


CONSENT CALENDAR

July 11, 2006

To: Honorable Mayor and
Members of the City Council

From:  Phil Kamlarz, City Manager

Submitted by: Manuela Albuquerque, City Attorney

Subject: Implementation Of Council Expense Reimbursement Policy Under AB 1234

RECOMMENDATION

Adopt two resolutions to:

1. Establish a policy on expenditures and reimbursement for Mayor and Council expenses to conform to the City Charter and a new state law (AB 1234); and
2. Establish a policy governing reimbursement of expenses by City boards and commissions as is also required by AB 1234.

FISCAL IMPACTS OF RECOMMENDATION

Some historic expenditure will be ineligible for reimbursement. There is no overall reduction required in the budget for the Mayor and Council or any other department. The resolutions would set the standards for eligible expenses and will require most expenses of Council office to be paid by the City directly rather than indirectly via City advances to individual bank accounts maintained and operated by Council members, as has been the case in the past.

CURRENT SITUATION AND ITS EFFECTS

I AB 1234

On January 1, 2006, AB1234, Government Code Sections 53232, et seq. became effective. AB 1234 establishes new requirements related to expense reimbursement for local officials. It provides that if local agencies reimburse the elected and appointed officials of their legislative bodies for the actual and necessary expenses of office, the **governing body** of the agency must adopt a written expense reimbursement policy, at a public meeting, that specifies the types and amounts of expenses of office which may be reimbursed. It also requires two hours of ethics training for such officials. A special Council works session will likely be scheduled through the Agenda Committee to comply with this requirement. Any members of boards and commissions who have received reimbursement for their expenses of office will also have to attend this the two-hour ethics training. Training for such commissioners will likely be conducted separately.

II. City's Historic Practices

In the course of developing an AB 1234 policy, the City Attorney coincidentally learned of the City's longstanding practice, likely dating back to the 1970s, of depositing Council funds budgeted for non personnel related expenses of office into non-City bank accounts operated by a Council member or a member of his or her staff. Under this practice, the City advances \$1500 at a time to each Council member and the Mayor. They each then deposit the funds in a non-City bank account operated by the Mayor, Council member and/or his/her staff. The Council member then pays the expenses of office from these privately operated accounts. The Mayor and Council members then submit written documentation to the Auditor to describe and justify these expenditures. The Auditor reviews this documentation before forwarding to Finance for advance replenishment. This longstanding practice predates the tenure of any current City official, including the Mayor, any Councilmember currently in office, the City Manager, the Auditor and the City Attorney. The City Attorney's research of remaining historical records has not uncovered any City Council action or City Attorney's opinions, authorizing the practice. The practice is inconsistent with Charter Section 61.

III. The City Charter

Charter Section 61 provides in pertinent part as follows:

Payment by the City... shall be made only upon vouchers certified by the head of the appropriate department and approved by the City Manager, and by means of warrants on the City Treasury, or by checks drawn upon deposits maintained in a bank or banks, issued by the Auditor and countersigned by the City manager. **The Auditor shall examine all ...bills and other claims and demands against the City, and shall issue no warrant and check for payment unless he finds that the claim is in proper form, correctly computed and duly certified; that it is justly and legally due and payable; that the payment has been otherwise legally authorized; and there is money available to make payment.**

Thus, the Charter envisions that the justifications for expenditures **precede** rather than **succeed** the disbursement of City funds. Under normal City practices, even the provision of travel advances is only made upon prior submission and approval of the event and the costs associated with it.

The City Manager believes that the practice of advancing funds into non-City bank accounts may have begun in the 1970's when Council members did not have offices located in the Civic Center Building and adopted it as a matter of convenience, apparently without any actual official action by the City Council or sanction by the City Attorney. Historic files indicate that at one time many Council supplies might have been purchased by the City staff for the Council and thus the actual amount of funds being disbursed via advances to these privately operated accounts was likely small. Thus, although the historical origins of this many decades-old practice are shrouded in the distant past, it is clear that this practice of advancing payments for all Council non-

personnel expenses to be expended through non-City accounts is inconsistent with the Charter. Thus, the City advances into privately operated accounts need to cease.

