the secretary shall report to the City Clerk whether the commissioner has reestablished residency in Berkeley. If the commissioner has not reestablished residency, automatic termination of membership will occur.

Pursuant to BMC section 2.04.145, every commissioner is required to execute an Affidavit of Residency prior to appointment. The appointing Councilmember submits the affidavit with the appointment form. All sitting commissioners must also complete an annual Affidavit of Residency to be filed with the City Clerk no later than April 1st of every year. Failure to file the annual affidavit will result in automatic termination from the commission. The FCPC, Police Review, and BUSD appointments to commissions are exempt from this requirement.

5) **Commissions with Special Regulations**

Several commissions require special qualifications for appointment. For example, some appointees to the Mental Health Commission, Medical Cannabis Commission, and Community Health Commission must satisfy occupational or specific category requirements under state or local law.

Other commissions have other terms of appointment, such as the Police Review Commission (BMC 3.32.030) which sets terms of two years, and the Youth Commission (BMC 3.42.030) sets terms of one year. The Fair Campaign Practices Commission (BMC 2.12.175) sets terms the same as the appointing Councilmember or Mayor. Appointments to the Mental Health Commission are made by the Council as a whole for three-year terms. (Resolution No. 57,078-N.S.) If specific rules deviating from the norm concerning appointments and terms exist, these are contained in the BMC sections or resolution which establishes the commission.

6) **Oath of Office**

Before commissioners can participate as voting members of their commissions, they must take the Oath of Office as required by law (City Charter Article V,
Section 18), at the City Clerk Department or through their commission secretaries. Failure to take the Oath of Office within 30 days of the date of the appointment letter shall be cause for automatic termination. Secretaries must check with the City Clerk Department prior to the commission meeting to verify that all newly-appointed members have taken the oath.

7) Attendance Requirements

The importance of regular attendance at commission meetings cannot be emphasized enough. The failure to comply with these attendance rules and other requirements as outlined in Chapter II., Section A. 10, can result in automatic termination. It is important to note that all commissions, regardless of the frequency of meetings, are subject to these attendance regulations.

A member must be present at least one hour, or 50% of the entire meeting, whichever is less, to be counted as present for purposes of attendance.

Under certain extreme circumstances, commissioners may teleconference for a commission meeting to avoid being marked absent. Please see Appendix L for the complete policy.

a. Absence from three consecutive meetings.

If a member has been absent from two consecutive regular meetings, the secretary advises the member that absence from three consecutive regular meetings of the body will result in automatic termination. There is no provision for excused absences except for those allowed under BMC 3.02.030. Within one week of the third consecutive absence, the commission secretary notifies the City Clerk in writing, of the three absences. The appointment expires on the date the fact of the third absence is reported to the City Clerk. Within one week, the City Clerk notifies the commissioner that his/her term has expired and notifies the Councilmember or Council, as appropriate, that a vacancy exists on the commission and that an appointment should be made to fill such vacancy. (BMC 3.02.020)

b. Reporting commissioner's absence from 50% of all regular meetings.

The secretary of each commission shall report the full attendance record of each member to the City Clerk at the end of each six-month period (June 30 and December 31) on a form available from the City Clerk. If a commission member has been absent from 50% or more of all regular meetings held within the reporting period, the secretary shall note this on the attendance report, and the appointment of the commissioner shall expire on the date the attendance is reported to the City Clerk. Within one week after receiving such attendance report, the City Clerk shall notify any commissioner whose appointment has been terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment should be made to fill the vacancy.

In the case of new members who were appointed during the last six-month reporting period, they must have attended more than half of all regular meetings
c. Commissions who meet quarterly.

Commissions officially authorized to meet only four times per year, shall be exempt from the requirements of 7.a. above. Instead, the secretary shall advise any member who has been absent from one regular meeting, that absence from two consecutive regular meetings of the body will result in automatic termination by the same mechanism described in paragraph 7.a. above.

The reporting period for a commission that meets quarterly is the full calendar year. Commissioners on these commissions will be terminated if they are absent from 50% or more of all regular meetings in the calendar year.

d. FCPC and PRC exemption from automatic termination due to attendance.

Because the Fair Campaign Practices Commission was created as a result of an initiative ordinance adopted by the voters, members of this commission are exempt from the automatic termination provision of BMC Section 3.02.020.

The Police Review Commission which was also created by initiative ordinance, provides for termination after three consecutive unexcused absences from regular or special meetings. (BMC 3.32.040)

e. No quorum - meeting canceled

Where it appears that there will be sufficient members to hold a meeting but at the actual time of the meeting a quorum cannot be assembled and the meeting is canceled, those members who are absent will have an absence counted against them. Commissions may adopt a rule establishing a maximum time those present will wait for a quorum, prior to canceling the meeting.

Commissioners should inform the secretary as far in advance as possible if they cannot attend a meeting. If it is known that a quorum will not be achieved, the secretary should notify all members that the meeting will be canceled. No absence will be recorded against any member.

Per Resolution No. 65,127-N.S. (and its successors), commission secretaries shall submit an information report to the City Council whenever a commission cancels two consecutive meetings for lack of quorum.

f. Excused Absences

To encourage full participation in commission meetings by all commissioners and the public, the Council encourages commissions to refrain from scheduling meetings on cultural and religious holidays. Commissioners may make a written request in advance of a meeting that an absence be excused due to a conflict between a scheduled commission meeting and a religious or cultural holiday. If received prior to the scheduled meeting, the secretary will then excuse the
absence and note the excused absence in the semi-annual attendance report sent to the City Clerk (BMC 3.02.030)

8) **Leaves of Absence (BMC 3.02.030)**

An appointing Councilmember may grant a leave of absence anywhere from one meeting up to a period not to exceed three months. Notice of the leave of absence must be filed by the Councilmember with the City Clerk prior to the actual absence. For meetings held after business hours, the notice of leave must be received by the City Clerk before 5pm on the day of the commission meeting in order to count for that meeting. In the case of commissioners who are appointed by the Council as a whole, a leave of absence of a period not to exceed three months may be granted by the Council; the secretary shall submit a consent item to the agenda process for the Council to approve the absence prior to the actual absence.

Commissioners may seek to be reinstated prior to the end date of their leave of absence. This request must be made to the appointing Councilmember. If this request is granted, the Councilmember must submit a written request to the City Clerk to terminate the leave of absence. Once the leave is terminated, the temporary appointee shall have no further right to serve and the regular commissioner will resume their duties on the commission.

As stated above, a leave of absence may be granted for a period not to exceed three months. A subsequent leave of absence may not be granted to the commissioner if it will extend the total uninterrupted leave beyond three months. The commissioner will be marked absent from any meetings missed beyond the end of the three month maximum leave.

Commissioners appointed to serve on a commission by members of another commission must request any leave of absence from the council as a whole. The request must be submitted through the agenda process by the commission secretary.

9) **Temporary Appointments**

During the commission member's authorized leave of absence, the commission treats the absence as a vacancy, i.e., the number required for a quorum drops accordingly (see Chapter V, Section C.3. for details). The appointing Councilmember or the Council may fill such vacancy by a temporary appointment for a period not to exceed the period of the temporary vacancy. Specific rules for temporary appointments include:

- A temporary appointee cannot obtain a leave of absence during their tenure.
- A temporary appointee can be terminated for missing three consecutive meetings.
10) Automatic Terminations

The importance of complying with the requirements of being a commissioner cannot be emphasized enough. Failure to recognize these requirements will result in automatic termination. The following are reasons why members are automatically terminated:

a. Absence from three consecutive meetings\(^2\) (see Sec. A.7. of this Chapter for details).

b. Absence from 50% or more of all regular meetings in a six-month period (see Sec. A.7. of this Chapter for details).

c. The non-filing of required Conflict of Interest Disclosure Statements (see Sec. B.2. of this Chapter for details).

d. Failure to take the Oath of Office within thirty days of the date of the appointment letter (see Sec A.6. of this Chapter for details).

e. Non-residency (see Sec. A.4. of this Chapter for details).

f. Failure to file an annual Affidavit of Residency (see Sec. A.4. of this Chapter for details).

g. Failure to meet any eligibility requirements of the ordinance, resolution or other law establishing the commission or regulating its membership.

If a commissioner is terminated more than four times due to any of the above reasons or a combination of the above reasons, he/she may not be appointed again to any commission for one year. No commissioner shall be appointed to any commission if there are outstanding Conflict of Interest statements or fines; and no commissioner shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file such statements.

11) Resignation Procedure

A commission member wishing to resign shall submit a letter of resignation directly to the City Clerk and to the appointing Councilmember or the Council, as

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\(^2\) The members of the Fair Campaign Practices Commission are exempt from this rule. The Police Review Commission provides for termination after three consecutive unexcused absences from regular or special meetings (BMC 3.32.040).
appropriate. The City Clerk should receive the signed original letter of resignation. The resignation may also be submitted via e-mail.

Once submitted, a letter of resignation cannot be withdrawn. The effective date of the resignation is the date it is received by the Clerk unless a future date is indicated. The City Clerk shall then notify the Councilmember, or Council, and the secretary of the commission that a vacancy exists. A new appointment may not be made until a written resignation is received by the Clerk.

12) Accommodations for Commissioners or Board Members with Disabilities

Commissioners who are disabled are entitled to receive reasonable accommodations on request in order to participate fully in board or commission meetings or activities. Potential accommodations include:

- Sign language interpreters;
- Printed materials in Braille, audio recordings, or in large print;
- Accessible transportation;
- Assistance in handling papers and documents; and
- Use of the City’s Assistive Listening Devices (ALD)

Individuals with disabilities who need accommodations to participate in a City of Berkeley meeting should make their requests to the Disability Compliance Program. The Disability Compliance Program oversees the vendor payment and reimbursement process. Please review Appendix F for more information.

13) Stipend Information

In order to remove barriers from citizen participation on commissions, the Council has authorized payment of $40.00 per meeting, in lieu of actual expenses, to Council-appointed members of commissions whose annual family income as filed jointly for federal income tax purposes is below $20,000 per year. See Appendix G for Administrative Regulation 3.2 governing stipends for commissioners.

Eligibility is determined by the previous year's income. Once established, eligibility continues until such time as the member becomes aware that his/her yearly family income has exceeded or will exceed $20,000. At such time that member shall immediately notify the secretary of the commission of this fact and request cancellation of eligibility to receive the stipend. When a commission member who was previously ineligible believes that circumstances have changed which will result in the family's current annual income being below $20,000, the commission member shall make a certified declaration with the secretary of the commission describing the general circumstances which have occurred (loss of job, etc.) which will result in the member's eligibility.
A new declaration form must be filed annually prior to May 31st in order to maintain eligibility. Claims for reimbursement shall be filed with the secretary of the commission who shall process the claim according to procedures established by Administrative Regulation 3.2.

Stipends may only be requested for official meetings. An official meeting is a duly noticed meeting with a properly posted agenda that is comprised of the full membership of the board or commission and the meeting must be conducted in accordance with all state and local laws regarding accessibility and participation by the public.

Payments to Police Review Commission are different from stipends described above. These payments are covered in B.M.C. Section 3.32.060.

All work of the Police Review Commission is compensated, up to the $200 cap, at a rate of $3 per hour. This would include attending subcommittee meetings, investigation time, reviewing documentation, etc.

**14) Use of the City Logo and Business Card Policy**

*Use of the City logo is restricted to communications generated from a City department. The logo may not be used for other purposes.*

The City of Berkeley does not provide business cards for members of appointed boards and commissions.

**B. CONFLICT OF INTEREST PROHIBITED**

Members of Berkeley’s commissions provide advice to the City Council, study various civil matters and, in the case of certain commissions, function in a quasi-judicial capacity. Precise relationships vary in that certain quasi-judicial determinations may be appealed to the City Council while others may not. All members of commissions should be aware of the need to avoid any instances of conflict of interest. Conflict of interest standards are generally applicable to all commissions. Additional requirements may be applicable to particular boards and commissions.

**1) Influencing the Making of Contracts and Affecting Other Financial Interests**

Section 36 of the Berkeley City Charter directly prohibits the involvement by any City official, elected or otherwise, in any contract, work or business of the City either directly or indirectly. BMC Chapter 3.64 clarifies Section 36 of the Berkeley City Charter as it relates to commissions. The City Charter and BMC Chapter 3.64 prohibit a commissioner from having an interest in any work or business of the City if the commission of which he/she is a member has had any role in influencing the making of the contract. These roles would include reviewing the contract itself,
reviewing bid specifications, reviewing requests for proposals, discussing funding of the activity which is the subject of the contract, or making other kinds of policy recommendations which directly affect the making of the contract. A commissioner cannot satisfy the Charter and BMC Chapter 3.64 simply by disqualifying himself/herself when the vote or discussion on the contract is taking place. The law prohibits the contract itself.

However, some exceptions to this rule exist. For example, if the commissioner is an officer, member, director or employee of a nonprofit corporation which is to receive the contract in question, the law does not prohibit the contract itself. The commissioner must disclose his/her interest, the minutes of the commission must reflect this disclosure, and the individual commissioner must disqualify himself/herself from participating in any manner either directly or indirectly in making or influencing any decision related to the contract.

These provisions of the City Charter and B.M.C. Chapter 3.64 are parallel to provisions of State law, Government Code Section 1090 et. seq. (See Appendix C of this Manual).

The State Political Reform Act, Government Code Sections 81000 et. seq., and the Berkeley Conflict of Interest Code adopted pursuant to the Act, prohibit a commissioner from making, participating in making, or attempting to influence the making of any City decision if the commissioner knows or has reason to know that it is reasonably foreseeable that the decision will have a material financial effect on specified interests of the commissioner or a member of the commissioner's family distinguishable from its effect on the public generally. The State Fair Political Practices Commission (FPPC) enforces these procedures and the scope of these prohibitions is delineated in FPPC regulations and advice letters. You may seek the advice of the City Attorney as to whether you should disqualify yourself. However, only a formal advice letter from the FPPC will insulate you from enforcement actions by the FPPC. Be sure to seek the advice of the City Attorney or FPPC well before you are required to participate in a matter which would create a possible conflict of interest.

In addition to filing required disclosure statements described below, any such conflict of interest should be publicly disclosed and noted in the official record of the commission meeting. In such cases the commissioner completes the positive act of verbal disclosure, recuses himself or herself, and refrains from voting.

Recusal is the affirmative action of removing oneself from consideration, discussion, and voting for an issue in which a conflict of interest exists. Commissioners must make the required disclosure above and then physically remove themselves from the proceedings. Recusal requires that the commissioner leave the room where commission discussion is occurring. The member may not re-enter the meeting space until after the consideration (including any votes taken) of the issue has concluded. A commissioner who has a disqualifying conflict of
interest is not counted towards achieving a quorum on a particular vote while they are recused.

2) Disclosure Statements Required

The Government Code of the State of California requires that designated commissions file statements of economic interests in which they disclose specified financial interests. The Berkeley Conflict of Interest Code specifies each commission which is subject to this requirement and the interests which must be disclosed.

If a member of a commission specified in the Code fails to file an Assuming Office Statement of Economic Interests within thirty days after the date of appointment, the commissioner's term shall expire. Similarly, if an Initial or Annual Statement of Economic Interests is not filed within 30 days after the City Clerk has given specific written notice of non-filing, the member's term on the commission shall expire.

If a commission member resigns or is terminated, a "Leaving Office" Statement is required to be filed.

If a member has been terminated from a commission for any reason, and a Councilmember wishes to appoint that person again, the member must first file a "Leaving Office" Statement prior to the new appointment unless the reappointment occurs within 30 days of termination. He/she is then required to file another "Assuming Office" Statement within thirty days of the date of re-appointment.

Pursuant to the City's Conflict of Interest Code, any commissioner who fails to file any required Statement of Economic Interests within the time specified for such statement will automatically be terminated from the commission. No commissioner shall be appointed to any commission if there are outstanding Conflict of Interest statements or fines; and no commissioner shall be appointed to any commission for a period of one year if terminated from any commission more than once for failure to file such statements.

All commission members affected will be routinely advised of these requirements and deadlines by the City Clerk. Not all commissioners are required to report the same degree of disclosure. The Conflict of Interest Code is designed to require only that degree of disclosure needed to protect the public interest while balancing that need with an individual's right to privacy.

3) Incompatible Public Offices

The common law doctrine of incompatible public offices prohibits a public official from occupying two public offices which are incompatible in terms of their duties and/or the likelihood of divided loyalties. However, in Berkeley, serving on two or more City boards or commissions, including quasi-judicial bodies, is permitted (BMC 3.80). If you already occupy an elected or appointed office other than a City board or commission, and you are applying for appointment to a City board or
commission, you should seek the City Attorney's advice as to whether the two offices may be deemed incompatible.

4) **Incompatible Activities for Compensation**

   Government Code Section 1126 prohibits a public official from engaging in activities for compensation which are incompatible with their public office. If you are engaged in compensated activities which may be incompatible with your duties as a commissioner, please consult the City Attorney.

5) **State Mandated Ethics Training**

   Assembly Bill 1234 passed in 2005 requires all local officials that are compensated for their service or reimbursed for their expenses to complete ethics training on a biennial basis. In Berkeley, the officials that fall under this requirement are listed below.

   - Mayor and City Council
   - Rent Board Commissioners
   - Board of Library Trustees
   - Human Welfare and Community Action Commissioners
   - **Police Review Commissioners**
   - Mental Health Commissioners

   These officials will receive a notice from the City Clerk advising them of the required training. The training may be completed on the Fair Political Practices Commission web site. The training must be completed within one year of the date of appointment and every two years thereafter. A certification of completion must be filed with the City Clerk. For more information, please contact the City Clerk Department.

