



Office of the City Manager

CONSENT CALENDAR

October 26, 2021

To: Honorable Mayor and Members of the City Council
From: Dee Williams-Ridley, City Manager
Submitted by: Mark Numainville, City Clerk
Subject: Referral Response: Amending City Council Office Budget Expenditure and Reimbursement Policies

RECOMMENDATION

Adopt a Resolution revising the Councilmember Office Budget Relinquishment and Grant Policy to add that donations to nonprofit organizations be made on behalf of the City Council and the residents of Berkeley.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

On March 9, 2021, Council adopted a referral to prepare a change in the City Council Expenditure and Reimbursement policies to have donations to nonprofit organizations be made in the name of the entire Berkeley City Council on behalf of the residents of Berkeley rather than from individual Council members. This item adopts a new resolution to include the revisions requested by the referral and the original policies in Exhibit A of Resolution No. 67,992-N.S.

BACKGROUND

On July 25, 2006, the City Council adopted Resolution No. 63,412–N.S. to establish the expenditure and reimbursement policy required by state law, and on September 10, 2013, revised that policy through the adoption of Resolution No. 66,295–N.S. On May 30, 2017, the City Council adopted Resolution No. 67,992-N.S. which incorporated the Councilmember Office Budget Relinquishment and Grant Policy into the Expenditure and Reimbursement policies.

This change to the Expenditure and Reimbursement policies originated with a two-part recommendation from the Open Government Commission to regulate officeholder accounts and to prepare changes to the Councilmember Office Budget Relinquishment and Grant Policy. A positive recommendation was made by the Agenda & Rules Committee to the City Council on part two of the Commission's recommendation.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

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

RATIONALE FOR RECOMMENDATION

This report and resolution are a response to the direction of the City Council on March 9, 2021.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Mark Numainville, City Clerk, (510) 981-6900

Attachments:

1: Resolution

Exhibit A: Councilmember Office Budget Relinquishment and Grant Policy

2: Council Budget Relinquishment Report Template

3: March 9, 2021 Referral Item

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

AMENDING CITY COUNCIL OFFICE BUDGET EXPENDITURE AND
REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Councilmember's departmental budgets to cover the costs of Mayor and Council staff and non-personnel expenditures which are reasonable and necessary for the performance of the duties of Mayor and Councilmember; and

WHEREAS, these funds may be relinquished to the General Fund and allocated to local organizations that support a municipal purpose; and

WHEREAS, on May 30, 2017, the City Council rescinded Resolution No. 66,295-N.S. and replaced it with Resolution No. 67,992-N.S., which incorporated by reference, Exhibit A to the policy for City Expenditures and Expense Reimbursement for Mayor and Council.

WHEREAS, on March 9, 2021, the City Council adopted a referral to prepare a change in the City Council Expenditure and Reimbursement policies.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Councilmember Office Budget Relinquishment and Grant Policy enumerated in Exhibit A of Resolution No. 67,992-N.S. is revised and re-adopted to include that donations to non-profit organizations be made in the name of the entire Berkeley City Council on behalf of the residents of Berkeley.

BE IT FURTHER RESOLVED that the policy concerning Councilmember Office Budget Relinquishment and Grant Policy is hereby adopted to read as follows:

Exhibit A: Councilmember Office Budget Relinquishment and Grant Policy

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Exhibit A

Councilmember Office Budget Relinquishment and Grant Policy

Introduction – Limitations on the Expenditure of Public Funds

The basic purpose of the City as an entity is to exist and function *as a municipality*. This is also reflected in the Charter, which limits the Council's powers only to those "municipal affairs adequate to a complete system of local government". (Section 38.)

Exercises of this power may not be used solely to further the interests of particular individuals, although they may incidentally benefit private interests:

The exercise of the police power is available only for the purpose of promoting the general welfare, the interests of the public as distinguished from those of individuals or persons. It cannot be used to promote private gain or advantage, except so far as the same may also promote the public interest and welfare, and it is the latter, and not the former, effect which forms the basis of the power and warrants its exercise.
(*Binford v. Boyd* (1918) 178 Cal. 458, 461.)

The Council's basic powers circumscribe its ability to spend public funds. In other words, the Council cannot spend public funds for purposes that are beyond its authority in the first place. Thus, the City may only use its funds for municipal purposes. In any given case the crucial inquiry is whether an expenditure serves such a purpose.

The determination of what constitutes a public purpose is primarily a matter for the legislature, and its discretion will not be disturbed by the courts so long as that determination has a reasonable basis.
(*County of Alameda v. Carlson* (1971) 5 Cal.3d 730, 745-746.)

If the courts find that there is a valid public purpose, they next examine whether the government's actions are reasonably related to effectuating this purpose. (*Tip Top Foods, Inc. v. Lyng* (1972) 28 Cal.App.3d 533, 541.) Public appropriations granted to private interests will not be considered unlawful diversions of public funds when the transaction serves the public interest, merely granting an incidental benefit to the private individual. (*Cane v. City and County of San Francisco* (1978) 78 Cal.App.3d 654, 660.)