In addition, the Council, as the governing body of the agency that authorizes reimbursement of expenses, needs to adopt a written expense reimbursement policy to comply with AB 1234.

BACKGROUND

The purpose of the recommended resolution is to bring the City's expenditure policies with respect to Mayor and Council expenses of office into conformity with both the City Charter and a new state law, AB1234, governing expense reimbursement and the requirement that they serve a municipal purpose. An additional resolution would govern the reimbursement of the expenses by other City commissions.

AB1234 requires standards to govern reimbursement of expenses of office. It does not regulate the City's direct payment of expenses of office to the vendor supplying the good or service. However, because of the City's past practice of reimbursing all non personnel related Council expenses of office, this resolution attempts to set guidelines for all expenditures whether reimbursed by the City or paid directly by the City in the first instance. The Council may approve additional types of expenditures either by advance approval of the particular expenditure itself, or by acting on a Council item requesting such approval and explaining why the expenditure constitutes a proper municipal purpose, or by the Council amending the attached resolution to add additional authorized classes of expenditures that constitute proper municipal purposes.

I. Mayor and City Council Expenses

As a whole, the resolution concerning Council expenditures would have the following effects:

- All Council expenditures must follow normal City procedures for the purchase of goods and services including attendance at conferences and other similar events.
- City funds will no longer be advanced to be disbursed through privately operated accounts.
- Mayor and Council budgets are solely for the actual and necessary expenses of office and cannot be expended to fund services provided by any non-profit community organization. The Council resolution in this regard needs to be rescinded. The Council as a body can, of course, continue to fund community agencies to provide particular services to the community.
- Travel, lodging, and meals at educational events may be reimbursed as long as a report is made to the Council after the event.
- Attendance at functions of local, civic, and community organizations may be reimbursed where the primary subject matter of the event relates to the City's business. This language is designed to make more explicit the principle that such

expenditures serve a municipal purpose and involve the actual and necessary expenses of office.

- Attendance at entertainment, recreational or cultural events, likewise, would not be paid from City funds.

This policy authorizes a larger range of expenditures than the model policy prepared by the League of California Cities' non-profit arm, the Institute for Local Self Government, and is intended to reflect the types of expenditures that Council members have historically engaged in that would constitute a valid expenditure of funds for a municipal purpose.

Expenditures for all other activities require **advance** approval by the City Council, must meet an articulated municipal purpose that must be recited in the report proposing the expenditure, and be approved by a resolution authorizing the expenditure and reciting that municipal purpose.

This report also recommends that the Council adopt an additional proposed resolution to govern other City boards and commissions as required by AB1234.

II. Other City Boards and Commissions.

AB 1234 requires the governing body of a city (i.e. the city council) to adopt a policy to set standards for reimbursement of expenses to any member of a "legislative body" as that term is used in the Brown Act. Thus, all City boards and commissions are subsumed within this definition. The proposed resolution would confine such reimbursement to attendance at educational seminars as reflective of current practice. The types of expenditures for such seminars would be subject to the standards as such educational seminars undertaken by the Mayor and Council.

RATIONALE FOR RECOMMENDATION

The new reimbursement policies are required to comply with the City Charter and state law.

ALTERNATIVE ACTIONS CONSIDERED

None, in light of the legal obligation to comply with state law.

CONTACT PERSON:

Manuela Albuquerque, City Attorney, 981-6950

Attachments:

- Attachment 1 -Resolution Establishing Council Expenditure and Reimbursement Policy
- Attachment 2- Resolution Establishing Travel and Training Reimbursement Policy for Board and Commission Members



Office of the City Manager

SUPPLEMENTAL REVISED AGENDA MATERIAL

Meeting Date: July 11, 2006

Item Number: 26

Item Description: **Implementation of Council Expense Reimbursement Policy
Under AB 1234 – Att 1 – Rev**

Revised Resolution Re Council Expense for Item 26 submitted by City Attorney.

