



Fair Campaign Practices Commission

PUBLIC HEARING
June 30, 2020

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Brad Smith, Chair, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act; Amending Berkeley
Municipal Code Chapter 2.12

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Election Reform Act, BMC Chapter 2.12, regarding the public financing program.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC or Commission) at its regular meeting of April 23, 2020.

Action: M/S/C (McLean/O'Donnell) to approve the amendments with changes.

Vote: Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Sheahan, Tsang, Smith; Noes: none; Abstain: none; Absent: none.

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

Under the provisions of the Berkeley Election Reform Act (BERA) known as the Berkeley Fair Elections Act of 2016 (BMC §§ 2.12.490 et seq.), a candidate who wishes to participate in the City's public financing program must file with the Commission an application for certification to participate in the program. (BMC § 2.12.500.A.1.) The Commission is required to certify an applicant's eligibility at the earliest practicable time. (BMC § 2.12.500.B.) The City is required to make the initial payment of Fair Elections

funds to the qualified candidate within seven business days of certification by the Commission. (BMC § 2.12.505.E.)

When the Berkeley Fair Elections Act was initially passed, the Commission was also required to verify that an applicant candidate's qualified contributions met all application requirements, authorize the initial distribution of Fair Elections funds to the candidate, and provide any candidate who has been denied payment of funds with a written determination. At its April 18, 2019 meeting, the Commission determined that the Fair Elections process could be more effectively and efficiently run if these three roles were carried out by City staff, rather than the Commission. As a result, the Commission passed an amendment to BERA to authorize City staff to carry out these three roles. That amendment was subsequently passed by the City Council.

At its February 20, 2020 meeting, the Commission discussed the ways in which retaining the requirement that the Commission, rather than staff, must certify a candidate's initial application can cause delays in candidates being certified and receiving funds. The process also sometimes necessitates that, in the interest or expediency or fairness, the Commission hold special meetings to review and approve a candidate's application. This can result in significant time and resources being expended by staff and commissioners to schedule, notice and attend a special meeting simply to approve a single public financing application. Moreover, ensuring commissioner availability, setting an agenda and providing adequate notice for a special meeting can lengthen the time a candidate must wait to receive Fair Elections funds.

Under current practice, the Office of the City Clerk reviews and verifies candidates' applications prior to certification by the Commission. At its April 23, 2020 meeting, the Commission adopted amendments to BERA which would allow City staff to also certify applications without Commission action, and subsequently report those certifications to the Commission.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

The proposed amendments ensure that public financing applications can be reviewed and certified in a more efficient and streamlined manner while retaining Commission oversight of the process.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

Amendments to the Berkeley Election Reform Act

CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices Commission, 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission, 981-6998

Attachments:

1: Ordinance

ORDINANCE NO. XXXXXXXX -N.S.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT RELATED TO
PUBLIC FINANCING FOR CAMPAIGNS

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

Section 1. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

2.12.500 Eligibility for Fair Elections campaign funding.

A. To be eligible to be certified as a participating candidate, a candidate must:

1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the [CommissionCity](#) a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:

a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and

c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.

2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's

- signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.
- b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
- 4) Maintain such records of receipts and expenditures as required by the Commission;
- 5) Obtain and furnish to the Commission or City staff any information itthey may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;
- 6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.
- 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);
- 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.
- 9) Not accept loans from any source.
- 10) The CommissionCity has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission mayshall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision. (Ord. 7674-NS § 1, 2019: Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)

B. At the earliest practicable time after a candidate files with the ~~Commission~~City a written application for certification as a participating candidate, the ~~Commission~~City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. ~~Such a determination shall be made by the Commission.~~

C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section 2.12.235.

D. If the ~~City or~~ Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates.

Section 2. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

2.12.505 Fair Elections fund payments.

A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.505.B.

B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:

- 1) \$120,000 for a candidate running for the office of Mayor;
- 2) \$40,000 for a candidate running for the office of City Council.

C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.

1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publically disclosed with the contributor information required under Sections 2.12.280 and 2.12.283.

2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the ~~Commission's~~City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.

G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section [2.12.235](#).

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed

shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. (Ord. 7674-NS § 2, 2019: Ord. 7564-NS § 8, 2017: Ord. 7524-NS § 3.6 (part), 2016)

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the public financing program for campaigns.

The hearing will be held on **June 30, 2020**, at 6:00 p.m. The hearing will be held via videoconference pursuant to Governor’s Executive Order N-29-20. The Council will consider all objections or protests, if any, to the proposed assessment. At the public hearing any interested person may present written or oral testimony.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **June 18, 2020**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

Written comments should be mailed directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or emailed to council@cityofberkeley.info in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council 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 the City Council, 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 to the City Clerk. 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 City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

Published: June 19, 2020 – The Berkeley Voice
Pursuant to Berkeley Municipal Code section 2.12.051

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on June 18, 2020.

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Mark Numainville, City Clerk

