



Office of the Mayor

CONSENT CALENDAR  
September 14, 2021

To: Members of the City Council

From: Mayor Jesse Arreguín (Author), Vice Mayor Lori Droste, Councilmember Rashi Kesarwani, Councilmember Kate Harrison (Co-Sponsors)

Subject: Expansion of the Berkeley Fair Elections Program

RECOMMENDATION

Refer to the Fair Campaign Practices Commission (FCPC) to develop an ordinance to expand the Berkeley Fair Elections Program to include School Board Director, Rent Board Commissioner and City Auditor among the offices eligible to participate in the public financing program.

BACKGROUND

In November 2016 Berkeley voters approved Measure X1 by a vote of 65% Yes, 35% No. This measure amended the City Charter and Berkeley Election Reform Act to create a system of public funding of municipal election campaigns, called the Berkeley Fair Elections Act. The Fair Elections Act provides limited public matching funds to participating candidates who commit to raising small dollar donations from Berkeley residents.

The Fair Elections Act is currently available to candidates for City Council and Mayor. The program has worked as designed in both the 2018 and 2020 Berkeley elections, decreasing barriers to running for office and helping increase trust in government, as participating candidates are funded by small donations from Berkeley residents instead of relying on larger donations from individuals and wealthy interest groups.

The Fair Elections Act is currently funded, per Article III, Section 6.2 of the City Charter, with a specified amount every year. This amount was \$500,000 in 2016 and is adjusted for inflation and population changes each year. The program was designed with funding sufficient to support all five City offices: Mayor, City Councilmember, School Board Director, Rent Board Commissioner, and City Auditor. However, the supporters of Measure X1, which included California Common Cause, MapLight, the NAACP, the ACLU, and other groups and citizens, decided to write the measure to implement the program for Mayor and Council first, starting in 2018, thus allowing the Council and the Berkeley Fair Campaign Practices Commission (FCPC) to expand the program to School Board, Rent Board, and Auditor later. This allowed the City the opportunity to launch the program and evaluate its effectiveness before expanding it to other offices.

Since launching the program in 2018, the City has been able to sufficiently budget funding for administration and matching funds, while also balancing other budget priorities. Additionally, numerous candidates have participated in the program, and the City has adjusted regulations and administration procedures to streamline implementation.

The City Council and FCPC can implement this expansion to School Board Director, Rent Board Commissioner, and City Auditor with the "double green light" process of amending the Berkeley Election Reform Act, as prescribed in Berkeley Municipal Code Section 2.12.051. This process requires a two-thirds vote of the Commission, followed by a two-thirds vote of the Council. By passing this referral today, the Council signals its strong support for expanding the program to these additional offices, to level the playing field, increase opportunities for residents to have a voice in our elections and reduce the impact of money in politics. The specific details of the expanded program would be developed and potentially passed by the Commission and then come to Council for review and potential approval.

FINANCIAL IMPLICATIONS

To be determined

ENVIRONMENTAL SUSTAINABILITY

There are no environmental impacts associated with the recommendations in this report.

CONTACT PERSON

Mayor Jesse Arreguín      510-981-7100

Attachments:

- 1: BMC Chapter 2.12, Article 8. Berkeley Fair Elections Act of 2016
- 2: City of Berkeley campaign expenditures 2014-2020 for School Board, Rent Board, and Auditor



penalties enumerated in California Government Code Section [91013](#), which is incorporated herein. (Ord. 7234-NS § 5, 2012; Ord. 6096-NS, § 2 (part), 1991)

## **Article 8. Berkeley Fair Elections Act of 2016**

### **2.12.490 Title and purpose.**

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties. (Ord. 7524-NS § 3.6 (part), 2016)

### **2.12.495 Offices covered.**

Candidates for the offices of Mayor and City Council shall be eligible to participate in the public campaign financing program established by this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

### **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 City 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 they 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 City 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 shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

B. At the earliest practicable time after a candidate files with the City a written application for certification as a participating candidate, the 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.