C. **COMMISSION ORGANIZATION**

1) **Election of Officers and Term of Office**

   Unless otherwise provided by ordinance, the chairperson and vice chairperson are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chairperson for more than two consecutive years. There is no term limit for Vice-Chair. The annual election of commission officers should occur during the month of February. The results of the vote should be publicly announced and the vote recorded in the minutes.

   If an established election schedule has been set for the election of officers, any variation from that schedule results in a vacancy or interim period, not an extended

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3 Election of Officers to the Police Review Commission, Board of Library Trustees and Landmarks Preservation Commission are regulated by Berkeley Municipal Code Sections 3.32.050, 3.04.040, and 3.24.030 respectively.
term for the officer. Terms of office for officers are determined by the date the election regularly occurs, not by the date it may have actually occurred.

Example: The Chair is elected in February 2012. The Chair resigns in April 2012. A new Chair is elected in May 2012. The newly elected Chair will serve from May 2012 to February 2013, when the next regular election is held.

2) Mandatory Annual Training for Officers

Chairpersons and vice chairpersons are required to complete mandatory annual training on: a) the parliamentary procedure of conducting and presiding over meetings according to the Brown Act and City policy; b) the role of the commission and its organization; and c) the commission’s relationship to the City Council, the City Manager, the secretary, other commissions, outside agencies, and the general public.

Resolution No. 63,876–N.S. was adopted by City Council to implement video training for commission officers to satisfy the requirements of Resolution No. 60,531–N.S.

The Chairperson or Vice-Chairperson may view, in its entirety, a training video obtained from the City Clerk Department or the training video for this purpose posted on the City Clerk website. Upon completion, the Chairperson or Vice-Chairperson must file with the City Clerk an Affirmation of Completion.

The training video must be viewed and the Affirmation of Completion must be filed with the City Clerk no later than 60 calendar days from the date of election as Chairperson or Vice-Chairperson. Failure to complete the video training and file the Affirmation of Completion within 60 days of election will result in the immediate forfeiture of the position of Chairperson or Vice-Chairperson.

While not mandatory for commissioners other than the Chair and Vice-Chair, completion of Commissioner training is encouraged for all commissioners.

3) Duties of Officers

The chairperson, or in her/his absence, the vice chairperson, performs the following duties:

- Presides at all meetings of the commission and ensures that the work of the commission is accomplished. To this end the chairperson must exert sufficient control of the meeting to eliminate irrelevant, repetitious or otherwise unproductive discussion. At the same time the chairperson must ensure that all viewpoints are heard and are considered in a fair and impartial manner. The Chair cannot make rules related to the conduct of meetings or commission procedure without approval of the full commission.
- Appoints commission members to temporary subcommittees and informal bodies subject to the approval of the full commission.

- Approves the agenda prior to distribution. This is limited to the structure and order of the agenda and does not grant the Chair the authority to remove items submitted by commissioners or staff.

- Signs correspondence on behalf of the commission.

- Represents the commission before the City Council with the formal approval of the commission by motion and vote.

- Approves commission reports to Council.

- The Chair or a quorum of the commission may call a special meeting. The Chair may also cancel a regular meeting.

- Performs other duties necessary or customary to the office.

4) **Transfer of Chair**

In the absence of the chairperson or his/her inability to act, the vice chairperson presides in place of the chairperson. In the event of the absence or the inability to act of both the chairperson and the vice chairperson, the remaining members elect one of their members to act as temporary chairperson.

If a chairperson is terminated for any reason, the office is vacated and the rules for transfer would apply. If a vice chairperson is terminated, the office is vacated and new election would be held to fill the office. If the officer is reappointed she or he shall not resume the office and must be re-elected to the office by the majority of the membership.

5) **Temporary Subcommittees**

From time to time the commission or the chairperson, with the confirmation of the commission, may appoint several of its members but fewer than the existing quorum of the present body to serve as a temporary subcommittee. Only commission members may become members of the subcommittee, however, the subcommittee shall seek input and advice from the residents, related commissions, and other groups. Subcommittees must be reviewed annually by the commission to determine if the subcommittee is to continue. Please consult Chapter IV for noticing and agenda requirements applicable to subcommittees. **All City of Berkeley commission subcommittees are considered ad hoc single purpose committees.**

Upon creation of the subcommittee, the parent body shall allow it to operate with the following parameters:
1. A specific charge or outline of responsibilities shall be established by the parent body.

2. A target date must be established for a report back to the parent body.

3. Maximum life of the subcommittee shall be one year, with annual review and possible extension by the parent body.

In the rare cases where it is deemed necessary to establish a joint subcommittee between commissions, the joint subcommittee shall be approved by the City Council and members designated by the City Council in accordance with the Fair Representation Ordinance.

Subcommittees make recommendations only to the parent commission. Subcommittee recommendations must be adopted by the parent commission before they can be forwarded to Council. A subcommittee may not represent the parent commission before the Council or other bodies unless it has first received the authorization of the parent commission to do so.

Subcommittees shall conduct their meetings in public and in accessible locations that are open to the public. Meetings may be held at privately owned facilities provided that the location is open to all that wish to attend and that there is no requirement for purchase to attend. Agendas for subcommittee meetings must be posted in the same manner as the agendas for regular commission meetings except that subcommittee agendas may be posted with 24-hour notice instead of 72-hour notice.

The secretary is not required to attend or take minutes at meetings of subcommittees. City staff may attend and participate in subcommittee meetings. Depending on the desires of the subcommittee members, City staff may participate the same as members of the public, or may be called upon to offer insights or provide information during discussion.

Subcommittees must be comprised of at least two members. If only two members are appointed, then both must be present in order for the subcommittee meeting to be held. In other words, the quorum for a two-member subcommittee is always two. A temporary appointment does not assume the subcommittee membership(s) of the commissioner for which they are substituting on the full commission.

Certain requirements listed above may not apply to subcommittees seeking legal advice and assistance from the City Attorney or meeting with the City Manager or his/her designees for purposes of real estate or labor negotiations.
CHAPTER III. COORDINATION WITH COUNCIL, STAFF AND OTHERS

A. COORDINATION WITH COUNCIL

1) Relationship to Council

All commissions, even those which are quasi-judicial, administrative or advisory to the City Manager also advise the City Council. As the only authorized legislative body of the City, the Council is responsible for accepting, rejecting or modifying commission recommendations. The Council relies on the various commissions to increase the variety of viewpoints and talents brought to bear on City problems. By concentrating on specific areas, commission members expand their expertise and conduct detailed analyses that the Council itself may not have the time to pursue. It is expected that commissions will adopt positions of advocacy within their specific spheres of interest. However, the Council’s role is to take into consideration the many varied and sometimes conflicting public needs and render its judgment of what will best serve the public good. The Council must weigh the effect of any given recommendation, not only on the particular area of interest, but on all other City goals and programs.

Just as the commissions advise the City Council concerning policy but do not create policy, so too do the commissions advise the City Council concerning various programs run by the City but do not themselves operate programs. The exceptions to this principle is the Board of Library Trustees which has administrative powers.

It is the responsibility of the City Manager and the City staff to operate programs authorized by the City Council. In a few cases a specific program will be designated by the Council to be sponsored by a specific commission, and even in such instances the administration is the responsibility of City staff.

2) Communications from Council

Each commission will be given an opportunity to review and make recommendations on items relevant to its charge. The City staff will notify commissions of relevant items requiring Council action while the item is still in the development stage so as to provide adequate response time.

The Council may also transmit referrals for information or action through the City Clerk who notifies the secretary of the commission. The secretary then notifies the commission. When appropriate, the Council may indicate a desired date for response and specify commissions to be consulted.

Each item presented to the City Council on the Council agenda whether generated by City Manager, Councilmembers, or commissions, shall indicate to whom the item has been referred, the date of referral, and any responses. Each commission may elect to respond by means of a separate report or communication.
The City Clerk posts City Council agendas, annotated agendas, and all reports and proposed resolutions and ordinances on the City’s website. The City Clerk also provides live captioned webcast and video archives of meetings. The City offers e-mail subscription notification at www.cityofberkeley.info/subscribe for newly posted Council information. Commissioners who wish to be notified when new electronic copies of agendas and annotated agendas are posted may subscribe to the City’s e-mail subscription service or request agendas and annotated agendas from the Commission Secretary.

3) Presenting Agenda Items to Council

A commission transmits its findings, responses to referrals and other communications to the Council through the Council agenda. Upon the direction of a commission, the secretary submits a completed commission report for the Council agenda to the agenda process no later than three weeks following commission action. The members of the commission are responsible for providing the content of the report to the secretary. The report will be placed on an upcoming Council agenda based on City Manager timelines and Council Rules of Procedure for scheduling matters on the agenda. All reports are due 33 days prior to the meeting date.

The commission is responsible for drafting the text of the report and providing the final text to the secretary. The secretary of the commission is responsible for formatting and submitting the commission report as approved by the commission and upon final review by the commission Chair or his/her designee. The Chair of the commission should be listed on the report on the “Submitted by:” line in the heading. The City Manager may ask the commission for additional information and/or clarification before placing the report on the agenda.

On rare occasions an advisory commission may be unable to achieve the number of votes needed to take official action. Any commission may communicate the opinion of fewer members than the officially required majority. Nothing in this section shall be construed to prevent the City Manager from reporting what occurred at the commission meeting.

Example: A commission of nine members, where there are only five members present at the meeting (thus achieving the required quorum). These five members disagree: three voting for a proposal and two against. If time permits the matter would be held until all members were present and a definitive recommendation voted upon. If, however, the matter is time sensitive, the commission could elect to communicate the facts to the Council and indicate those voting for each of the opposing viewpoints.

Commissions may submit items to the Consent Calendar, Action Calendar, and Information Reports for the Council agenda. To be accepted for the agenda, Action and Consent Items must contain a specific recommendation for Council
approval, adoption or authorization. Such recommendations should be clear and spell out who is taking action and what the action will accomplish.

The subject matter appropriate for Information Reports is that which seeks to advise or inform the Council on a subject but does not request any action or report by the Council.

The subject matter appropriate for the Consent Calendar is that which recommends a specific Council action and is routine, non-controversial, easily explained and can be expected to receive Council approval without discussion. A subject which is controversial and complex and can be expected to generate Council discussion should not be transmitted as a Consent Calendar item but as an Action Item.

A commission report to Council shall state the full commission motion and the listing of how each commissioner voted. It must also state whether or not any commissioner was recused and the reason for recusal. Further, a complete commission report shall include all opposing points of view and not be limited to discussion of reasons for opposition stated by commissioners only.

This section is only intended to give you an overview of communicating to Council. For more detailed procedures on this subject, see Chapter VI. City Council Agenda Process.

4) Completed Commission Work

It is the commission's responsibility to provide complete, concise and accurate reports to the Council, prepared in such a manner that the City Council fully understands the issue and what action, if any, it is to take. A commission report should include a clear recommendation, the reason for the recommendation, the facts on which it is based, points of disagreement within the commission or with staff, if any, all opposing points of view, and the minority recommendation, if any. Quality commission reports and recommendations take into account the Council's need to view an issue from as many perspectives as possible. The Council must fully understand the relevant background and implications, including costs, of each action it is asked to take. It is the commission's responsibility to provide that requisite information insofar as possible. Submission of quality reports will enable the City Council to act knowledgeably and expeditiously on commission reports and will reduce the likelihood of the Council referring the report back to the commission for clarification. Prior to making a recommendation to the Council, the concerns of all affected stakeholders should be solicited and reported to the Council in the commission report.

Quality reports entail four key procedural aspects:

- Review by other affected commissions prior to submission to the City Council;
• Proper report format and preparation;
• Legal review when appropriate; and
• Realistic funding plans which do not hurt other programs.

5) Council Meetings and Agendas

Regular City Council meetings are generally held twice monthly on Tuesdays. The schedule is established annually taking into consideration holidays and election dates.

As an early order of business the Council considers the Consent Calendar; however, items may be removed from the Consent Calendar and discussed later in the meeting or carried over for discussion to the next regular meeting unless the City Manager requests the matter be heard as a priority.

During the discussion of the Consent Calendar the Council may move Information Reports to the Action Calendar for discussion or to be carried over as pending business until discussed or withdrawn.

Supplemental items accepted by at two-thirds vote of the Council will be available in the reference binder at the Council Chambers at the Council meeting.

When authorized by the full commission, the Chair or the representative of the commission has the right to address the City Council on matters within their charge at the time their item is heard. They may address Council from the staff table. Each commission may present a majority and minority position. Commission members not delegated to speak as the official representative may utilize the Public Comment period to present information to Councilmembers.

B. COORDINATION WITH STAFF

1) Duties of Secretary

An employee of the City designated by the City Manager serves as secretary to the commission. **The staff secretary represents the City Manager and at the same time, assists the commission in its functions and advises the commission of staff’s recommendations.** Individuals assigned to serve as secretaries to a commission are there to perform the ministerial and housekeeping functions as outlined below and do not vote. The secretary should inform commissioners about activities, projects and work that is taking place in the organization and among other commissions. In addition to this, **as City professionals, they have the responsibility to assure that the commission is apprised of laws and administrative processes affecting proposed policy recommendations and operational recommendations. This will save reprocessing all the good work of these bodies which serve largely without compensation and which contribute valuable time to the City.**
It is a **secretary's responsibility to**: a) prepare commission agendas and minutes pursuant to the Brown Act and City procedures; b) notify members of meetings; c) maintain an accurate subscription mailing list; d) **maintain permanent records of all meetings**; e) follow the established Council agenda process to submit reports to Council based on the text provided by the commission; f) request permission from the City Manager or Department Director, for any requests for extensive staff work or report preparation; g) review minutes and agendas of other commissions; h) report commissioner attendance to the City Clerk; i) file Commissioner's Annual Declaration Reimbursement (stipend) forms with the Auditor; j) obtain clerical assistance when needed; k) administer the oath to newly appointed commissioners if needed and file completed oath forms with the Clerk; l) **post agendas and minutes in hard copy and to the web**, and m) forward final, adopted minutes to the Records inbox.

In addition to posting agendas and minutes to the web, the secretary may also post other information that is of particular interest to the public including the commission workplan, specific projects, vacancies, and other general information. When posting additional information it is important that the information be timely and relevant to commission business.

More importantly, the secretaries must at all times consider the policy and fiscal impacts of proposals and provide commissioners with early and timely information about not only the fiscal and policy impact of a proposal in and of itself, but its relationship to overall department and citywide fiscal capacity and priorities. **Commission secretaries must be constantly aware of the responsibility to represent overall Council priorities and administrative policies of the City.** To this end, all commission secretaries will be required to attend training on such matters.

Per Resolution No. 65,127-N.S. (and its successors), commission secretaries shall submit an information report to the City Council whenever a commission cancels two consecutive meetings for lack of quorum.

Documents related to the functions of the commission shall be retained in accordance with the Citywide Records Retention Schedule. Of primary importance is the proper retention of minutes. Secretaries must sign the hard copy of the final adopted minutes and retain these records permanently. Secretaries may also consult with the Records Coordinator in their department for guidance on records retention.

**2) Relationship Between Secretary and Commission**

As previously stated, **the secretaries of commissions are City employees appointed by the City Manager**. In some instances, a department director who is named as staff secretary delegates this responsibility. While other staff members may assist the commission from time to time, **clerical staff will not be assigned to attend meetings without approval of the City Manager**. Only the staff secretary's presence is required. Generally, the staff secretary is appointed from the department which most nearly encompasses the commission's activities.
The two main responsibilities of the staff secretary are to: assist the commission in its functions; and to represent the City Manager. As representatives of the City Manager, the staff secretary also advises the commission of staff's recommendations. In this sense, the secretary is an active participant with the commission, although without a vote, rather than merely a passive transmitter of information.

While the secretary's role is to assist the commission, the secretary and other staff assistants are not employees of the commission. At all times the staff is directly responsible to the department director and to the City Manager. The following are some ways to avoid misunderstandings and to keep the channels of communication open:

a. **All contacts from the commission to any member of the staff other than the secretary, are transmitted through the secretary.** Conversely, all contacts from staff to the commission go through the secretary. When an individual commissioner wants to make contact with a higher level employee, i.e., the City Manager, the commissioner should notify the secretary of this contact.

b. **Contacts with staff members should clearly be in the framework of the commission assignment.**

c. **Commissioners shall not ask for individual reports, favors, or special considerations.**

d. **Citizen complaints heard by commissioners should be referred directly to the staff person (secretary) assigned to the commission.**

e. **Commissioners should realize that the assigned staff person who works with the commission reports directly to a supervisor and may not be able to carry out every recommendation that the commission may have.**

At the same time, the staff secretary has a responsibility to:

a. **Keep the commission informed of the purpose and goals of the organization and suggest methods to accomplish these goals and how to seek out information or resolution of a problem.**

b. **Initiate suggestions so that the commission has an idea how to seek out information or resolution of a problem.**

c. **Promote the team spirit, so that all commissioners can participate in a manner which will maximize their satisfaction in the organization.** Recognizing commissioner contributions and encouraging involvement are two ways to let everyone know that their ideas are welcome.
d. Take initiative to inform commissioners about activities, projects and work that is taking place elsewhere in the organization and among other commissions.

e. Present a balanced report on controversial issues, so that both positive and negative aspects can be readily identified.

If a commission desires information or a report which will require an excessive amount of staff time, the commission should present the request to the Council for approval. The Council may then consider the request in the context of the Citywide work plan and determine the urgency and priority of the request. Following this procedure will prevent staff from being diverted from priority projects.

Reports submitted to the Council by formal action of the commission should present objectively the commission’s recommendation and deliberations, but should also make reference to any disagreement with staff, so as to fully inform the Council of the implications of the report. It is suggested that the secretary maintain a simple report for tracking the status of all referrals to the City Manager and City Council. The report could be updated for each meeting, providing a one-line description of the referral, the date of the referral, when it was transmitted to the Council or City Manager, and what the response was.