Criteria for Grants of City Funds from Councilmember Office Budgets

All relinquishments and grants of public funds to nonprofit organizations are made in the name of the entire Berkeley City Council on behalf of the residents of Berkeley.

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Relinquishments and grants for purposes and recipients that fall within the categories listed in Table 1 may be “pre-approved” each fiscal year by Council resolution.

Table 1.

Recipient	Purpose
The City (e.g., the Berkeley Public Library, the Berkeley Animal Shelter)	Any purpose already being undertaken, because it already serves a public purpose. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
BUSD and other public agencies operating in Berkeley	Any purpose already being undertaken, because it already serves a public purpose, assuming the activity is in Berkeley. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.
Entities with which the City is co-sponsoring a public event in Berkeley (e.g., Earth Day, Solano Stroll).	City co-sponsorship suggests but is not conclusive of public purpose; public purpose would need to be stated, and all such events should be open to the public at no cost. Alternatively, a list of ongoing events that have been determined to serve a public purpose could be developed.
Entities in Berkeley to which the City already contributes funds for municipal purposes (e.g., affordable housing or social service nonprofits)	To advance the same public purposes for which the entities are funded. This includes both grants and attendance at fundraising events in capacity as the Mayor or a Councilmember.

Proposed relinquishments and grants that do not meet the criteria for pre-approval, but that meet an appropriate municipal purpose, may be approved by resolution with a majority vote of the City Council.



[First Last name]
Councilmember District [District No.]

CONSENT CALENDAR
[Meeting Date (Month Day, yyyy)]

To: Honorable Mayor and Members of the City Council
From: Councilmember [Author Last Name], District [Council District Number]
Subject: [Recipient]: Donations of Funds to Support a Municipal Public Purpose

RECOMMENDATION

On behalf of the City Council and the residents of Berkeley, adopt a Resolution approving the expenditure of an amount not to exceed \$[amount] per Councilmember, to the [Recipient] with funds relinquished to the City's general fund to support a municipal public purpose.

FISCAL IMPACTS OF RECOMMENDATION

\$[amount] is available from Councilmember Budget discretionary accounts.

BACKGROUND

We are proposing that the City Council make a grant of \$[amount] to [Recipient] for [state the public purpose] on behalf of the City Council and the residents of Berkeley.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

CONTACT PERSON

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

Attachments:
1: Resolution

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

AUTHORIZING THE EXPENDITURE OF SURPLUS FUNDS FROM THE OFFICE EXPENSE ACCOUNTS OF THE MAYOR AND COUNCILMEMBERS FOR A GRANT TO PROVIDE PUBLIC SERVICES FOR A MUNICIPAL PUBLIC PURPOSE

WHEREAS, a California non-profit tax exempt corporation enter organization name seeks funds in the amount of [\$enter amount] to provide the following public services enter services; and

WHEREAS, the provision of such services would fulfill the following municipal public purpose Enter text here: explain what the funds will buy and how Berkeley citizens will specifically benefit. Do not make general statements like "Berkeley citizens support the environment and the organization does important environmental work."

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that funds relinquished by the Mayor and Councilmembers from their Council Office Budget up to [\$enter amount per office] shall be granted to enter organization name, on behalf of the City Council and residents of Berkeley, to fund the following services enter services.

BE IT FURTHER RESOLVED that (for further action if needed; if not delete) - ends in a period (.).

Exhibits **[Delete if there are NO exhibits]**

A: Title of the Exhibit

B: Title of the Exhibit

Consent Calendar

- 9. Loan Application: Dock Replacement at the Berkeley Marina**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager or her designee to sign a loan agreement with the California Department of Boating and Waterways and to accept the funds for a loan not to exceed \$5,500,000 for replacement of D & E docks at the Berkeley Marina.
Financial Implications: See report
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,746–N.S.
- 10. Grant Application: Environmental Enhancement and Mitigation Project (EEMP) Proposal**
From: City Manager
Recommendation: Adopt a Resolution authorizing the City Manager to submit an Environmental Enhancement and Mitigation (EEM) grant application to plant urban forest trees in the amount up to \$500,000; to accept the grant; to execute any resultant revenue agreements and amendments; and authorizing the implementation of the project and appropriation of funding for related expenses, subject to securing the grant.
Financial Implications: Revenue - \$500,000
Contact: Scott Ferris, Parks, Recreation and Waterfront, (510) 981-6700
Action: Adopted Resolution No. 69,747–N.S.
- 11. Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.)** *(Reviewed by the Agenda & Rules Committee) (Item contains Supplemental Material)*
From: Fair Campaign Practices Commission
Recommendation: Form a joint subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.
(On February 8, 2021, the Agenda & Rules Committee made a positive recommendation to the City Council on part two of the Commission recommendation to prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.)
Financial Implications: None
Contact: Sam Harvey, Commission Secretary, (510) 981-6950
Action: Approved the recommendation of the Agenda & Rules Committee revised to change the word “citizens” to “residents.”