REVISED RESOLUTION RE COUNCIL EXPENSE FOR ITEM 26

RESOLUTION NO. –N.S.

ESTABLISHING COUNCIL EXPENDITURE AND REIMBURSEMENT POLICIES

WHEREAS, each fiscal year, the City Council appropriates funds in the Mayor and Council member’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 Council member; and

WHEREAS, the procedure for expending these funds has evolved and has not been governed by a formal Council resolution; and

WHEREAS, the Council needs to ensure that the expenditures are incurred and paid in conformity with the requirements of the City Charter; and

WHEREAS, AB 1234, a new state law requires that all cities adopt an expense reimbursement policy for Mayor and Council expenses;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that Resolution No. 59,597-N.S., and any amendments thereto, are hereby rescinded.

BE IT FURTHER RESOLVED that a policy concerning City Expenditures and Expense Reimbursement for Mayor and Council departments is hereby adopted to read as follows:

CITY EXPENDITURES AND EXPENSE REIMBURSEMENT FOR MAYOR AND COUNCIL DEPARTMENTS

I City Expenditures for Mayor and Council

The Mayor and Council members shall purchase all office supplies, office equipment, furniture, computers, or any other product or good or service for the actual and necessary expense of their office in the manner normally applicable to all other purchases of goods and services by the City. Such expenses may include membership in organizations of elected officials and the purchase of newspapers and periodicals that provide information needed for the performance of official duties.

II. Reimbursement of Actual and Necessary Expense of Office

The Mayor and Council members and their staff may be reimbursed for the actual and necessary expenses for the categories of activities set forth below under “Authorized Activities.”

A. Authorized Activities.

Travel, meals and lodging incurred in connection with the following types of activities set forth below constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled:

1. Communicating with representatives of local, regional, state and national government on City policy positions;
2. Attending educational seminars designed to improve officials' skill and information levels, provided that a brief report of such seminar shall be made by the Mayor and Council at a subsequent Council meeting;
3. Participating in local, regional, state and national organizations of cities whose activities affect the City's interests;
4. Recognizing service to the City (for example, thanking a longtime employee with a retirement gift or celebration of nominal value and cost);
5. Attending City events; or events sponsored by organizations or entities whose activities affect the City's interests where the primary purpose of the event is to discuss subjects which relate to City business; and
6. Implementing City approved policies;
7. Meals where the primary purpose of the meal is to conduct City-related business (other than simply meeting constituents) as long as the amount of such meal does not exceed the daily maximum as set forth in this Resolution and meets applicable federal and state standards as to when meal reimbursement may be allowed; and
8. Expenditures for these purposes approved in advance by a Mayor or Council member and undertaken by that person's staff.

Expenditures for all other activities require prior approval by the City Council and must meet an articulate municipal purpose that must be recited in the report proposing the expenditure and the resolution authorizing the expenditure.

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;

3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children – or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

1. Registration. Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.

2. Transportation. The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.

3. Airfare. Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.

4. Automobile. Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable.

The Internal Revenue Service rates will not be paid for rental vehicles; only receipted fuel expenses will be reimbursed.

5. Car Rental. Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. Taxis/Shuttles. Taxis or shuttles fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. Lodging. Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.

8. Meals. Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher costs locations (*see* Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem).

9. Telephone/Fax/Cellular. Council members will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distances charges for those calls.

10. Airport Parking. Airport parking must be used for travel exceeding 24-hours.

11. Other Travel Related Expenses. Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.

12. Miscellaneous Office Products. Notwithstanding the requirement in Section I, occasionally an elected officer or officer's staff may need to make an immediate small out of pocket purchase of office supplies that are normally ordered by the City for which payment is paid directly to the vendor. The City in accordance with the applicable City Manager Administrative Regulation concerning petty cash refunds may reimburse such purchases.

D. Cash Advance Policy

From time to time, it may be necessary for an official to request a cash advance to cover anticipated expenses while traveling or doing business on the City's behalf. Such request for an advance should be submitted to the City Auditor, and copied to the City Manager, ten (10) working days prior to the need for the advance with the following information:

1. The purpose of the expenditure(s);
2. Whether the expenditure is for an authorized activity
3. The benefit to the residents of the City.
4. The anticipated amount of the expenditure(s) (for example, hotel rates, meal costs, and transportation expenses); and
5. The dates of the expenditure(s).