All appearances by staff before the commission are scheduled through the secretary so that they may be placed on the agenda. A staff person appearing before, or communicating with, a commission as a private individual must advise the commission that he/she is not acting in an official capacity.

Staff secretaries are professionals who are required to provide their best technical and professional advice both to the commission and also to the City Manager. Occasionally this dual role will result in staff suggesting an alternate recommendation. Commission reports are not subject to modification by the City Manager. However, commission reports that require action must be accompanied by the "City Manager Response Report" and must be completed by the department staff and submitted to the agenda process.

3) The Relationship with the City Manager

The commission secretary should provide the City Manager with copies of each commission report directed to the City Council before the report is submitted to the City Clerk for the agenda process.

The City Manager may include an accompanying report to Council which highlights the nature of any difference and any alternate recommendations in those cases where the City Manager differs with the recommendation of a commission report. Otherwise, the “City Manager” section of the report should state “City Manager concurs/takes no position with the content and recommendations of the commissions report”. Secretaries may refer to Groupware for agenda report templates.
On an annual basis, the City Manager will solicit the opinion of each commission regarding staff service provided.

C. RELATIONS WITH OTHER COMMISSIONS, OUTSIDE AGENCIES AND THE GENERAL PUBLIC

1) Other Commissions

There are enormous benefits when commissions work together on projects or research. Besides the advantages of time and energy savings, commission work can reflect a more accurate blend of community sentiment when efforts are made to coordinate in order to deal with overlapping subject matter.

When one commission recommends an action to the Mayor and Council relating to a sphere of interest of another commission, the other involved commissions are notified and given an opportunity to comment before any reports are forwarded to Council. Referrals for information or review of proposals from one commission to another are transmitted through the respective secretaries of each commission.

In order to develop a useful liaison between commissions, each commission should determine which other bodies regularly deal with overlapping subject matter. Commissions which regularly overlap on each other's activities should request agenda, minutes and relevant reports from each other. Commissions which do not ordinarily relate need not routinely communicate with each other, but where an issue arises which is of concern to both, the two commissions should review the issue with each other before submitting a report to Council.

2) Outside Agencies

Unless specifically authorized by the Council, commissions may not represent policy to outside agencies either on their own behalf or on behalf of the City. Commissions function in an advisory capacity and in the absence of an explicit delegation of the role to act on the City's behalf by the Council on a particular issue, they may not directly communicate with outside agencies.

If a commission wishes to support or object to a particular policy or program it should frame its action as a motion and a recommendation to the City Council on whose behalf the letter will actually be sent. Supporting or opposing legislation need not take the form of a resolution. Action by Council on such a commission request would be in the form of a letter. However, should a resolution be requested of Council, such resolution would be attached to the Council report (in the proper format), ready for Council action. If a request for an official policy statement is received from an outside jurisdiction, the commission should analyze and study the request. It could then make a recommendation to the Council for a response. All communications from outside agencies are transmitted through the staff secretary.
Furthermore, commissions may not take any action such as endorsing grant applications, receiving donations and gifts, sponsoring community events, or approving use of City property, facilities or other resources, which commits or indicates an intention to commit the City without authorization by the Council and coordination with the City Manager.

The commission may not act as a sponsor of or participate in (such as having an information booth) community events without the authorization of the City Council. This prohibition includes the use of the City logo or seal in conjunction with community events. Use of the City logo is restricted to communications generated from a City department. The logo may not be used for other purposes. The City of Berkeley does not provide business cards for members of appointed boards and commissions.

Commissions cannot have a joint meeting or joint event with an outside agency (public or private) for the purpose of conducting commission business. If a dialog with the outside agency is desired, the commission may invite the entity to make a presentation and field questions at a regular commission meeting.

3) General Public

The purpose of commission meetings is to permit open discussion on specific topics in a setting that is more informal than a Council meeting, to hear public expression on issues and to inform the public of what the commission is doing. Commissioners have the obligation to consider the welfare of the entire City, to be fair, objective and courteous, and to afford due process to all who come before them.

Public opinion must be sought but no commissioner should permit his/her judgment to become subservient to the criticism of those citizens attending the meetings. In order to conduct its business, the commission has the authority to limit discussion and public participation on any subject (see Chapter IV. Sec. F.3.).

All communications from the commission to members of the public are transmitted through the commission secretary. Similarly, arriving communications are received by the secretary and relayed to the commission through the agenda packet. The secretary is responsible for including all communications received in the agenda packet according to publication deadlines. Official responses to citizen inquiries must be approved by the full commission and sent via the secretary.

The roster of commission members is a public document available in the Office of the City Clerk. The roster includes the name, residential or mailing address and either a home or business phone number of each commissioner. Commissioners may interact with the public, however, if commissioners are contacted by the public outside a meeting, commissioners should encourage citizens to send their comments to the secretary for distribution to all commissioners or come to a meeting and speak at public comment. This will allow the full commission to hear and consider all pertinent information and points of view.
Any type of public surveys and/or polling of the public outside of a noticed commission meeting requires Council approval.

Secretaries should consult with the administrative official to whom they report for direction on how to address complaints and concerns from residents and members of the public.

4) Individual Commissioners

An individual commissioner may not represent the commission before the general public unless the City Council has authorized a commission to grant permission to do so to an individual commissioner (A commission may authorize one of its members to appear before another City commission without Council approval). When an individual commissioner is appearing in a private capacity before other commissions, outside agencies, the media, or the general public, the commissioner must clearly indicate that she/he is speaking as a private individual, not as an official representative. Official City stationery may be used only for official commission correspondence such as memos authored by the secretary or a commission-approved letter to the City Council.

Each commissioner also has the obligation to work cooperatively with other commissioners. Commissioners should exercise self-discipline and strive always to be objective, fair and courteous with each other as well as with staff and the public. A healthy respect for the time of other commissioners, staff and the public is of critical importance.

5) Press and Other Media

For notices of meetings and agendas the secretary should routinely send these items to the media. Copies should also be sent to the City Manager. The secretary shall post the agendas and approved minutes on the web and send the approved minutes to the City Clerk for indexing into Records Online.

In order to inform the public as much as possible of commission activities, the secretary, with the approval of the commission or the Chairperson, should provide the media with pertinent information as noted below.

Information concerning items of particular interest to be discussed at future meetings as well as recent newsworthy actions of the commission should be regularly provided to the media. Press releases which state the City's policy must be cleared through the City Manager's Office prior to release to the press. Copies of all press releases and other notices that are provided to the media, should be sent to the City Manager's Office also. Inquiries from the media should be handled only by the Chair.
CHAPTER IV. PUBLIC MEETINGS

This chapter describes the key steps necessary for complying with the Brown Act and City Policy for public meetings of boards and commissions.

The Brown Act (Gov. Code §§ 54950 et seq.) is the state's open meetings act. It is intended to ensure that the public has adequate notice of what its elected and appointed local decision makers do, and that those decisions and the deliberations leading to them take place in public.

A. “LEGISLATIVE BODIES”

The Brown Act applies to any “legislative body” as defined below. Only those types of legislative bodies relevant to the City are described.

1. The governing body of the local agency, such as the City Council, is a legislative body. (Government Code section 54952(a).)

2. A body established by statute such as Joint Powers Agencies established by a group of cities is a legislative body. (Section 54952(a).)

3. All commissions, committees, boards or other bodies of a local agency, whether advisory or decision-making, temporary or permanent, created by charter, ordinance, resolution or formal action of the legislative body, are themselves legislative bodies. (Section 54952(b).) Thus, every task force, committee or other advisory group, however denominated, is likewise a “legislative body,” if it was created by formal action of the council or commission, such as by motion.

4. All committees of a quorum of the legislative body are legislative bodies. (Section 54952(b)). In addition, attendance of a subcommittee meeting by an alternate, even as an observer, would result in a meeting of the legislative body if his or her presence would make a quorum of the commission.

5. Every standing subcommittee of less than a quorum of a legislative body which either has a continuing subject matter jurisdiction, or has a meeting schedule fixed by charter, ordinance or resolution or formal action of the legislative body, constitutes a legislative body. (Section 54952(b).)

Only ad hoc advisory subcommittees of less than a quorum of the legislative body are not deemed separate legislative bodies. To be considered ad hoc the group must be:

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4 All statutory references are to the Government Code unless otherwise noted.

5 This exception does not apply if the subcommittee has been delegated authority by the parent body. If it has, it constitutes a legislative body.
1. composed solely of less than a quorum of the parent body. (No citizens, members of other commissions, Council members or other persons can be included in the committee. If others are included, then the group is considered a legislative body under A.3 above and is required to follow all the procedures applicable to a legislative body); and

2. have a finite charge and be required to report back to the parent body within a specific time period, of less than a year; and

3. have no meeting schedule established by the parent body, law or resolution, which set up the ad hoc subcommittee.

Under City policy boards and commissions are limited to creating ad hoc subcommittees.

Despite the exemption above, under City policy, ad hoc subcommittees are considered legislative bodies and must comply with the public meeting requirements of the Brown Act.

B. “MEETINGS”

All “meetings” must be conducted in compliance with the Act. Any contact between a quorum of the legislative body, either directly or through intermediaries to “develop collective concurrence as to action to be taken” on any matter that is “within the subject matter jurisdiction” of the City, is a meeting. “Meeting” includes retreats, forums, workshops and similar types of events. A meeting can be in person, by telephonic or other electronic medium, or through intermediaries.

1) Basic Requirements

All meetings must be properly noticed under the Brown Act. Meetings that are not properly noticed in compliance with the Brown Act are illegal. With limited exceptions, members of the public are allowed to be present\(^6\) at all meetings.

2) Prohibited Serial Meetings

Another type of illegal meeting is a “serial meeting”. A serial meeting is one in which a quorum of a legislative body communicate with each other, directly or indirectly, through whatever medium, to develop collective concurrence.

There are many types of serial meetings, all of which are prohibited.

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\(^6\) Authorized closed sessions are exempt from the requirement of public attendance, but must still be properly noticed.
A literal “serial” meeting is one in which members of a legislative body constituting a quorum meet in smaller groups, serially, or a single member meets with enough other members to constitute a quorum individually, one after the other.

A memorandum from staff asking for comment from a quorum of a legislative body also constitutes a serial meeting because feedback from members of the legislative body assists staff in developing a position which takes into account their points of view and thus results in the collective concurrence of the legislative body. However a staff member may have separate conversations or communications with members of a legislative body in order to answer questions or provide information regarding a matter that is within the subject matter jurisdiction of the local agency, if that person does not communicate to members of the legislative body the comments or position of any other member or members of the legislative body.

Another type of serial meeting can result – sometimes unintentionally – from improper use of e-mail. E-mail communication between a quorum of a legislative body to develop a collective concurrence constitutes an illegal serial meeting. (Section 54952.2(b).) To avoid this problem, members of legislative bodies should never use the “reply to all” function to an e-mail that may be addressed (even via “bcc”s) to a quorum of the legislative body. Since it is not always possible to know who might receive a “reply to all”, it is better to simply never use the “reply to all” function. Of course, a serial meeting can occur from forwarding an e-mail as well.

3) Lobbying

Serial lobbying by members of the public of all commission members is not prohibited as long as they are not acting as intermediaries between members of the legislative body. (Section 54952.2 (c)(1).)

4) Exceptions - Gatherings That Are Not “Meetings”

Certain gatherings of a quorum of a legislative body are not considered meetings under the Brown Act. Major exceptions not previously discussed are described below:

a. **Attendance By One Legislative Body At a Meeting of Another**
   
   Attendance at a meeting of another commission or the City Council does not need to be separately noticed, provided that a quorum of the attending body does not discuss privately among themselves, other than as part of the scheduled meeting, business of a specific nature that is within the subject matter jurisdiction of that body. (Section 54952.2(c)(4).) This exception includes noticed meetings of legislative bodies of other public bodies, not just those of City commissions or the Council.

b. **Attendance at a Meeting of a Standing Subcommittee, As Observers**


If the standing subcommittee members of a legislative body plus attending non-subcommittee members together comprise a majority of the parent legislative body, the non-members’ role must be confined to a role as observers. (Section 54952.2(c)(6).) The apparent intent is to ensure that such meetings do not turn into de facto meetings of a quorum of the parent body, since they have not been noticed as such. The main purpose of this requirement is to avoid having to notice meetings as ones of the entire legislative body out of fear that a quorum may attend to observe the meeting.

This exception does not apply to an alternate appointee to a subcommittee. A commissioner appointed to be an alternate member of the subcommittee may not attend a subcommittee meeting as an observer. They may only attend when they are serving as a member of the subcommittee in place of another member.

c. **Attendance at Conferences and Other Gatherings Open to Members of the Public**

Attendance at a public conference is permissible as long as a quorum of the body do not discuss among themselves specific business that is within the subject matter jurisdiction of the agency.

d. **Purely Social or Ceremonial Occasions**

Attendance at purely social or ceremonial occasions are not considered meetings as long as the participants do not discuss among themselves business of a specific nature that is within the subject matter jurisdiction of the local agency. (Section 54952.2(c)(5).)

e. **Open and Public Community Meeting Organized by Someone Other Than the City to Address a Topic of Local Community Concern**

Attendance at a meeting organized by persons or groups other than the City to address a subject of local community concern may be attended without noticing the meeting as long as members of the legislative body only participate in the public program and do not discuss among themselves matters of specific business within the jurisdiction of the City.

**Caution! No “Informal” Meetings!** Commissions often wish to have “retreats,” “study sessions,” or “workshops.” Any such activity, where a quorum of the commission is present and discussing commission business is a meeting. It must meet all the requirements for notice, public participation, location and accessibility. Any such meeting would count toward the limit on the number of meetings allowed set by Council.
C. ESTABLISHING A REGULAR MEETING SCHEDULE

Section 54954 requires that each legislative body, except for advisory and standing committees, must establish a schedule of its regular meetings, which includes the time and location of the meeting. Thus the only commissions that would have to establish a regular meeting schedule are those commissions that have final decision-making authority as to some matters, such as the Board of Library Trustees, Planning Commission, Zoning Adjustments Board, Landmarks Preservation Commission, Fair Campaign Practices Commission, Police Review Commission and Housing Advisory Commission.

In addition to Brown Act requirements above, City policy requires all commissions to establish a meeting schedule at the beginning of each year to follow for the next 12 months. The meetings must be scheduled in accordance with the meeting frequency schedule adopted by the City Council and must be noticed and conducted under the rules and regulations of the state and local authority.

D. LOCATION AND ACCESSIBILITY OF MEETINGS

1) Location

Meetings of legislative bodies are generally held in public buildings. Meetings may be held in a privately owned building or facility provided that all Brown Act requirements for noticing and accessibility are met. In addition, no member of the public shall be required to make a purchase or meet any other requirement of the private establishment as a condition of attending and participating in the meeting.

Meetings must be held within City limits unless the meeting falls within one of the exceptions in section 54954(b). Listed below are the exceptions least unlikely to apply to City legislative bodies.

- Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

- Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies. Meetings with private or non-profit entities do not qualify as "multiagency" meetings; such meetings must involve other public agencies.

- Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.
Finally, a legislative body may meet outside the jurisdiction if it is unsafe to meet in the place normally designated by reason of fire, flood, earthquake, or other emergency.

Consult the City Attorney if there is some special reason to have a meeting outside City limits.

2) Accessibility

The Americans with Disabilities Act (ADA) has always been applicable to the manner in which the City conducts its public meetings, but provisions of the ADA have been expressly incorporated into the Brown Act. Appendix F describes the accessibility requirements that must be observed.

In addition, Council policy requires that all meetings, even those not subject to the Brown Act (such as ad hoc subcommittee meetings), be held in accessible facilities. This includes the approach to the facility, entry, path of travel within the facility, and restrooms. Secretaries should contact the Disability Programs Manager for recommended locations or for a location assessment, if necessary.

Pursuant to City of Berkeley Administrative Regulation 1.12, all boards and commissions must provide communication access in the form of accommodation to members of the public with disabilities so that they may have an equal opportunity to participate in and benefit from board and commission meetings. This particularly affects citizens who are vision or hearing impaired, and may involve requests for such accommodations as providing meeting agendas in large print or Braille, utilizing the City’s assistive listening devices, or the provision of a sign language interpreter at the meeting itself.

Upon request, it is the responsibility of the Disability Compliance Program to arrange for this accommodation at no cost to the requesting individual. Although the Communication Access Statement (see Chapter V. Sec. D.2.) states that three working days advance notice will ensure accommodation availability, every attempt will be made to arrange accommodation even on short notice. Although primary consideration should go to the disabled individual’s preferred type of accommodation, when a particular type of accommodation is not available on short notice, an alternative type of accommodation may be considered. For example, if Braille or large print isn’t available on short notice, staff may read the document to the vision-impaired person as an alternative.

Commissioners or board members with disabilities will receive accommodation through the Disability Compliance Program upon request. This is discussed in Chapter II. Section A.12.
E. AGENDA AND NOTICE REQUIREMENTS

1) Agenda Requirements

Under Section 54954.2, a “brief general description” of each item of business to be “transacted or discussed” at any regular meeting must be included on the agenda.

2) 72- Hour Notice of Regular Meetings

The agenda for a regular meeting must be posted in “a location that is freely accessible to members of the public” at least 72 hours before the meeting. The City has erected a publicly accessible bulletin board for this purpose in front of Old City Hall. Secretaries must post the notice under the listing for their board, commission or task force. The notice may be posted at other locations as well. (Section 54954.2.) This Manual requires that secretaries post the meeting notice at the meeting location.

The 72 hour posting requirement need not be met where an item was properly noticed to be considered at a prior meeting that occurred less than five calendar days before the present meeting, and at that prior meeting the commission adjourned its consideration of that item to the present time and location. (Sections 54955, 54954.2(b)(3).) Within 24 hours of either an order of adjournment or continuance, the order which sets forth the time and place of the adjourned meeting or continued hearing, must be posted at a conspicuous location on or near the door of the location at which the order was made. (Sections 54955, 54955.1.) However, if a hearing is continued to within less than twenty-four hours, a copy of the order must be posted immediately. (Section 54955.1.)

3) Adding Emergency Items To The Agenda

An item may be added to the agenda if the commission finds by a two-thirds vote (of the total authorized membership), or by unanimous vote if less than two-thirds of the members are present, that there is a present need to take immediate action, which came to the attention of the City less than 72 hours before the meeting. (Section 54954.2(b)(2).) Be careful not to overuse this exception. It should normally be triggered only when some precipitating event that occurs and comes to the attention of the City less than 72 hours from the event. The Commission should seriously consider whether there is really a need to take immediate action. When it does so it undermines the important public policy goal of ensuring that all relevant stakeholders and points of view are considered before a recommendation to the Council is formulated. Although the Brown Act also has special noticing procedures for an “emergency situation,” Section 54956.5 so narrowly defines this term (“work stoppage, crippling activity that severely impairs public health, safety or both…”) that it is generally inapplicable.
4) **Legislative Bodies Must Establish a List of Persons Requesting Mailed Notice and Agenda Packets and Mail Such Agendas and Agenda Packets to Such Persons by a Specified Time**

The rules governing the mailing of agendas are set forth in Section 54954.1. These rules require that any person who requests a copy of the agenda and agenda packet in writing must be mailed a copy of the agenda and packet at the time that the agenda is posted or a distribution is made to a majority of the members of the commission. Such a written request for agendas and packets is effective for the calendar year in which it is requested and must be renewed following January 1 of each year. (However, failure to follow this requirement will not result in the invalidation of the action taken by the legislative body.) Per City policy a fee to cover the cost of mailing such agendas and supporting documents should be charged. The Brown Act requires that the secretary maintains a continuously updated list of persons who have requested agendas and agenda materials in writing.

5) **Special Meetings**

Any meeting not on the regular meeting schedule is a special meeting. The procedure for calling a meeting is governed by Section 54956. Notice of a special meeting may be delivered by any means, but each member of the commission and any member of the media requesting notice, must receive the agenda at least 24 hours before the meeting. If any member of the legislative body has filed a written waiver of notice, then receipt by such member of the notice is not required. Notice is deemed to have been dispensed with if a member is actually present. The meeting can be called by the commission Chair or by a majority vote. Only items that are described on the agenda may be discussed or acted upon. The call and notice (special meeting agenda) must be posted at least 24 hours prior to the meeting on the bulletin board in front of Old City Hall, at 2134 Martin Luther King Jr. Way, and at the meeting location. A special meeting counts toward the total number of meetings allowed.

6) **Subcommittee Meetings**

Meetings of commission subcommittees require 24-hour advance public notice. The notice is prepared by the commission secretary and posted in all the same required locations as applies to meetings of the full commission.

7) **Public Hearings**

Public hearings are held when required by law. Generally, the need for a public hearing is limited to the quasi-judicial commissions; Zoning Adjustments Board, Landmarks Preservation Commission, Housing Advisory Commission, Fair Campaign Practices Commission, Police Review Commission, and the Planning
Commission. Please see Chapter V. Sec. B.6. for proper public hearing procedures.

8) Media List For Special Meetings

In order to give proper notice of a special meeting, it is important to ensure that the commission/committee secretary maintain a current list of such media. The City Clerk has developed a list of media that is used to give notice of City Council special meetings. This list should be used, along with any other radio or television station that may have sought notice of a particular legislative body's meetings.

9) Local Notice Requirements

The City Council has limited the type of subcommittees that may be created by a board or commission. Some of the key requirements are that such subcommittees: have a single purpose, be composed exclusively of less than a quorum of the parent body, have a specific charge, and have a target date to report back to the parent body. This policy only allows the creation of ad hoc subcommittees. In addition, under City policy subcommittee meetings must follow all Brown Act requirements, including wheelchair accessible locations and 24-hour public notice.

F. MEETING PROCEDURES

1) Basic Rules

With a few narrow exceptions not applicable to most commissions, all meetings of legislative bodies must be open to the public. (Section 54953.)

No one can be required to give his or her name in order to attend or speak at a meeting.

Audio or videotaping of the meeting must be allowed except when the legislative body finds that the recording is performed in a manner that constitutes “a persistent disruption of the proceedings.” (Section 54953.5(a).)

2) Teleconferencing Meetings

The Act allows meetings to be conducted by teleconferencing under very specific procedures, including: (1) the requirement that each location be identified in the notice and agenda of the meeting and made accessible to the public, (2) all votes must be by roll call and (3) public comment may be made at any of the noticed locations. (Section 54953.) Because such meetings present logistical difficulties, they should be planned well in advance with staff to make sure teleconferencing is feasible.
On December 18, 2007, the City Council approved an official policy governing the circumstances under which a commissioner will be permitted to teleconference and establishing the procedure for obtaining approval for use of teleconferencing.

Teleconferencing may only be used in the case of an extreme, unforeseen health or disability. It may not be used in the case of business or other travel and it requires pre-approval. Please read the policy carefully in Appendix L.

3) Public Comment

a. When? At the beginning or during each item?

Decide whether to allow comment at the beginning or during each item as authorized under section 54954.3. Since the Act requires that public comment for regular meetings be permitted on any subject within the subject matter jurisdiction of the city, if you decide to allow comment during each item, you will also need to decide when you will allow general comments on subjects not related to anything on that agenda.

b. Any overall time limits and/or limit per speaker?

Section 54954.3(b) allows a commission to adopt reasonable regulations to govern public comments. Typical of such rules are time limits on speakers and overall time limit on public comment. You should decide whether to set an overall time limit and/or limit per speaker.

c. Want to draw a distinction between public comment at regular meetings versus special meetings?

Section 54954.3(a) requires public comment at special meetings as well as at regular meetings. At special meetings, the comment can be confined to the subject matter to be considered at the special meeting. By contrast, at regular meetings the speaker can address any matter within the jurisdiction of the commission. You should distinguish between regular and special meetings on the agenda for purposes of public comment.

d. No Discussion of Items Raised At Public Comment

Public comment cannot be used to start a discussion between commissioners or to take action in response to comments. Section 54954.2 does allow members of the legislative body or its staff to make brief responses to comments made at public comment. It is also permissible for a member of a legislative body to ask a question for clarification, make a brief report on his her own activities and make a referral to staff or ask that an item be placed on a future agenda.
e. Formal Participation by the Public/Presentations

An individual wishing to formally address the commission or make a presentation should prepare a written request to the secretary to be scheduled on a future agenda. The request is discussed at the next meeting and the commission may grant or deny the request.

4. Records Related To Agenda Items

All reports, motions or other writings disseminated by the commission or the staff to a majority of the members of the commission must be available for public review at the commission meeting on the date that the subject to which it relates is on the commission agenda. (Section 54957.5.) Any matter disseminated to the commission at the meeting by other persons must be made available to the public upon request without delay. (Id.) While one-way communications by email or regular mail are not illegal serial meetings, if these memoranda or emails relate to a subject on a subsequent agenda, they should be made part of the agenda packet for that meeting and available for public review.

5. Adjournments

When a quorum of the legislative body is not present, the members who are present can adjourn the meeting to a set time and place or they can continue the meeting as a subcommittee. (Section 54955.) Although it is generally not advisable for the present members to continue in the meeting as a subcommittee, because the subcommittee cannot make recommendations to the Council, it may be advisable under some circumstances. For example, when members of the public are present and want to give their input on some policy matter pending before the commission, and the matter was scheduled for a public hearing, the members present may wish to continue as a subcommittee in order to obtain the input from the public so as to not inconvenience the members of the public who came to give testimony.

6. Minutes

Although the Brown Act does not require minutes, except for closed sessions, the Commissioner's Manual does require minutes of commission meetings except for subcommittee meetings. When required, minutes are limited to action minutes only.

7. Closed Sessions

Closed sessions are rarely permissible for commissions. They are authorized by the Brown Act for certain specified reasons generally only applicable to the City Council. The most common reasons for closed sessions are to discuss pending or
threatened litigation with legal counsel, give instructions to a labor negotiator and
to appoint, evaluate, hear charges against or dismiss an employee. Please contact
the City Attorney for advice significantly in advance of any proposed closed
session to ascertain whether under the particular facts, the commission is
authorized to conduct a closed session and if so how such a closed session must
be noticed and conducted.

G. BERKELEY OPEN GOVERNMENT ORDINANCE

Adopted in 2011, the Berkeley Open Government Ordinance provides greater
access to citizens with regard to City business and documents. The portions of the
ordinance that are specific to boards and commissions are listed here:

- Meetings of the Zoning Adjustment Board are recorded, televised and
  video-streamed live as well as archived for replay. The ordinance also
  states the intent to add Planning, Housing Advisory Commission, and
  Landmarks Preservation Commission meetings to the broadcast
  requirement when resources permit. (2.06.100)

- Disclosure of ex parte contacts prior to certain hearings. (2.06.110)

- Rules regarding the conduct and reporting of closed session meetings and
  actions. (2.06.120)

- Contributions to the City which may be accepted by any legislative body
  must be approved by the City Council at a regular meeting. (2.06.150)

- Delegation of oversight functions to the Open Government Commission
  which consists of the FCPC sitting ex officio members of OGC (2.06.190)

H. CONCLUSION

Following these procedures will ensure the validity and integrity of commission
actions. Failure to follow the requirements of the Brown Act may result in the
nullification of commission actions and significant delays as the invalid actions are
re-agendized for future meetings. It is essential that secretaries and
commissioners remember that the standards of conduct and transparency are
higher for public legislative bodies. These regulations ensure that the public is
aware of and engaged in the public process and that the actions of the commission
cannot be called into question.
CHAPTER V. COMMISSION PROCEDURES

A. WORK PROGRAM

1) Development of a Work Program

Many commissions find it effective to establish a yearly work program or statement of goals. A work program is a planning document that specifies how and when the objectives (outcomes) which the commission expects to accomplish during the fiscal year will be achieved. Goal statements explain the nature and scope of the work to be performed and the time needed to accomplish the goal. The nature of the duties of specific commissions may determine which method is most suitable.

Designing yearly work programs or goal statements may be done in conjunction with the development of the relevant departmental work plan so that the department and commission's work will complement each other throughout the year.

When developing a workplan Commissions should take special care to ensure that they remain within their subject area purview and the constraints of their enabling legislation.

B. MEETING PROCEDURES

1) Establishment of Meeting Rules

Each commission may establish additional rules and limit debate. It is the responsibility of the chairperson to control the debate among commissioners so that everyone has a chance to speak before others speak for a second time, and to expedite the business at hand. To this end, commissions may establish rules to limit debate.

2) Processing of Motions

When a motion is made and seconded, it should be stated by the maker of the motion and read by the Chair prior to debate. If the motion is adopted, the maker's written version of the motion, if any, should be given to the secretary for reference in preparation of Council reports and/or the minutes. A motion may not be withdrawn by the mover without the consent of the member seconding it. After discussion has ended and immediately prior to the vote, the secretary clearly states the full motion (with any amendments). If a roll call vote is used, the secretary then calls the roll (always calling the names in the same order). After all commissioners have voted, the secretary announces the vote totals and whether or not the motion passes.
The chairperson may at any time, by majority consent of the members, permit a member to move a subject out of the regular agenda order.

Motions may be adopted by the "no objection" method unless any member prefers voice or roll call vote. There is no legal requirement for roll call voting unless a member demands it. While this method of expediting a long agenda is common practice, a roll call vote may be preferable to provide greater clarity and understanding on commission proceedings for the members, the secretary and the public in attendance.

3) Reconsideration of a Vote

A commission may reconsider their action on a vote taken previously. This is limited to actions taken at the meeting currently in session. In order to reconsider a vote, the motion to reconsider must be made by a commissioner from the prevailing side of the original vote. The motion must be made prior to adjournment of the meeting.

4) Parliamentary Procedure and Robert’s Rules of Order

More detailed information on parliamentary procedure for chairpersons and commissioners, the precedence of motions, and voting procedures is contained in informational materials provided by the City Clerk Department. Parliamentary rules derive from Robert’s Rules of Order (adopted by Resolution No. 23,080-N.S.).

5) Order and Decorum


While the Commission is in session, the members should not interrupt the proceedings or any Commissioner or member of the public who has the floor.

b. Conduct of Public in Attendance.

Persons attending the meeting should observe the rules and procedures of the Commission and should not disrupt commission business, for example: by shouting, making disruptive noises, such as boos or hisses; creating or participating in a physical disturbance; speaking out of turn or in violation of the Commission’s procedures or rules; preventing or attempting to prevent others who have the floor from speaking; preventing others from observing the meeting; entering into or remaining in an area of the meeting room that is not open to the public; or approaching the Commission without consent. Any message to or contact with any member of the Commission while it is in session should be through the Commission Secretary.

Members of the public that do not follow the rules for decorum may be asked to leave the meeting. If a member of the public creates a significant
physical disruption to the conduct of the meeting or acts in a threatening manner toward another member of the public, staff, or commissioners, law enforcement personnel may be called to remove the individual from the premises.

Although not required, each person addressing the Commission may give his/her name and City of residence. All remarks should be addressed to the Commission as a body and not to any specific member. No one other than the Commission and the person having the floor, may enter into any discussion, either directly or through a member of the Commission, without the permission of the Chair. No question may be asked of a Commission member except through the Chair. After being recognized for this purpose by the Chair, any commission member may briefly respond to comments made during the public comment period or may pose a question to the person speaking at public comment or during a public hearing but may not discuss the matter.

Interested persons may address the Commission on any issue concerning City business during the period assigned to Public Comment under Commission procedures. The public may also comment during a public hearing on the subject of the public hearing in accordance with any procedures established by the commission for this purpose. Commissioners may ask questions but the Commission should not discuss or act in connection with such citizen comment, if the subject is not on the agenda for action. A Commissioner may, however, refer a subject to staff or other resources for factual information or for action, if appropriate.

c. Rules of Debate

The presiding officer may debate from the Chair, subject only to such limitations of debate as are imposed on all members. The Chair should not be deprived of any of the rights and privileges enjoyed by a member of the Commission by reason of his/her acting as the presiding officer.

Every member desiring to speak should address the Chair, and upon recognition by the presiding officer, should confine him/herself to the question under debate.

d. Interruptions

A member, once recognized, should not be interrupted when speaking unless it is to call him to order, or as herein otherwise provided. If a member, while speaking, is called to order, he/she should cease speaking until the question of order can be determined, and, if in order, he/she should be permitted to proceed.
6) Public Hearings

Public hearings are held when required by law. When a hearing is required by law, the procedure for that hearing may also be specified by that law. Public hearings are held by quasi-judicial commissions, such as hearings or permits before the Zoning Adjustments Board, Landmarks Preservation Commission, or Housing Advisory Commission. In such quasi-judicial proceedings, special rules apply.

a. Notice of Hearing. Where a public hearing is mandated by law, the form and timing of the advance notice is most often specified by law. The commission’s secretary will handle all such requirements. Most notices are routinely distributed to the media, affected community organizations, affected neighborhood groups, and, depending on the specific subjects, they may also be circulated to affected special interest organizations or individuals.

Certain hearings require, in addition to a mailed notice, a posting in the area affected by subject matter. Again, all legal notice requirements are properly handled by the commission’s secretary.

b. Conduct of Hearing. The procedure to be followed for a public hearing may vary depending on the governing law or regulation. In the instances where a commission acts in quasi-judicial fashion, certain minimum standards of receiving testimony must be met. These would include, but not necessarily be limited to, an introduction of the subject by either the secretary or the chairperson, testimony from affected parties or interested citizens, or receipt of any pertinent documentation.

The hearing should be formally declared open by the chairperson and should be formally terminated by commission motion. If findings are required as a part of the commission action, such findings should be clearly stated for the record. If any commissioner must abstain from participation due to potential conflict of interest, or has a disclosure of interest which, while it should be made, does not prevent participation, these should be stated at the commencement of the hearing.

c. Action. Any action resulting from the hearing should be clearly stated in the form of a motion, properly seconded and voted upon. The record should in such cases identify those voting "aye", those voting "no", those abstaining, and those absent.

Action must, of course, be by an affirmative vote of at least a quorum of the commission. This criteria is more specifically discussed in Section D.3 of this Chapter.
Under State law, action is prohibited on any matters which have not been properly noticed. This is more specifically discussed in Section D.1 of this Chapter.

If no action is to be taken at that meeting, the chairperson should announce this fact, and, if possible, advise the public of the date when action may be expected.

d. **Tape Recording of Hearings.** In certain quasi-adjudicating hearings, there is a legal requirement for a public hearing be taped. The secretary will provide a written set of action minutes, which, when adopted by the commission, constitute the legal record.

e. **Hearing from the Public.** At public hearings, commissions have the responsibility to hear all viewpoints of any subject. In order to ensure that all parties are adequately heard, it is often necessary to establish ground rules. These rules most commonly include:

   1) Limiting the time of speakers.

   2) Establishing strict rules regarding rebuttal, if it is decided that rebuttal is permitted.