Any unused advance must be returned to the City within five (5) working days of the official's return, along with an expense report and receipts documenting how the advance was used in compliance with this expense policy.

E. Expense Report Content and Submission Deadline

1. A Statement of Expense must be completed, signed and submitted to the City Auditor for review and forwarding to the Finance Department for payment. The Statement of Expense must document that the expense in question met the requirements of this Resolution. For example, if the meeting is with a legislator, the local agency official should explain whose meals were purchased, what issues were discussed and how those relate to the City's adopted legislative positions and priorities.

2. Officials must submit their Statement of Expense reports to the Auditor's Office within 30 days of an expense being incurred, accompanied by receipts documenting each expense. Restaurant receipts, in addition to any credit card receipts, are also part of the necessary documentation. Receipts for gratuities and tolls under \$5 are not required.

3. Inability to provide such documentation in a timely fashion may result in the expense being borne by the official.

F. Audits of Expense Reports

All expenses are subject to verification of compliance with this policy.

H. Reports

At the following City Council meeting, each official shall briefly report on meetings attended at City expense. If multiple officials attended, a joint report may be made.

I. Compliance with Laws

City officials should keep in mind that some expenditures may be subject to reporting under the Political Reform Act and other laws. All agency expenditures are public records subject to disclosure under the Public Records Act.

J. Violation Of This Policy

Use of public resources or falsifying expense reports in violation of this policy may result in any or all of the following:

- (1) loss of reimbursement privileges;
- (2) a demand for restitution to the City;
- (3) the City's reporting the expenses as income to the elected official to state and federal tax authorities;
- (4) civil penalties of up to \$1,000 per day and three times the value of the resources used; and
- (5) prosecution for misuse of public resources.



Office of the City Manager

SUPPLEMENTAL REVISED AGENDA MATERIAL

Meeting Date: July 11, 2006

Item Number: 26

Item Description: **Implementation of Council Expense Reimbursement Policy Under
AB 1234**

Revised Resolution: Establishing Travel and Training Reimbursement Policy for Board and Commission Members.

REVISED RESOLUTION FOR ITEM 26

RESOLUTION NO. –N.S.

ESTABLISHING TRAVEL AND TRAINING REIMBURSEMENT POLICY FOR BOARD AND COMMISSION MEMBERS

WHEREAS, AB 1234, a new state law requires that all cities adopt an expense reimbursement policy before a legislative body member may receive reimbursement for necessary expenses of office; and

WHEREAS, the Rent Stabilization Board and Board of Library Trustees occasionally authorizes their Board members to attend specific training seminars and meetings which are designed to facilitate the Board members performance of their duties; and

WHEREAS, the City Manager will occasionally authorize the use of City funds for a board or commission member from other boards or commissions to attend training programs or conferences designed to improve that official's skill and information level; and

WHEREAS, the Council has adopted an Expenditure and Reimbursement Policy for the Council and Mayor that sets forth those travel and training expenses for which Council will be reimbursed;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Berkeley that the following policy is adopted for reimbursement of board and commission members for travel and training expenses.

Travel and Training Reimbursement for Boards/Commissions

A. **Authorized Activities.**

Travel, meals and lodging incurred in connection with attending educational seminars designed to improve officials' skill and information levels constitute authorized expenses, as long as the other requirements of this Resolution are fulfilled. For members of most of the City's boards and commission, other than the Board of Library Trustees and Rent Stabilization Board, such activities will occur only on rare occasions when approved by the City Manager and determined to be within the City's budget. The member of the body attending the educational event shall provide a brief report of the activity to the legislative body at a public meeting subsequent to the seminar. The Rent Stabilization Board may also receive travel meals and lodging incurred in connection with communicating with representatives of local, regional, state and national government on Board policy positions to the extent permitted by the Board;