   3) Requesting commission members to hold questions to the end of the public presentation portion of the hearing.

f. **Impartiality and Standards of "Fair Play".** Commissions should be aware of the need to maintain basic standards of fair play and impartiality. This awareness must also speak to the need to avoid the appearance of bias. The chairperson has the primary responsibility to ensure that the varying points of view are heard, that the hearing or workshop proceeds in a timely manner, and that the options for future action by the commission are clearly stated. **Awareness of the varying interests within the Berkeley community is essential,** and the City Council depends on its boards and commissions to provide thoughtful advice based on the fullest possible study of the subject and contact with all relevant segments of the community to obtain their input.

7) **Joint Meetings of Commissions**

   Two or more commissions may hold a joint meeting to discuss an issue that falls under the purview of multiple commissions. While it may be noticed as a “Joint Meeting,” in practice it is really two separate meetings occurring at the same place and time. The secretary for each commission must prepare separate agendas and post them accordingly. During the meeting, each commission must vote independently on each agenda item. The secretary for each commission shall prepare separate minutes for the meeting as well.
C. COMMISSION AGENDA NOTICE

1) Notice of Meetings

In order to protect the right of the public to know when meetings are held, adequate notice must be made. In the case of regular meetings whose time and place is set forth in a formal document (bylaws, ordinance, resolution, etc.), the required agenda serves as notice and no additional notice is needed. The agenda must be physically posted 72 hours in advance of the meeting. The agenda posted on the web is helpful to the public, however, it does not satisfy the official noticing requirement.

Special meetings may be called by the chairperson or a majority of commissioners if written notice is received at least twenty-four hours in advance by each member and by any news media which have requested such notice in writing. The notice must contain the time and place of the meeting as well as the business to be transacted. No other business can be considered.

Agendas of meetings of the commission and any subcommittee meetings are to be posted on the official City bulletin board, at the meeting location, and are to be posted on the City's website. For more information, refer to Chapter IV, Section E.

2) Cancellation of Meetings

When the meeting is cancelled prior to the meeting date:
General practice is to post a notice of cancellation, stating that the meeting has been cancelled, in all the locations that the notice and agenda are regularly posted (at the meeting location, on the bulletin board at Old City Hall, and on the commission web page). Any persons or members of the media on a subscription list for notices and agendas should be notified as soon as possible. This should be done as soon as it is known that the meeting will be cancelled.

When the meeting must be cancelled due to lack of quorum:
When less than a quorum of a body appears at a noticed meeting, the body may either meet as a committee of the parent body or adjourn to a future date pursuant to the provisions of Government Code sections 54955 or 54954.2(b)(3). If no members of the legislative body appear at a noticed meeting, the secretary may adjourn the meeting to a future date and provide notice to members of the legislative body and to the media in accordance with the special meeting notice provisions set forth in Govt. Code section 54956.

When a meeting is adjourned to a subsequent date:
Notice of the adjournment must be conspicuously posted on or near the door of the place where the meeting was held within 24 hours after the time of the adjournment.
Rescheduling a Cancelled Meeting:
In order to reschedule a meeting, the commission must act to modify the meeting schedule though the commission agenda. A special meeting called to replace a cancelled regular meeting counts towards the 10 meetings per year limit. Any meeting not on a regular meeting date is a special meeting, unless the commission formally voted to amend the annual meeting schedule. The Chair may cancel a meeting prior to the meeting date. The Secretary may also cancel a meeting if there is no quorum upon polling the commission.

3) Polling, Quorum, and Voting

The staff secretary should poll commissioners three days before the meeting to determine if there is a quorum and to communicate this information to the chairperson.

A quorum is the minimum number of commissioners who must be present for the valid transaction of business. In order to take any action, a quorum of commissioners must be present. For the purposes of these guidelines, **a quorum means a majority of actual appointees.** Thus, if a commission has nine actual appointees (out of a potential of nine), five members constitute a quorum. If there are only five appointees (out of a potential of nine), three members constitute a quorum.

The number of affirmative votes needed to pass a motion is the same number which constitutes a quorum - a majority of actual appointees. The City of Berkeley requires a majority of the "membership" rather than a majority of those present at the meeting to take action or pass a motion. This ensures that a majority of those actually appointed to a commission endorse the action being taken. If one were to allow a majority of a quorum to take action (instead of a majority of those actually appointed), formal action could be taken by a very low percentage of those actually appointed (e.g., if there were five actual appointments to a nine-member body, a quorum would be three and action could be taken by two appointees).

Occasionally, a particular enabling ordinance or resolution may create a different requirement so the ordinance or resolution establishing the commission should be consulted for particular requirements.

Commissioners that have been granted a leave of absence are subtracted from the number of actual appointees in the table below. Vacancies on the commission also are subtracted from the number of actual appointees. If a temporary appointee to the commission is absent from a meeting, that does not reduce the number of actual appointees.
The following is a chart indicating the numbers needed to take action:

<table>
<thead>
<tr>
<th>Total Number of Seats*</th>
<th>Actual Appointees</th>
<th>Quorum</th>
<th>Votes Needed for Action</th>
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</thead>
<tbody>
<tr>
<td>9</td>
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<tr>
<td>9</td>
<td>3</td>
<td>2</td>
<td>2</td>
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</table>

* This refers to the authorized membership under the commission’s enabling legislation.

An exception is the Police Review Commission, established by Ordinance No. 4644-N.S. (BMC Chapter 3.32), which states that "A majority of the appointed commissioners shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present is required to take action."

**Example 1:** A commission with 9 seats. Two members have a leave of absence and one seat is vacant. No temporary appointments have been made for the commissioners on leave. The number of Actual Appointees is 6, the Quorum is 4, and number of Votes Needed for Action is 4.

**Example 2:** A commission with 9 seats. Three members do not attend and do NOT have Leaves of Absence. One seat is vacant. The number of Actual Appointees is 8. The Quorum is 5. The number of Votes Needed for Action is 5.

In Example 2 there are 5 members in attendance and the votes needed for action is 5. All votes must be unanimous in order to complete commission business. This highlights the importance of requesting a Leave of Absence in advance of a meeting. Had the three absent commissioners obtained a LOA, the number of Actual Appointees would have dropped, thus lowering the quorum and the votes needed.

4) **Polling for Special Meetings**

In instances where the Council desires a prompt advisory recommendation and there is no time to consider the Council's request at a regular meeting, a special
meeting should be called. If a quorum cannot be assembled for a special meeting, the staff secretary so advises Council and indicates the date that the commission is expected to be able to consider the issue.

D. COMMISSION AGENDA

1) Agenda Titles/Purpose

The purpose of the agenda is to inform the public regarding the issues to be discussed. It is required by the Brown Act that agenda item titles describe fully the issue or action to be discussed and/or taken. This requirement, therefore, precludes such agenda titles as "University Avenue Improvements" under NEW BUSINESS, or listing a topic on every meeting agenda to cover the "possibility" of discussion.

In preparing the agenda you should place yourself in the position of a member of the public. You need to ask yourself if you could determine from the agenda title what the commission or board is discussing and what action is being proposed.

For example: "University Avenue Improvements" listed on an agenda by itself does not say anything. An appropriate title might be:

"Adopt a Recommendation to the City Council to Proceed with the Proposed $5 million University Avenue Landscaping Improvements"

Another example: "Earth Day" listed on an agenda by itself is too vague. An appropriate title might be:

"Discussion of Commission recommendation to Council to sponsor Earth Day Parade"

The agenda must be clear on what action, if any may be taken on an item. The agenda should list the recommendation or action proposed. By using a full explanation in the item title (never use acronyms), members of the public who may be in favor or opposed to such an issue would know to be present at the Commission meeting to discuss their views.

2) Agenda Format/Headings

Prior to each meeting of the commission, the secretary prepares and distributes an agenda which usually includes, but is not limited to, the following: Roll Call, Public Comment, Approval of Minutes, Public Hearings, Old Business, New Business, (with appropriate description of the item under the headings of Public Hearings, Old and New Business), and Adjournment. The agenda may be approved by the chairperson prior to distribution. The format of the agenda may be varied to suit the commission’s needs, but it shall always include the following:
Communication Access Information (A.R.1.12)

“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 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.”

SB 343 Disclaimer

“Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at _______________________ Department located at _______________________.”

Communications Disclaimer

“Communications to Berkeley boards, commissions or committees are public record and will become part of the City’s electronic records, which are accessible through the City’s website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information.”

Agendas may include the following if applicable:

Accessibility of Meeting Facilities
All meeting facilities must be accessible. If, however, the accessible entry or path of travel is other than the main or common entrance or path to the meeting location, such information and directions must be so noted on the agenda.

Use of Dates
Items for which material was included in the past and which are not duplicated again as part of the agenda packet should contain the date of the previous agenda packet for reference.

Identification of Written Reports
Written reports which are to be delivered at the meeting will be identified in the following way: (to be delivered).
• Oral Reports
  Agenda items for which there will only be an oral report will be identified in
  the following way: (oral report).

3) Submission of Commission Agenda Reports

  All reports prepared by staff assisting commissions shall be routed through the
  department director for policy and operational clearance prior to submission for
  consideration by a relevant commission.

  Commission members are responsible for typing any documents they wish to
  submit for consideration by the commission. Commissions should formally adopt
  procedures and guidelines for submitting items to the commission agenda. These
  guidelines may include deadlines, format requirements, standards for
  completeness, as well as procedures for late submissions if desired. Any
  commissioner may submit an item for consideration on the commission agenda.
  Neither the secretary nor the Chair may prevent an item from appearing on the
  agenda if it meets the requirements established by the commission and this
  Manual.

4) Distribution of Commission Agenda Packets

  When all necessary documents are submitted from the commissions by the
  deadlines noted above, the secretary mails complete agenda packets, first-class
  postage, to commission members no later than seven days before the meeting. All
  written communications sent to commissions shall be distributed to all members in
  the packet or at the next meeting. Any commissioner may opt to receive the
  agenda packet in electronic format only. This request must be made in writing to
  the secretary of the commission.

  Complete agenda packets shall be available at the meeting for public perusal and
  at the Main Reference Library. Any supplemental items shall also be included in
  the packet for public perusal at the meeting and the packet maintained at the
  Library.

  An agenda without supporting materials may be distributed to other commissions
  or City departments whose area of interest is complementary or whose work
  directly impinges on the subject to be discussed. The secretary distributes the
  agenda to appropriate local media. In addition, the agenda is posted on the City's
  Official Bulletin Board and at the meeting location. Commission agendas are also
  posted by the secretary on the City's Website: http://www.cityofberkeley.info/commissions.

  Secretaries shall provide new commissioners with an orientation packet of
  agendas, action reports, and minutes for the previous six-month period.
5) **Subscription Service Fee**

The secretary shall maintain a list of all persons requesting a subscription for the agendas of any commission. The cost for reproducing and mailing agendas is established by Administrative Regulation 3.8 of the City Manager.

6) **Late Communications to the Commission**

All writings or documents which are related to any item on an agenda and which are distributed to a majority of the commission within 72 hours of a regular meeting of the commission must be made available for public inspection at the time the subject writing or document is distributed to a majority of the commission at a designated location identified on the agenda. These late communications should also be posted on the commission web site. This is the SB 343 disclosure listed above in paragraph 2).

E. **MINUTES**

1) **Action Minutes**

The secretary shall keep an accurate record of the commission's proceedings and transactions. The provision of a stenographer to take summary minutes is not possible. The secretary shall provide action minutes similar to those provided to the Council by the City Clerk. Action minutes list the date, time, and place of the meetings, the members and staff in attendance, the members absent, and a clear and concise description of final actions taken. Approved motions are indicated by "moved, seconded, and carried," and include a breakdown of the vote. The vote breakdown includes the members voting yes, no, abstain and absent. Reasons for making a motion, debate, and audience reaction will not be included.

In quasi-judicial proceedings, if no recording is made, more detailed minutes are needed that summarize debate, list findings, tally speakers for and against, and note testimony offered by the appellant, witnesses, and other relevant information.

Minutes are presented to the commission for approval at the next regular meeting. The commission may by motion make such correction as conforms to fact. Corrected minutes may be approved with the corrections noted, or if the changes are significant, they may be included in the agenda packet at the next regular meeting. It is the responsibility of the commission secretary to retain the official signed copies of minutes in accordance with the City's Records Retention Schedule.

Members not present at a meeting may vote on the approval of minutes from the meeting at which they were absent if they believe they are informed and able to consider the item.
2) Recording Meetings

It is desirable to audio record meetings when resources permit; but it is not required. However, if a commission decides to audio record their meetings, all meetings should consistently be recorded on a regular basis without fail. This is particularly important if the audio is to be posted to the web. Audio should be posted within a consistent window after each meeting and must be posted for every meeting once the practice is started. Recordings must be maintained in accordance with the City’s Records Retention Schedule.

3) Distribution

Minutes may be distributed to other commissions or City departments whose area of interest is complementary or whose work directly impinges on the subject to be discussed. Minutes must be sent to the City Clerk for indexing into Records Online.

4) Subscription Service Fee

The secretary shall maintain a list of all persons requesting a subscription for the minutes of any commission. The cost for reproducing and mailing minutes is established by administrative regulation of the City Manager.

F. OFFICIAL COMMISSION RECORDS

All agendas, minutes, reports, communications, audio recordings (if retained), and any other related material, should be kept in an organized manner and in such a way that these records can be easily transferred to another staff person in the event of a change in duties or termination with the City.

Hard copies of commission minutes must be signed by the secretary. These records are retained PERMANENTLY. Commission minutes must also be sent to the Records Inbox in MS Word format once they have become official.

It is the responsibility of the secretary to maintain all commission records pursuant to the City’s Records Retention Schedule and other policies.
CHAPTER VI. CITY COUNCIL AGENDA PROCESS

A. AGENDA PROCESS (OPEN GOVERNMENT ORDINANCE AND A.R. 5.1)

Each year the Council adopts a schedule establishing the specific dates of all meetings and recess periods. The agenda schedule is structured to provide the City Council with copies of their "agenda packet" 12 days prior to the Council meeting. This allows Councilmembers time to review the agenda material in order to ask questions of staff prior to the meeting.

The City Clerk is the coordinator for the agenda process. The City Clerk routes commission reports and the accompanying City Manager report to reviewers in the City Manager and City Attorney departments, who may request modifications to the City Manager report that accompanies each commission report because of policy or legal issues and/or financial implications. From time to time a commission may be requested to clarify some portion of its report. This request may be prompted by the need to coordinate agenda reports on a particular item to provide the Council with comprehensive information from the City Manager and/or other commissions. Suggested additions or clarifications may provide the Council with a more complete recommendation and thus facilitate action.

B. AGENDA SCHEDULE

Coordinating, organizing and assembling the large volume of information and reports which comprise the "agenda packet" is a complex task. The City Manager establishes an agenda schedule setting forth the various deadlines for submittal of agenda items based on meeting dates of the Council Agenda Committee and the City Council. Contact the City Clerk Department and refer to Administrative Regulation 5.1 for details on the timeline and process.

C. COMMISSION REPORTS TO COUNCIL

1) Method of Communication

A commission transmits its findings, responds to referrals and other communications to the City Council through various categories of reports on the City Council agenda. Those categories include:

- Consent Items
- Action Items
- Information Items

Most actions taken by the City Council do not require a resolution. Similarly, Commissions need not frame recommendations to the Council in the form of a resolution. If it is desired for the Council to adopt a resolution, commissions must
adhere to the format restrictions for official resolutions. Commissions must stay within their purview when making recommendations to Council.

Commissions should consider the agenda submission deadlines when planning to make a recommendation to the City Council. Agenda reports are due 33 days prior to the meeting.

Alternately, commissions may relay their position on an issue to the Council in the form of a letter. These communications to Council must have the complete content approved by the full commission. The letter is then signed by the Chair and the secretary submits it to the City Clerk.

2) Secretary's Timeline

Upon direction of the commission, the secretary submits the item for the Council agenda. Commission reports are to be approved by the commission Chair or its designee prior to submittal. Once the commission provides the complete text of the report to the secretary, the secretary ensures that it is in the proper format and submits it through the department director to the City Clerk no later than three weeks following commission action. The City Clerk will place the report on an upcoming Council agenda based on City Manager timelines as stated in A.R. 5.1.

As stated above, the deadline to submit reports for the Council agenda is 33 days prior to the meeting. As a general guideline, a commission should allow at least three months for an item or recommendation to be considered and adopted by the commission, then entered into the Council agenda process, and ultimately be heard at a City Council meeting.

3) Votes Needed to Take Action

On rare occasions a commission may be unable to achieve the number of votes needed to take official action. An example would be a commission of nine members, with five members present at the meeting (fulfilling the required quorum) where there are three votes in favor of a proposal and two votes against it. If time permits, the matter should be held until sufficient members are present so that a definitive recommendation can be achieved. If, however, the matter is time sensitive, the commission could elect to communicate to the Council that the commission was unable to take action. The City Manager may also so advise the Council of this situation.

4) Complete, Concise and Accurate Reports

It is the responsibility of the commission to provide complete, concise and accurate reports to the City Council. The reports should be prepared in such a manner that the City Council fully understands the issue and what action, if any, is being requested to take. (The vote should be included in any case, listing those voting for, against, abstaining, and those who are absent.)
There is an accepted and specific report format for each type of report (Consent, Action, Information) discussed on page 28. In general, however, commission reports should include:

- Clear recommendation.
- The reason for the recommendation.
- The facts on which it is based.
- All opposing points of view including within the Commission, staff, or the public, if any.
- The Resolution or Ordinance, in proper format, if needed.

5) Quality Reports

Quality commission reports take into account:

- The Council's necessity to view an issue from as wide an angle as possible, including the views of affected sectors in the community, fully understanding the relevant background and implications, including the costs of each action it is asked to take, and the staff concerns, if any.
- The need for the Council to have complete information from which to act knowledgeably and expeditiously, reducing the likelihood of the Council referring the report back to the Commission for clarification.
- The City Manager's likely concerns regarding the recommendation.
- Review by other affected commissions prior to submission to the Council.
- Proper report format (Secretaries should refer to Groupware for current agenda templates).

6) Review by Other Commissions

Often the spheres of interest of various commissions overlap, depending on the specific issue. Before a commission recommends action on an issue, it invites other commissions with an interest in the topic to review the subject and offer a response, whether or not the Council specifically requested such coordination.

Example 1: The Parks and Recreation Commission is planning to recommend construction of a playground area at the Marina. It should involve the Waterfront Commission and the Planning Commission.
Example 2: The Commission on Aging is planning to recommend the funding of a health care clinic for seniors. It should refer the proposal to the Community Health Commission and the Mental Health Commission.

If a referral to another commission has been made, the commission writing the report indicates at the beginning of the report the fact that it made a referral and what the response to the referral was, if any.

The review process is described below:

- Commission A develops draft report, and refers draft report to…
- Commission B and others as necessary who review and submit comments to…
- Commission A which incorporates comments, revises report as necessary to send to Council.

D. REPORT FORMAT/ROUTING

The format requirements for reports to the Council are the same for commissions as for staff. It is the secretary’s responsibility to follow format requirements when finalizing a commission report. Format templates and examples are posted on the Intranet under Groupware. The secretary should be alert to the need to refer draft reports to appropriate commission(s) prior to submission of final reports to the Council.

Commission reports may be considered incomplete in one or more of the following instances:

- When the report has not been reviewed by another commission(s) whose review is essential if the Council is to make an informed decision;
- When improper format has been used;
- When the recommendation or implications of the recommendation are unclear because of inadequate information;
- When the staff report has not been included with the agenda submission.

Incomplete agenda reports will not be accepted.

E. DISTRIBUTION WITH COUNCIL AGENDA PACKET

Reports received by the City Clerk by the established deadline that are ready for inclusion in the Council packet will be copied and distributed by the City Clerk with all other agenda materials.
F. RESOLUTIONS/ORDINANCES ACCOMPANYING REPORTS

From time to time a commission may present a resolution or an ordinance to the Council for action or information.

Most actions taken by the Council do not require a resolution. When a resolution is absolutely necessary and required for legal or financial reasons, commission secretaries should contact the City Clerk so that the appropriate document can be presented in conjunction with a commission's report. The following guidelines should be followed:

a. Contact the City Clerk in advance of preparation of a resolution to ensure that the resolution language meets established standards. This step will ultimately save a considerable amount of time and a great many corrections.

b. All resolutions should follow the format provided in City Clerk Department templates posted on the Intranet under Groupware/City Clerk.

c. If a resolution or ordinance is being amended, the number of the resolution or ordinance to be amended is that of the original resolution or ordinance, not that of the most recent amendment (however, you can use the latest amendment as a sample to guide you in preparing another amendment).

d. If the Commission is proposing an ordinance for adoption that will be codified in the Berkeley Municipal Code, they must follow the formatting procedures provided by the City Clerk Department on the Intranet under Groupware/City Clerk. In addition, it is recommended that the ordinance be forwarded to the City Attorney and City Clerk for review prior to submitting the final report to the City Clerk for the agenda process.

e. Resolutions and ordinances must be carefully proof-read for accuracy.

When a commission recommends that the City Manager or City Clerk send a letter, the item that is submitted to the Council agenda process must include the full text of the letter. The names and addresses of the contact people named in the recommendation must be provided to the City Clerk prior to the Council meeting.
## APPENDICES

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Appendix A. Berkeley Municipal Organization Chart

Berkeley Residents

- School Board
- Rent Board
- City Council
- City Auditor
- Berkeley Housing Authority
- Board of Library Trustees
- City Manager (City Manager's Office)
- Boards and Commissions

All Other City Departments and Services

- Planning and Development
- Police Department
- Housing and Community Services
- City Attorney’s Office
- Public Works/Transportation
- Fire Department
- Human Resources
- City Clerk’s Office
- Parks Recreation & Waterfront
- Department of Health Services
- Information Technology
- Finance Department
Appendix B. Berkeley City Charter Section 36

Charter of The City of Berkeley

Section 36. Officers not to be interested in contracts or franchises.

No officer or employee shall be directly or indirectly interested in any contract, work or business of the City, or in the sale of any article, the expense, price or consideration of which is paid for from the treasury or by assessment levied by any act or ordinance; nor in the purchase or lease of any real estate or other property belonging to the City or which shall be sold for taxes or assessments or by virtue of legal process at the suit of the City. No officer shall be in the employ of any public service corporation in the City or of any person having any contract with the City or of any grantee of a franchise granted by the City.

Provided, however, the prohibitions in this Section contained shall not apply to the following:

(a) Members of advisory Boards, Commissions, or Committees of the City, who serve without salary or other compensation; provided, however members of Boards, Commissions or Committees which perform functions other than advisory functions shall not be included within this exception.

(b) Officers or employees of the State of California or of any department, division, or constitutionally created agency thereof.

Any contract or agreement made in contravention of this Section shall be void.

Any violation of the provisions of this Section shall be deemed a misdemeanor.

The Council shall enforce the provisions of this Section by appropriate legislation.
Appendix C.  BMC Chapter 3.64, Interpreting City Charter Section 36 Concerning Membership On Boards And Commissions

Sections:

3.64.010  Findings.
3.64.020  Definitions.
3.64.030  Contract, work or business of City--Prohibitions.
3.64.040  Chapter declaratory of existing law.

3.64.010 Findings.

A.  For many years the Berkeley City Council has relied on an extensive system of advisory boards and commissions in the formulation of public policy, and approximately thirty commissions, with more than two hundred fifty members meet on a regular basis to reflect and express a broad spectrum of citizen opinion on civic issues.

B.  The City benefits from this network of democratic participation because it provides a structured setting within which the viewpoints and experience of citizens can supplement the technical expertise of City staff professionals. In addition this system allows the City to benefit from the wide variety of experience and specialized knowledge of selected citizens--in Berkeley, often at the cutting edge of their fields--that are sources of innovation and sensitive response to public needs.

C.  The citizens on Berkeley's boards and commissions serve out of the desire to discharge civic responsibility. They are not (with the exception of the Police Review Commission and the Rent Stabilization Board) paid for their services and, in most cases, are not reimbursed for expenses they incur.

D.  A commissioner's responsibilities are substantial, and entail a significant expenditure of time. Often, they are called upon to make difficult judgments and arrive at unpopular conclusions.

E.  For this system of democratic participation to continue to function effectively, it is essential that citizens who volunteer their services to the City not incur unwarranted personal risk as they participate on boards and commissions.

F.  Charter Section 36 prohibits an officer from being directly or indirectly interested in any contract, work, or business of the City. Although this section exempts members of advisory boards, commissions, or committees who serve without salary or other compensation, members of boards, commissions, or committees which perform functions other than advisory functions are subject to this prohibition.

G.  Conflict of interest legal issues, especially those raised under the City Charter Section 36, are extremely complex, turn on subtle nuances of fact, and the legal terms used often have meanings different from their common sense construction.
H. The ambiguities in Section 36 deter many qualified citizens from serving as commissioners for fear that they may inadvertently violate the Charter.

I. There is therefore a need to clarify the provisions of the City Charter and to balance the City's interests in preventing the use of public office for private gain against the City's need for diverse community representation on its boards and commissions.

J. City Charter Section 36 (b) authorizes the council to enact appropriate legislation to implement the provisions of City Charter Section 36 and Charter Section 118 authorizes the council to enact legislation which may be necessary and proper to carry out any of the provisions of the Charter.

K. Enactment of legislation clarifying and implementing Section 36 is necessary and proper for the reasons set forth above. (Ord. 5694-NS § 1, 1985)

3.64.020 Definitions.
For purposes of determining whether a member of a board and commission has a prohibited interest in a contract, work or business of the City within the meaning of Charter Section 36 and this chapter, the following definitions shall apply:

A. "Advisory board" or "commission." All boards and commissions of the City shall be deemed advisory except in instances when the board or commission is performing other than an advisory function as defined in subsection B below.

B. "Performance of other than advisory functions." A board or commission will be deemed to perform other than an advisory function and to be subject to this chapter and Section 36 only with respect to any contract, work or business of the City, the making or securing of which is influenced either directly or indirectly by the board or commission. A board or commission directly or indirectly influences the making or securing of a contract, work or business of the City whenever it engages in actions, including but not limited to, formally or informally reviewing a contract, reviewing a bid specification or request for proposal, discussing funding of an activity, discussing priorities for funding, or making general policy, implementation of which results in the making or securing of a contract, work or business for the City.

C. "Interested; Exclusions." A City employee or member of a board or commission shall not be deemed to be "interested" in a contract, work or business of the City if his or her relationship with the contracting party or entity constitutes a "remote interest" within the meaning of Government Code Sections 1091 and 1091.5, the fact of such interest is disclosed to the department, board or commission of which he or she is a member and noted in its official records, and the employee or member with such interest disqualifies himself or herself from participating in any manner, either directly or indirectly, in making or influencing any decision related to the contract, work or business of the City in which he or she has a remote interest. (Ord. 5694-NS § 2, 1985)
3.64.030 Contract, work or business of City—Prohibitions.
No member of a board or commission shall be directly or indirectly interested in any contract, work or business of the City as defined in 3.64.020C herein if the board or commission of which he or she is a member has performed other than advisory functions as defined in Section 3.64.020B herein, with respect to such contract, work, or business of the City. (Ord. 5694-NS § 3, 1985)

3.64.040 Chapter declaratory of existing law.
This chapter is declaratory of and does not constitute any change in existing law. (Ord. 5694-NS § 4, 1985)
Appendix D. BMC Sections 2.04.030 – 2.04.145, Regarding Various Rules And Regulations

Article 2. Boards, Commissions and Committees

2.04.030 Sections 2.04.030 through 2.04.130--Purpose.
The purpose of Sections 2.04.030 through 2.04.130 is to give all nine elected members of the City Council an equal share in the responsibility of making Berkeley’s appointed boards, commissions and committees representative of the entire Berkeley community so as to provide for the widest possible community participation. (Ord. 4780-NS § 1, 1975)

2.04.040 Applicability of provisions.
Sections 2.04.030 through 2.04.130 shall be applicable as follows:

A. Present Boards, Commissions, and Committees.

1. Sections 2.04.030 through 2.04.130 shall apply to the following boards, commissions and committees presently appointed by the City Council:

2. The Advisory Committee for the Local Transit Study (City of Berkeley representatives only); the Board of Adjustments; the Board of Appeals; the Citizens Humane Commission; the Civic Arts Commission; the Code Review and Study Committee; the Commission on Aging; the Community Health Advisory Committee; the Housing Advisory and Appeals Board; the Human Relations and Welfare Commission; the Personnel Board; the Planning Commission; the Recreation Commission; the Solid Waste Management Commission; the Waterfront Advisory Board (City Council appointees only).
Appendix D. BMC Sections 2.04.030 – 2.04.145, Regarding Various Rules and Regulations

B. Additional Boards, Commissions and Committees.

1. Sections 2.04.030 through 2.04.130 shall apply to all additional boards, commissions and committees created and appointed by the City Council after December 1, 1973.

2. Section 2.04.030 through 2.04.130 shall not apply to those additional governmental bodies created independently of the Berkeley City Council where the assigned number of Berkeley City Council appointees is fixed by law at a figure less than nine. Where the number of City Council appointees to such bodies is nine or more, each councilmember shall make an equal number of appointments and the remaining appointees shall be chosen by majority vote.

C. Council Committees. Sections 2.04.030 through 2.04.130 shall not apply to the appointment of council members to council committees. (Ord. 4780-NS § 2, 1975)

2.04.050 Number of members to be established.
Within one month after April 15, 1975, the City Council shall establish the size of all the then existing boards, commissions and committees covered by Sections 2.04.030 through 2.04.130. The size of each board, commission and committee shall be established as a multiple of nine so that an equal number of appointments may be made by each member of the City Council. The council may at any time change the size of boards, commissions and committees covered by Sections 2.04.030 through 2.04.130 to a different multiple of nine. (Ord. 4780-NS § 3, 1975)

2.04.060 Appointments--Time when made.
Within four months after April 15, 1975, each City Councilmember shall appoint an equal number of persons to each board, commission and committee covered by the ordinance codified herein. (Ord. 4780-NS § 4, 1975)

2.04.070 Appointments--Term and expiration.
The terms of persons appointed to boards, commissions and committees under Sections 2.04.030 through 2.04.130 shall expire no later than the same date as the expiration of the term of the councilmember who appointed them. The council may provide for shorter terms.

The death, resignation or recall of a councilmember shall cause the terms of such councilmember’s appointees to expire. All members of boards, commissions and committees appointed under Sections 2.04.030 through 2.04.130 whose terms expire shall serve until their successors are appointed, except in the case of automatic termination for absence. Each vacancy on a board, commission or committee is to be filled through appointment or reappointment by the councilmember to whom the vacancy is credited. Sections 2.04.030 through 2.04.130 shall not affect limitations set by the council on the number of terms persons may serve. (Ord. 4780-NS § 5, 1975)
2.04.075 Appointments--Specific term.
Except as provided in this section, the terms of all persons appointed by the City Council to boards, commissions and committees pursuant to Berkeley Municipal Code Sections 2.04.030 through 2.04.130 (hereinafter "commissioners") shall, regardless of the date of appointment, regularly expire on the first day of December of each year.

Notwithstanding the above, where the death, resignation, or recall of a councilmember occurs prior to the regular expiration date of appointees as provided herein, the terms of appointees of that councilmember shall expire on the date of death, resignation, or recall of that councilmember. (Ord. 6395-NS § 1, 1997)

2.04.080 Present membership--Reappointment or termination when.
The present members of boards, commissions and committees may be reappointed under Sections 2.04.030 through 2.04.130. If not reappointed, the terms of all persons serving on boards, commissions, and committees covered in Section 2.04.040 who were appointed prior to the effective date of the ordinance codified herein shall terminate four months after April 15, 1975. At such time, the only council-appointed members of boards, commissions and committees covered in Section 2.04.040 shall be those persons appointed according to the provisions of the ordinance codified herein. The terms of those persons appointed to boards, commissions and committees according to the provisions of Section 2.04.050 through 2.04.070 shall commence four months after April 15, 1975. (Ord. 4780-NS § 6, 1975)

2.04.090 Quorum.
The quorum for all boards, commissions and committees covered by Sections 2.04.030 through 2.04.130 shall be a majority of those persons appointed in accordance with the ordinance codified herein. All boards, commissions and committees may take action if a quorum is present. (Ord. 4780-NS § 7, 1975)

2.04.100 Future boards, commissions and committees--Composition.
All future boards, commissions and committees created and appointed by the City Council after April 15, 1975, shall be composed of an equal number of persons appointed by each member of the City Council according to the provisions of Section 2.04.070. (Ord. 4780-NS § 8, 1975)

2.04.110 Abolition not prohibited.
Nothing in Sections 2.04.030 through 2.04.130 shall prohibit the City Council from abolishing boards, commissions and committees described in Section 2.04.040, enlarging or reducing their responsibilities, or combining their functions. (Ord. 4780-NS § 9, 1975)

2.04.120 Sections 2.04.030 through 2.04.130--Conflicts with other provisions.
It is not the purpose of the ordinance codified herein to amend or repeal the ordinances and resolutions establishing the boards, commissions and committees described in Section 2.04.030, except insofar as their provisions are in conflict with Sections 2.04.030 through 2.04.130. Where there is no conflict, those
ordinances and resolutions shall continue to apply. Wherever there is a conflict between Sections 2.04.030 through 2.04.130 and one of those ordinances or resolutions, Sections 2.04.030 through 2.04.130 shall apply. (Ord. 4780-NS § 10, 1975)

2.04.130 Sections 2.04.030 through 2.04.130--Liberal construction.
Sections 2.04.030 through 2.04.130 shall be liberally construed and interpreted as to scope and coverage in order to effectuate the intent that each member of the City Council shall make an equal number of appointments to Berkeley's boards, commissions and committees. (Ord. 4780-NS § 11, 1975)

2.04.140 Residency requirements.
Members of boards, commissions, and committees appointed by the council or individual council members, shall be residents of the City unless the member is required by federal or state law or the ordinance or resolution establishing the board, commission or committee to represent a specified organization, agency, group, category or profession. The term of any member of a board, commission, or committee shall terminate if that member is no longer a resident of Berkeley or if the member, while intending to return, does not reestablish a place of residence in the City within six months after leaving the City. (Ord. 5430-NS § 1, 1982: Ord. 4803-NS § 1, 1975)

2.04.145 Affidavit of residency.
A. Every commissioner, except those exempted from the residency requirement pursuant to Section 2.04.140, shall execute an Affidavit of Residency, signed under penalty of perjury, prior to their appointment to a city board or commission. The original executed Affidavit of Residency and the appointment form for said commissioner shall be filed with the City Clerk at the same time. No commissioner shall be appointed, nor may he or she serve on a commission if an Affidavit of Residency has not been filed with his or her appointment form.

B. Every commissioner serving on a commission shall file an original Affidavit of Residency annually no later than April 1st of each year. An annual affidavit need not be filed if the commissioner filed an affidavit pursuant to subsection (A) on or after January 1st but before April 1st.

C. If a commissioner fails to file the annual Affidavit of Residency by April 1st he or she shall be automatically terminated from the commission. (Ord. 7111-NS § 1, 2009)
Appendix E. Resolution No. 53,989-N.S., Notice to Potential Candidates for Berkeley Elective Office and Individuals Interested in Serving as Members of City Boards and Commissions

RESOLUTION NO. 53,989 — N.S.