B. Unauthorized Expenses

The following personal expenditures incurred by City officials shall not be reimbursed:

1. The personal portion of any trip, such as where the official is on his/her own vacation activities;
2. Political contributions or attendance at political or charitable events;
3. Family expenses, including partner's expenses when accompanying official on agency-related business, as well as children – or pet-related expenses;
4. Entertainment expenses, including theater, movies (either in-room or at the theater), sporting events (including gym, massage and/or golf related expenses), or other recreational and cultural events;
5. Alcoholic beverages;
6. Non-mileage personal automobile expenses, including repairs, traffic citations, insurance or gasoline; and
7. Personal losses incurred while on City business. Any questions regarding the propriety of a particular type of expense should be resolved by the City Council before the expense is incurred.

C. Particular Types of Authorized Expenditures Defined

To conserve City resources and keep expenses within community standards for public officials, expenditures should adhere to the following guidelines. In the event that expenses are incurred which exceed these guidelines, the cost borne or reimbursed by the City will be limited to the costs that fall within the guidelines.

- 1. Registration.** Registration fee charged for any authorized convention, conference, seminar or meeting is reimbursable.
- 2. Transportation.** The most economical mode and class of transportation reasonably consistent with scheduling needs and cargo space requirements must be used, using the most direct and time-efficient route. Charges for rental-vehicles may be reimbursed under this provision if more than one City official is attending an out of town conference, and it is determined that sharing a rental vehicle is more economical than other forms of transportation. In making such determination, the cost of the rental vehicle, parking and gasoline will be compared to the combined cost of such other forms of transportation. Government and group rates must be used when available.
- 3. Airfare.** Airfares that are equal to or less than those available through the Enhanced Local Government Airfare Program offered through the League of California Cities, the California State Association of Counties and the State of California are presumed to be the most economical and reasonable for purposes of reimbursement under this policy.

4. Automobile. Automobile mileage is reimbursed at Internal Revenue Service rates presently in effect. These rates are designed to compensate the driver for gasoline, insurance, maintenance, and other expenses associated with operating the vehicle. This amount does not include bridge and road tolls, which are also reimbursable. The Internal Revenue Service rates will not be paid for rental vehicles; only receipts for fuel expenses will be reimbursed.

5. Car Rental. Rental rates that are equal or less than those available through the State of California's website (<http://www.catravelmart.com/default.htm>) shall be considered the most economical and reasonable for purposes of reimbursement under this policy.

6. Taxis/Shuttles. Taxis or shuttle fares may be reimbursed, including a 15 percent gratuity per fare, when the cost of such fares is equal or less than the cost of car rentals, gasoline and parking combined, or when such transportation is necessary for time-efficiency.

7. Lodging. Lodging expenses will be reimbursed or paid for when travel on official City business which reasonably requires an overnight stay. If such lodging is in connection with a conference, lodging expenses must not exceed the group rate published by the conference sponsor for the meeting in question. Travelers must request government rates, when available. In the event that government rates are not available at a given time or in a given area, lodging rates that do not exceed the IRS per diem rates for a given area are presumed reasonable and hence reimbursable.

8. Meals. Meal expenses and associated gratuities should be moderate, taking into account community standards and the prevailing restaurant costs of the area. A helpful source of guidance is Internal Revenue Service per diem rates for meals and incidental expenses, which include adjustments for higher cost locations (*see* Publication 1542 at www.irs.gov or www.policyworks.gov/perdiem).

9. Telephone/Fax/Cellular. Officials will be reimbursed for actual telephone and fax expenses incurred on City business. Telephone bills should identify which calls were made on City business. For calls made on an official's personal cell phone, the official may obtain reimbursement for business calls based on the following formula: minutes used on public business divided by the total minutes allowed under a monthly plan, plus long-distance charges for those calls.

10. Airport Parking. Airport parking must be used for travel exceeding 24-hours.

11. Other Travel Related Expenses. Baggage handling fees of up to \$1 per bag and gratuities of up to 15 percent will be reimbursed. Expenses for which City officials receive reimbursement from another agency are not reimbursable.