NOTICE TO POTENTIAL CANDIDATES FOR BERKELEY ELECTIVE OFFICE AND INDIVIDUALS INTERESTED IN SERVING AS MEMBERS OF CITY BOARDS AND COMMISSIONS

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

WHEREAS, conflict of interest issues are often complex, creating ambiguities which may deter many qualified and interested citizens from serving as elected officials or members of the City’s boards and commissions; and

WHEREAS, there is a need to alert potential candidates for office and prospective appointees to boards and commissions of the existence of such conflict of interest laws and to encourage such individuals to seek out advice when questions arise pertaining to their particular situation.

NOW, THEREFORE, Be It Resolved by the Council of the City of Berkeley that the City Clerk be instructed to provide the following notice to individuals expressing interest in candidacy for Berkeley elective office and for appointment to the City’s boards and commissions:

“The purpose of this notice is to alert you to State and local conflict of interest provisions. These provisions may prohibit you, members of your family, or your employer, from having any financial relationship -- such as a contract or consultant position -- with the City, the Berkeley Housing Authority, and the Berkeley Redevelopment Agency, during the term of your office; for members of the City Council such prohibition can extend in certain instances for a one-year period following the conclusion of the term of office.

If a prohibited interest exists, the financial relationship may have to be terminated; for example, a contract may not be renewed or created, a consultant position may have to be withdrawn, your employer or a family member may be required to cease conducting business with the City.

Statements of Economic Interest are required to be filed by elected officials and appointed members of boards and commissions. The information disclosed in such statements provides the public with information concerning the financial interests of those serving in a public or official capacity, as well as assisting in the determination of whether certain of the interests disclosed require appropriate further action. The specific prohibitions applicable to potential conflicts of interest are not deemed “satisfied” or “cured” simply by filing the economic interest statements and disclosing the relevant financial interests; such a filing is a state-mandated requirement and is separate and distinct from any prohibitions that may be imposed as a result of an existing or future financial relationship with the City.

If you are uncertain as to whether existing or future financial interests you, your family, or your employer may have with the City constitute a potential conflict which would require termination or other remedial action upon your assuming elective office or upon your appointment to a City board or commission, you are encouraged to seek further information from the City Attorney’s Office by providing a written description of your financial interest or relationship with the City and the elective or appointive position which you are seeking. It is your obligation to seek such advice and to bring any such potential conflicts to the City’s attention. The City will not independently investigate the background or financial statements of candidates for elective or appointive office in order to detect potential conflicts of interest.”

In effect: November 3, 1987
Appendix F. Responding to Requests for Accommodations for Persons with Disabilities

RESPONDING TO REQUESTS FOR ACCOMMODATIONS FOR PERSONS WITH DISABILITIES
Procedures for Members of Boards and Commissions and Staff

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

Secretaries to Boards and Commissions will respond to accommodation requests according to the procedures below. Individuals with disabilities who need accommodations to participate at a City of Berkeley meeting should make their requests to the Disability Compliance Program, which will evaluate the individual’s request and will determine the appropriate method, if any, of accommodation. Individuals must make a disability-related accommodation request at least seventy-two (72) hours in advance of meetings.

1. Notify the Disability Compliance Program of upcoming accommodation requests:
   a. Nature of the accommodation and how often it is needed,
   b. Commission assignment or meeting for which accommodation is requested,
   c. Estimated duration of the assignment.

2. The Disability Compliance Program determines the most effective way to provide an accommodation, whether an accommodation would comply with applicable law
Appendix F. Responding to Requests for Accommodations for Persons with Disabilities

3. The Disability Compliance Program oversees the vendor payment and reimbursement process. To ensure reimbursement for an individual who provides his or her own accommodation at City expense, approval by the Disability Compliance Program must be obtained in writing prior to the meeting for which the accommodation is requested. If approved as an accommodation, procedure for reimbursement is as follows:

a. Each vendor must fill out a “Vendor Information Questionnaire and Certification” (available from staff or from Finance) before invoicing City.

b. Vendor or individual with a disability submits an invoice for services or expenses to staff, including signature, a statement of when service or expense occurred, what the Commission activity was, and receipts for expenses.

c. Staff approves invoice and forwards it to accounting staff for processing.

d. Finance Department mails check to vendor or individual with a disability.

e. Reimbursement to an individual who provides his or her own accommodation will be made at the standard rate paid to vendors performing a comparable service.

CONSIDERATIONS FOR SELECTING ACCOMMODATION METHODS

The person requesting an accommodation should make the request well in advance to allow adequate time for staff to make any arrangements. Whether a requested accommodation is approved, or complies with applicable law, may depend, in part, on whether staff has adequate time for the request. Staff may be able to provide an accommodation directly, but it takes time to arrange an accommodation from a service vendor, through the use of assistive technology (equipment), or through modification in the way an activity is conducted.

Accommodations must be reasonable in terms of administrative and technical practicability, availability, and cost. Staff will recommend the most effective method of accommodation that works for the individual with the disability.

Examples of accommodations include, but are not limited to:

- Assistance with writing and other tasks for persons with manual impairments;
- Interpreters or captioning for persons with hearing impairments;
- Speakers for persons with speech impairments;
• Braille, large print, or electronic versions of printed text and descriptions or tactile representations of graphics for persons with vision or other print-related impairments.

The City provides accommodations for participation in regular or special Board and Commission meetings, meetings of subcommittees of Boards and Commissions, and meetings with City staff. The City does not provide accommodations for activities sponsored by another agency or for an individual engaged in community activities that are not official activities of the City.

WHAT THE ADA SAYS ABOUT ACCOMMODATIONS

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

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

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

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

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

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

Auxiliary aids and services includes:

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

(2) Qualified readers, taped texts, audio recordings, Brailled materials, large print materials, or other effective methods of making visually delivered materials available to individuals with visual impairments;

(3) Acquisition or modification of equipment or devices; and

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

WHAT THE COMMISSIONERS’ MANUAL SAYS ABOUT ACCOMMODATIONS

Sections of the Commissioners' Manual that discuss accommodations include:

Accommodations for Commissioners or Board members with Disabilities
  ➢ Chapter II - A. 12, page 19

Reimbursement for disabled support services
  ➢ Chapter II - A. 13, page 19 – 20

Requirement that Commission meetings be accessible to the public
  ➢ Chapter IV - D. 2, page 42

Agenda format and accessibility of meeting facilities
  ➢ Chapter V - D. 2, pages 57 – 58

CONTACT INFORMATION

Department of Public Works
Disability Compliance Program
1947 Center Street
Berkeley, CA 94704
Tel: 510.981-6342
TDD: 510.981-6345
Fax: 510.981-6340
E-mail: pchurch@cityofberkeley.info
Appendix G. Administrative Regulation 3.2 Governing Stipends for Commissioners

CITY OF BERKELEY
ADMINISTRATIVE REGULATIONS

SUBJECT: Stipend and Reimbursement in Lieu of Expenses for Members of Certain Boards, Commissions and Committees

PURPOSE

The purpose of this Administrative Regulation is to establish procedures for reimbursing expenses to certain board, commission, and committee members who might otherwise incur an economic hardship.

POLICY

The City Council, by Resolution No. 64,831-N.S. (known as the Stipend Resolution April 20, 2010), authorized payment in lieu of expenses to members of all Council-appointed boards, commissions, committees, task forces and joint subcommittees who meet certain criteria in order to remove barriers from citizen participation of those members for whom participation might be an economic hardship. Subcommittees of commissions, which are designated by the advisory body and not by Council appointment, are not eligible for reimbursement.

An eligible member is authorized to receive:

a) $40 for each official meeting attended, not to exceed four (4) meetings each month;

b) reimbursement for actual child care expenses incurred while he/she attends meetings;

c) reimbursement for actual expenses paid to an attendant to provide care for a dependent elderly person while he/she attends meetings; and

d) reimbursement for actual expenses incurred for disabled support services in order to participate fully in board, commission, or committee meetings.

An “official meeting” is defined as a duly noticed, properly agenized, regular meeting or special meeting of the full board or commission at which a quorum of the full membership must be present in order for the meeting to be held.

For a meeting that is cancelled, claims may only be submitted if it is for an official meeting where the attendees and staff Secretary believed that the meeting would proceed as scheduled, and for which Commissioners and the Secretary actually showed up and waited a reasonable period beyond the meeting start time for the quorum to be met before canceling.

A receipt or invoice signed by the person providing such care or support services must accompany a request for reimbursement.

The City Clerk Department is responsible for keeping this Administrative Regulation up-to-date and shall include a copy with each appointment letter mailed.
PROCEDURE

COMMISSIONER'S CRITERIA AND RESPONSIBILITIES

1. 
   a) Persons eligible to receive reimbursement in lieu of expenses are those board, commission, or committee members whose family's gross income as filed jointly for federal income tax purposes is below $20,000 per year.

   b) Commissioners who are minors (e.g. Youth Commissioners) must have eligibility declaration forms co-signed by a parent or legal guardian attesting that the combined family income is under $20,000.

   c) In order to pay a Commissioner's attendant directly, a vendor form with the attendant's social security number or tax I.D. number must be on file in the Finance Department's Accounts Payable Division. A copy of this form must be attached to each request for payment.

   d) To be reimbursed, a Commissioner must be set up as a vendor by Finance - General Services. If an individual is paid $600 or more in one calendar year a 1099-Misc. will be generated by Finance.

2. To establish eligibility, Commissioners must file an appropriate declaration form (sample attached) with the secretary of their board, commission or committee. Commissioners must file a new declaration form annually prior to May 31st in order to maintain eligibility.

3. 
   a) Eligible members who are disabled and are seeking reimbursement for support services must also file with the secretary a statement of the support services he/she requires in order to participate fully. If the member's needs change, he/she must immediately notify the secretary. Otherwise, the statement certifying the need for support services will continue to be in effect for the duration of the member's term of appointment.

   b) Pursuant to Berkeley Municipal Code Section 3.66.040, low-income status for members of the Commission on Disability is not a prerequisite for reimbursement of attendant care expenses.

4. The Human Welfare and Community Action Commission provides for alternate representatives of the poor to be elected or to be appointed when a vacancy occurs. Alternate representatives of the poor shall be eligible for stipend payments when serving in place of the principal member.

5. Pursuant to Berkeley Municipal Code Section 3.32.060 Police Review Commissioners shall receive $3/hr for their time and work investigating complaints, reviewing policies and practices, and attending meetings, but in no case shall compensation for any one commissioner exceed $200 per month.
RESPONSIBILITIES OF SECRETARY

1. It is the responsibility of the secretaries of each board, commission, and committee to submit quarterly payment forms to the Auditor, by the 10th of each month (January, April, July, and October). The forms must contain the names of any eligible board, commission, or committee members, the number of official regular meetings attended by each member during that quarter, and the amount due to each member. Verification signed by the Commission Secretary that each meeting, for which reimbursement or stipend is claimed, actually occurred must be included. The form for such quarterly submission is attached. The completed forms should be attached to a FN024 Form and forwarded for review to the Auditor by the 10th of each specific month so payment can be made by Finance. A separate FN024 must be submitted individually for each member.

2. The secretaries will maintain copies of all Declarations Respecting Eligibility on file and attach a copy each time an FN024 is submitted to the Auditor, and when submitting quarterly statements.

3. Each secretary will advise the board, commission, and committee members of this policy and respond promptly to commissioner inquiries regarding payment status. Commissioners should not contact the City Auditor or City Clerk’s office for payment status. (For appropriate background, secretaries should check with the City Clerk or the City website for the latest amendment of the Stipend Resolution).

RESPONSIBLE DEPARTMENT:
City Clerk

TO BE REVISED:
Every 5 years

Approved by:
Department Director

City Manager
ANNUAL DECLARATION FORM RESPECTING ELIGIBILITY FOR REIMBURSEMENT OF EXPENSES AS A MEMBER OF THE

(Board/Commission/Committee)

Inasmuch as it is in the public interest to remove barriers, particularly those creating economic hardships for citizens participating on boards, commissions and committees, the City Council has determined that it is in the public interest to alleviate this hardship by authorizing payments in lieu of expenses for certain meetings and under certain conditions as indicated in Stipend Resolution No. 64,831-N.S.

I, __________________________________________ certify to the following:

1) That my adjusted gross income reported individually, or as part of a family joint Federal Income Tax Return, was less than $20,000 for the Year ______;

2) I will file this declaration form every year no later than May 31st with the Secretary who will forward copies to the Auditor; and

3) I will notify the Secretary as soon as I am aware that my family's current year income exceeds $20,000 and request that my eligibility be canceled:

_________________________________________  ____________
Signature                                       Date

_________________________________________  ____________
Signature of Parent or legal Guardian if Member is a Minor Date

_________________________________________  ____________
Signature of Designated Secretary              Date

I, __________________________________________ certify I am disabled and require the following support services:

________________________________________________________________________________________

Signature: ___________________________________
A.R. NUMBER: 3.2

SPECIAL PAYMENT FORM

FN024 payment request form must be attached
Verification of available funds must be attached in an Account Balance Inquiry report from FUND$.

Type of Payment:
- Meetings of Board, Commission, Committee, etc.
- Other

Name of Commission:

Name of Commissioner:

Address of Commissioner:

Name of Secretary:________ Phone:________

Quarter Covered: Year _____
- Mar
- Apr-Jun
- July-Sept
- Oct-Dec

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<tr>
<th>Date of meeting</th>
<th>Official Meeting* (Y/N)</th>
<th>Rate</th>
<th>Total amount due</th>
<th>Total paid - year to date**</th>
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* Duly noticed, properly agendized, regular or special meeting of the full board or commission
** Includes this quarter

☐ Please hold check for pick up:____________________________

Commissioner's signature

Prepared by:_________________________ Date:____________________

CERTIFICATION AND AUTHORIZATION FOR PAYMENT: I hereby certify that the payments for all persons whose names appear herein have been properly authorized; and that the amounts indicated as due said persons are actually due and payable. Payment is approved against the appropriation indicated under delegated authority of the City Manager.

For Department and City Manager ___________ Date __________________
COMMISSIONER STIPEND CHECKLIST

This checklist is provided to expedite the processing of commissioner stipends. The City Auditor’s Office and the Finance Department require that all forms are completed and information accurately prepared and submitted before stipends can be paid. Review the checklist prior to submitting stipend requests.

___ Commissioner is set up as a vendor with Finance - General Services
   * Use a W-9 form to set up the Commissioner as a vendor

___ Attach the FN024 voucher
   * Account code is provided
   * Secretary should check FUND$ and ensure funds are available in the account to pay the voucher
   * Payment amount is clearly documented
   * All approved signatures are included

___ Attach the Special Payment Form (AR 3.2)
   * The form is complete and accurate
   * The form documents the fiscal year (year to date) expenditures of the individual commissioner

___ Annual Declaration Form
   * The form is completed and signed and dated yearly by the commissioner and the Commission Secretary
   * A copy of the form is submitted with the reimbursement voucher

___ Supporting Documentation
   * A copy of the sign-in sheet (showing date of meeting) or a screen print out from the commissioner’s meeting webpage showing the date the meeting took place
   * Requests for reimbursement for cancelled meetings require written representation from the Commission Secretary
Appendix H. BMC Chapter 3.02, Automatic Termination of Appointments

Sections:

3.02.010 Commissioner defined.
"Commissioner" shall be defined as a voting member of any board, commission or committee established by the City Council, notwithstanding the manner in which such voting member is appointed. (Ord. 5021-NS § 2, 1977)

3.02.020 Absence from meetings--Termination procedure.
A. The term of any commissioners, as defined in Section 3.02.010, except one serving on the Police Review Commission, who has been absent from three consecutive regular meetings of the board, commission or committee on which such commissioner serves, shall automatically expire as set forth in this section.

B. The secretary of the board, commission or committee shall report to the City Clerk the third consecutive absence from regular meetings of any commissioner no later than one week after the third absence. The appointment of the commissioner shall expire on the date the fact of the third consecutive absence is reported to the City Clerk. Within one week after receiving such notification, the City Clerk shall notify any commissioner whose appointment has automatically terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment shall be made to fill the vacancy.

C. The secretary of each board, commission or committee shall report on each January 1st and July 1st the attendance record of each member of said body to the City Clerk for the six month period immediately preceding each January 1st and July 1st.

D. The City Clerk shall note any commissioner reported as being absent from 50 percent or more of all regular meetings held during the six month period reported. The appointment of the commissioner shall expire on the date the attendance is reported to the City Clerk. Within one week after receiving such attendance report, the City Clerk shall notify any commissioner whose appointment has automatically terminated and report to the appointing Councilmember, or Council, that a vacancy exists and that an appointment should be made to fill the vacancy. (Ord. 5940-NS § 1, 1989: Ord. 5576-NS § 1, 1983: Ord. 5021-NS § 1, 1977)

3.02.030 Leaves of absence.
The following circumstances shall not count as absences for the purposes of Section 3.02.020:

A. A member of a board, commission or committee may be granted a leave of absence not to exceed three months by the appointing Councilmember or the Council and a temporary vacancy shall thereupon exist for the period of such leave of absence. Notice of the leave of absence must be filed with the City Clerk prior to the absence. During the period of such temporary vacancy, the appointing Councilmember or the Council may fill such vacancy by a temporary appointment to said commission; provided, however, that the period of such temporary appointment shall not exceed the period of the temporary vacancy. At the expiration of a leave of absence so granted, the member shall automatically resume full membership on the board, commission or committee.

B. Commissioners may request that an absence be excused due to a conflict between the date of a scheduled commission meeting on which the commissioner sits and a religious or cultural holiday. Such a request shall be made in writing on a form provided by the City and submitted to the secretary prior to the meeting for which the commissioner’s absence is to be excused. The request shall not be subject to the approval of the commission but shall be accepted upon request. The secretary shall then excuse that absence and exclude it from the attendance report sent semi-annually to the City Clerk.

The definition of a religious or cultural holiday shall be left to the individual commissioner. However, the following list may be considered illustrative of the religious and cultural holidays for which a commissioner may seek an excused absence: Al Hijrah New Year, Ash Wednesday, Chinese New Year, Diwali, Easter Sunday, Eid Al Fitr, Eid Al Adha, Good Friday, Hanukkah, Holi, Kwanzaa, Palm Sunday, Passover, Rosh Hashanah, St. Patrick’s Day and Yom Kippur. (Ord. 6610-NS § 1, 2001: Ord. 5021-NS § 3, 1977)

3.02.040 Limiting the number of terms commissioners may serve consecutively.
Commissioners shall serve not more than eight consecutive years on a commission, notwithstanding interruption of service due to the following:

A. Absence from the commission due to termination pursuant to Berkeley Municipal Code Section 3.02.020;

B. Absence from the commission due to any leave(s) of absence pursuant to Berkeley Municipal Code Section 3.02.030;

C. Absence from the commission due to termination pursuant to the provisions of the Conflict of Interest Code, for failure to file the required Statement of Economic Interests, and subsequent reappointment.

Termination of appointment pursuant to this section shall be eight years from the date of the initial appointment. Commissioners cannot be reappointed to their respective boards or commissions until a two-year break in service has occurred.
Notwithstanding the above, if the term of a member of the Mental Health Commission would terminate prior to expiration of the term the member was appointed to, this section shall not require that such member be terminated prior to the member serving the full term to which the member was appointed.

This provision shall become effective December 1, 1990, and shall apply to all appointments made on or after that date. (Ord. 6624-NS § 1, 2001: Ord. 6201-NS § 1, 1993: Ord. 6009-NS § 1, 1990)

3.02.050 Standard for incompatibility for members of advisory boards and commissions—Council determination—Remedies.

A. The Council finds and declares that:

1. Citizen advisory boards and commissions (collectively "commissions") bring to bear significant expertise on issues that come before the City.

2. Sitting on a volunteer advisory commission is a significant commitment of time and energy, which prevents many qualified individuals from sitting on commissions.

3. Individuals who are particularly qualified in a particular area will often have employment that is in some way related to the issues that come before the advisory commissions on which they sit.

4. Although the Council has provided that advisory commissions are subject to the City’s Conflict of Interest resolution, in light of their advisory status and the need to attract qualified commissioners, advisory commissions should not be subject to every possible prohibition related to conflicts of interest.

5. It is the purpose of this section to establish a fair and workable standard for determining when outside activities for compensation are incompatible with membership on an advisory commission, to establish the obligations of members of advisory commissions with respect to outside activities for compensation, to provide a process for determinations relating to incompatibility of outside activities for compensation and to establish remedies.

B. Pursuant to its authority under Government Code Section 1126(b), the City Council establishes and declares that outside activities for compensation shall not be considered incompatible with membership on City commissions other than those listed in subsection (I), but members of such commissions shall recuse themselves with respect to commission actions relating to any outside activity for compensation to the extent the action involves any specific employment responsibilities for which they receive compensation.

C. The City Attorney shall employ the standards set forth in the preceding subsection in making determinations under Government Code Section 1126 with respect to members of commissions other than those listed in subsection (I). Whenever the City Attorney issues a written opinion under Government Code Section 1126, that opinion shall be immediately transmitted to the City Clerk and the affected commissioner.
Appendix H. BMC Chapter 3.02, Automatic Termination of Appointments

D. If the affected commissioner notifies the City Clerk in writing of his or her disagreement with the City Attorney’s opinion within 14 days after the opinion is transmitted to him or her, the City Clerk shall place the matter on the Council’s agenda at the earliest possible time and shall notify the affected commissioner of the date and time of the meeting at which the Council will consider the matter.

E. The Council shall allow the affected commissioner an opportunity to address it, shall determine whether to affirm or overrule the City Attorney’s opinion and may make any order consistent with this section and Government Code Section 1126.

F. If the commissioner fails to comply with the City Attorney’s opinion or, on appeal, the order of the City Council, the commissioner’s seat shall be deemed automatically vacated as of the date of the Council’s order.

G. From the date the City Attorney’s opinion is issued and transmitted to the board or commissioner who is its subject, until completion of Council proceedings under this section, that commissioner shall comply with the incompatibility standard set forth in subsection (B) as applied in the City Attorney’s opinion. Thereafter, the commissioner member shall comply with the order of the Council.

H. Prior to accepting any appointment to any commission, the nominee shall disclose to the appointing Councilmember every employment, activity or enterprise for compensation that falls within the scope of the authority of the board or commission for which he or she has been nominated.

I. The standard set forth in subsection (B) of this section applies to commissioners appointed by the Council to all City boards and commissions except the Board of Library Trustees, the Fair Campaign Practices Commission, Homeless Commission, Housing Advisory Commission, Human Welfare and Community Action Commission, Landmarks Preservation Commission, Planning Commission, Police Review Commission, and Zoning Adjustments Board.

J. Nothing in this section affects any disclosure, disqualification or eligibility requirement of under any provision of federal, state or local law other than Government Code Section 1126(b). (Ord. 6643-NS § 1, 2001)
APPENDIX I. Council Determination as to Incompatibility; Recusal; Automatic Vacancy

(Berkeley Municipal Code § 3.02.050)

A. Whenever the City Attorney issues a written opinion that a member of any City board or commission is engaged in an employment, activity or enterprise for compensation which is inconsistent, incompatible or in conflict with his or her duties as a board or commission member, that opinion shall be immediately transmitted to the City Clerk and the affected board or commission member.

B. If the affected board or commission member notifies the City Clerk in writing of his or her disagreement with the City Attorney’s opinion within 14 days after the opinion is issued, the City Clerk shall place the matter on the Council’s agenda at the earliest possible time and shall notify the affected board or commission member of the date and time of the meeting at which the Council will consider the matter.

C. The Council shall allow the affected board or commission member an opportunity to address it and shall then determine whether to affirm or overrule the City Attorney’s opinion.

D. If the Council overrules the City Attorney’s opinion, the affected board or commission member shall be conclusively considered not to be engaged in an employment, activity or enterprise for compensation which is inconsistent, incompatible or in conflict with his or her duties as a board or commission member and no further action shall be taken.

E. If the Council affirms the City Attorney’s opinion, the board or commission member’s seat shall be deemed automatically vacated as of the date of the Council’s decision, unless the City Attorney’s opinion states, or the Council determines, that the incompatibility is not pervasive, in which case the board or commission member may remain on the board or commission but shall recuse himself or herself from decisions relating to his or her employment, activity or enterprise for compensation.

F. From the date the City Attorney's opinion is issued and transmitted to the board or commission member who is its subject, until completion of Council proceedings under this section, the board or commission member shall recuse himself or herself from decisions relating to his or her employment, activity or enterprise for compensation.

G. Prior to accepting any appointment to any board or commission, the nominee shall disclose to the appointing Councilmember every employment, activity or enterprise for compensation that falls within the scope of the authority of the board or commission for which he or she has been nominated. (Ord. 6643-NS § 1, 2001)
APPENDIX J. Resolution Number 63,138-N.S. Incompatible Offices

RESOLUTION NO. 63,138-N.S.

AMENDING THE CITY OF BERKELEY COMMISSIONERS' MANUAL CHAPTER II(B)(3) TO CLARIFY LANGUAGE REGARDING INCOMPATIBLE OFFICES

WHEREAS, it is the desire of the City Council to allow commissioners to serve on two or more city boards or commissions; and

WHEREAS, on October 20, 2005, the City Council adopted Berkeley Municipal Code (BMC) Chapter 3.80 (Ordinance No. 6,876-N.S.) abrogating the common law doctrine of incompatible offices with respect to membership on two or more city boards or commissions; and

WHEREAS, the Commissioners' Manual provides basic information to all members, and establishes certain standards of conduct and procedure, and delineates responsibilities of secretaries, chairpersons and the body as a whole; and

WHEREAS, there is a need to modify language in Chapter II(B)(3) of the Commissioners' Manual to reflect the City's abrogation of the Common Law Doctrine of Incompatible Public Offices with respect to membership on two or more city boards or commissions as codified in BMC Chapter 3.80.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Commissioners' Manual is hereby amended as noted in Exhibit A to abrogate the Common Law Doctrine of Incompatible Public Offices with respect to membership on two or more city boards or commissions.

BE IT FURTHER RESOLVED, that Resolution No. 62,418-N.S. is hereby amended.

The foregoing Resolution was adopted by the Berkeley City Council on December 13, 2005 by the following vote:

Ayes: Councilmembers Anderson, Capitelli, Maio, Moore, Olds, Spring, Worthington, Wozniak and Mayor Bates.

Noes: None.

Absent: None.

Attest: Sara T. Cox, City Clerk

Tom Bates, Mayor
APPENDIX K. Resolution Number 65,127-N.S. Meeting Frequency Schedule

RESOLUTION NO. 65,127–N.S.

2011 COMMISSION MEETING FREQUENCY SCHEDULE

WHEREAS, on June 13, 2005, the City Council adopted a plan which created three categories of meeting schedules and a process for requesting Council or Agenda Committee approval of any extra meetings; and

WHEREAS, Council also directed commission secretaries to submit an information report whenever a commission cancels two consecutive meetings for lack of quorum and an annual attendance report; and

WHEREAS, on January 15, 2008, the City Council adopted a plan which created a fourth category of meeting frequency; and

WHEREAS, adopting a commission meeting schedule will provide commissions with direction to set their respective regular meeting schedules for subsequent years.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley directs that commission secretaries shall submit an information report to Council whenever a commission cancels two consecutive meetings for lack of quorum.

BE IT FURTHER RESOLVED that commissions may request that the Council approve extra meetings by placing a report on the City Council agenda for consideration.

BE IT FURTHER RESOLVED that commissions will meet according to the following categories:

Category A. These commissions will meet on their own schedule.
   Board of Library Trustees
   Design Review Committee
   Fair Campaign Practices Commission
   Housing Advisory Commission
   Landmarks Preservation Commission
   Personnel Board
   Planning Commission
   Police Review Commission
   Zoning Adjustments Board

Category B. These commissions will have a maximum of ten meetings per year.
   Citizens Humane Commission
   Civic Arts Commission
   Commission on Aging
   Commission on Disability
   Commission on Labor
   Community Environmental Advisory Commission
   Community Health Commission
   Disaster and Fire Safety Commission
Energy Commission
Homeless Commission
Human Welfare and Community Action Commission
Medical Cannabis Commission
Mental Health Commission
Parks and Recreation Commission
Peace and Justice Commission
Public Works Commission
Transportation Commission
Waterfront Commission
Youth Commission
Zero Waste Commission

Category C. These commissions will meet as necessary to fulfill their legal requirements as determined by the board Chair and/or staff.
   Downtown Berkeley Business Improvement District
   Elmwood Advisory Board
   Loan Administration Board
   Solano Avenue Business Improvement District Advisory Board

Category D. These commissions will meet once quarterly.
   Commission on Early Childhood Education
   Commission on the Status of Women

BE IT FURTHER RESOLVED that commission secretaries will submit an annual commission attendance report for the period November through October to the City Clerk in November of each year.

BE IT FURTHER RESOLVED that a report presenting commission attendance and meeting frequency will be submitted to the City Council for review in December of each year.

BE IT FURTHER RESOLVED that any changes to the meeting frequency schedule will be submitted through resolution.

Adopted by the Berkeley City Council on December 14, 2010
APPENDIX L. Policy for Commission Teleconferencing
Approved by Berkeley City Council December 18, 2007

TELECONFERENCING FOR COMMISSIONERS

Criteria for allowing teleconferencing:
Commissioner is unable to attend a commission meeting due to an extreme, unforeseen health or disability situation that would prohibit attendance for a prolonged period of time. Teleconferencing may only be conducted at a meeting location that can accommodate such request as determined by the commission secretary.

Procedure for approval (if criteria above can be met):
1. Commissioner must complete a form requesting the ability to teleconference. The form must include the reason that teleconferencing is needed, the timeframe of the request and meeting dates affected, the address and telephone number of the teleconference location and a statement that the commissioner will accept the responsibility to post the meeting notice in accordance with the requirements of the Brown Act and make the location accessible to any member of the public who so desires to attend at that location.

2. The request is placed on the agenda of the next regular commission meeting and is voted upon by the full commission membership. The request must receive a two-thirds vote for approval. In the event of an urgent matter where a special meeting of the commission is called to consider a request to teleconference, the request must be approved at least five business days prior to the meeting date to allow for proper Brown Act noticing.

3. Only one commissioner from any commission may be permitted to teleconference at each meeting.

4. Teleconferencing is not permitted under any circumstance for subcommittee meetings.

Teleconferencing will not be approved for:
1. Vacation or business travel.
2. Task Force or sub-committee meetings.

Commissions Subject to Teleconferencing Policy:
Board of Library Trustees
Citizens Humane Commission
Civic Arts Commission
Commission on Aging
Commission on Disability
Commission on Early Childhood Education
Commission on Labor
Commission on the Status of Women
Community Environmental Advisory Commission
Community Health Commission
Design Review Committee
Disaster and Fire Safety Commission
Downtown Area Plan Advisory Committee
Downtown Berkeley Business Improvement District Advisory Board
Elmwood Advisory Board
Energy Commission
Fair Campaign Practices Commission
Homeless Commission
Housing Advisory Commission
Human Welfare and Community Action Commission
Landmarks Preservation Commission
Loan Administration Board
Mental Health Commission
Parks and Recreation Commission
Peace and Justice Commission
Personnel Board
Planning Commission
Police Review Commission
Public Works Commission
Solano Avenue Business Improvement District Advisory Board
Transportation Commission
Waterfront Commission
West Berkeley Project Area Commission
Youth Commission
Zero Waste Commission
Zoning Adjustments Board
APPENDIX M. General Information for Newly Appointed Commissioners

APPOINTMENT OF NEW COMMISSIONER

All new appointments, and temporary appointments are processed pursuant to the filing of an appointment form and Affidavit of Residency with the City Clerk by a City Councilmember. The City Clerk then verifies the eligibility of the appointee to serve. A person may not be eligible to serve on a particular commission if:

- The ordinance, resolution or other law establishing the commission or regulating its membership has specific eligibility requirements that the appointee cannot meet; or
- The person has served eight consecutive years on the commission and has not been off the commission for a period of two years (those established by initiative may not be subject to this requirement); or
- The person has failed to file conflict of interest statements and has outstanding statements and/or has been removed from office more than once for failure to file statements; or
- The person has been administratively terminated more than four times; or
- There is no open commission seat.

The City Clerk Department prepares the official appointment letter and provides the commissioner with a packet of general information. If the commissioner is designated in the City’s Conflict of Interest Code, the appointment package will include the Form 700 and instructions. This form must be filed with the City Clerk within thirty days of the date of the appointment. The new appointee must also take the oath of office.

Failure to take the oath within thirty days of the date of the appointment letter and/or failure to file required conflict of interest statements within thirty days of appointment will result in automatic termination from the commission.

PRIOR TO SERVING AND PARTICIPATING AT A COMMISSION MEETING:
Commissioners must be fully eligible prior to serving at a meeting. Commission secretaries have been instructed to not permit a newly appointed commissioner to participate at a meeting unless the secretary has received notice from the City Clerk Department.

The secretary will officially swear the new commissioner in at the start of his/her first meeting if the commissioner has not already been sworn at the City Clerk Department. The secretary is also required to immediately forward the completed oath to the City Clerk.

LEAVES OF ABSENCE
Regular attendance at commission meetings is important to enable the commission to proceed with business. If a commissioner has advance notice of potential problems regarding attendance at meetings, a commissioner should notify the commission secretary and may wish to consider requesting a leave of absence from the appointing councilmember. Failure to obtain a leave of absence may result in automatic termination for absence. See Chapter II, Part A for more information.
A commissioner may also request to be “excused” from a regular commission meeting due to a conflict between the date of the meeting and a religious or cultural holiday. Such a request must be made in writing on a form provided by the City and submitted to the commission secretary prior to the meeting for which the commissioner is to be excused. The request is not subject to commission approval, but shall be accepted upon request. The definition of a religious or cultural holiday is left to the discretion of the individual commissioner.

**STIPEND/EXPENSES**

In order to remove barriers from citizen participation on commissions, the Council has authorized payment of $40 per meeting, in lieu of expenses, to Council-appointed members of commissions whose annual family income as filed jointly is below $20,000 per year. If a commissioner desires to establish stipend eligibility, he/she must file a statement with the commission secretary. It is the secretary’s responsibility to forward statements and meeting information to the City Auditor in a timely manner to ensure proper payment. Specific information related to this is contained in the Stipend Resolution.

**TERMINATION FROM A COMMISSION**

Commissioners, with a few exceptions, are appointed for terms ending November 30th of each year. Commissioners may continue to serve at-will for a period up to eight consecutive years unless replaced by a councilmember anytime after the initial term has ended. See Chapter II, Part A for more information.

**RESIGNATIONS BY COMMISSIONERS**

Written resignations by commissioners shall be forwarded directly to the City Clerk Department. Resignation letters should state the effective date of the resignation. Verbal resignations and backdated resignations are not considered resignations. The effective date of the resignation is the date it is received by the City Clerk unless a future date is indicated. The City Clerk Department will provide the resigning commissioner with a Form 700, Conflict of Interest Leaving Office Statement, if applicable, and will notify the appointing councilmember and the commission secretary of the resignation.

**QUESTIONS REGARDING APPOINTMENT**

If you have any questions regarding an appointment or termination or basic rules contained within the Commissioners’ Manual, please contact the commission secretary.