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. (Ord. 7723-NS § 1, 2020: Ord. 7691-NS § 2, 2020: Ord. 7674-NS § 1, 2019: Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)

**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 publicly 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 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. 7723-NS § 2, 2020: Ord. 7691-NS § 3, 2020: Ord. 7674-NS § 2, 2019: Ord. 7564-NS § 8, 2017: Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.510 Candidate statement notice.**

A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6.1. (Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.515 Transition rule for current election cycle.**

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund. (Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.520 Special municipal elections.**

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election. (Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.525 Campaign accounts for participating candidates.**

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section [2.12.250](#).
- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles. (Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.530 Use of Fair Elections funds.**

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds or contributions for:
  - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

- 2) The candidate's personal support or compensation to the candidate or the candidate's family;
- 3) Indirect campaign purposes, including but not limited to:
  - a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
  - b) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
  - c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
  - d) An independent expenditure as defined in Berkeley Municipal Code Section [2.12.142](#) as may be amended;
  - e) Any payment or transfer for which compensating value is not received;

C. The term "Contribution" is defined in [2.12.100](#) and includes "Qualified Contributions" as defined in [2.12.167](#) and contributions from non-residents of Berkeley as described in [2.12.500.A.7](#).

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545. (Ord. 7691-NS § 4, 2020: Ord. 7674-NS § 3, 2019: Ord. 7564-NS § 9, 2017: Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.535 Administrative modification of timelines.**

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.540 Insufficient funds in the program.**

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section [2.12.505.B](#). Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section [2.12.505.C](#), the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section [2.12.500.A.6](#). (Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.545 Cost of living adjustments.**

The Commission shall adjust the dollar amounts specified in Sections [2.12.167](#), [2.12.500.A.3](#), [2.12.505.B](#) and 2.12.530.B.3.b for cost of living changes pursuant to Section [2.12.075](#) in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections [2.12.167](#), [2.12.500.A.3](#) and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Section [2.12.505.B](#). (Ord. 7691-NS § 5, 2020: Ord. 7564-NS § 10, 2017: Ord. 7524-NS § 3.6 (part), 2016)

#### **2.12.550 Fair Elections Act penalties.**

In addition to other enforcement and penalty provisions of this Article:



- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- C. The Commission shall, after a hearing held pursuant to Section [2.12.230](#), have the authority to impose the fine created by this section upon a two-thirds vote. (Ord. 7524-NS § 3.6 (part), 2016)

**2.12.555 Violation--Persons ineligible for public funds--Time limit.**

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section [2.12.230](#). The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation. (Ord. 7524-NS § 3.6 (part), 2016)

**2.12.560 Review by Commission.**

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. (Ord. 7524-NS § 3.6 (part), 2016)

**The Berkeley Municipal Code is current through Ordinance 7778-NS, passed June 29, 2021.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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## CITY OF BERKELEY CAMPAIGN EXPENDITURES 2014-2020

### for Auditor, Rent Board, and School Board

Data collected from the City of Berkeley's Public Portal for Lobbyist and Campaign Finance Disclosure by MapLight, a nonprofit research organization.

Candidates with less than \$500 in total expenditures were excluded from this dataset.

Winning candidates are indicated by an asterisk\*

### 2014

Office Sought	Candidate	Total Expenditures
Auditor	Anne-Marie Hogan*	\$ 2,639
Rent Stabilization Board	James Chang*	\$ 2,092
Rent Stabilization Board	John Selawsky*	\$ 1,894
Rent Stabilization Board	Jesse Townley*	\$ 1,705
Rent Stabilization Board	Katherine Harr*	\$ 1,553
Rent Stabilization Board	Paola Laverde*	\$ 1,110
School Board Trustee	Ty Alper*	\$ 48,298
School Board Trustee	Julie Sinai	\$ 30,220
School Board Trustee	Joshua Daniels*	\$ 22,430
School Board Trustee	Karen Hemphill*	\$ 11,533

### Independent Expenditures

No independent expenditures found for the above contests.

## 2016

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Office Sought	Candidate	Expenditures
Rent Stabilization Board	Judy Hunt	\$ 7,991
Rent Stabilization Board	Christina Murphy*	\$ 6,846
Rent Stabilization Board	Leah Simon-Weisberg*	\$ 5,615
Rent Stabilization Board	Igor Tregub*	\$ 5,110
Rent Stabilization Board	Alejandro Soto-Vigil*	\$ 4,013
Rent Stabilization Board	Nathan Wollman	\$ 3,551
School Board Trustee	Judy Appel*	\$ 5,342
School Board Trustee	Beatriz Leyva-Cutler*	\$ 1,301
School Board Trustee	Abdur Sikder	\$ 1,069

### Independent Expenditures

Committee	Candidate	Support or Oppc	Total Expenditures	Office Sought
Berkeley Working Families	Alejandro Soto-Vigil	support	734	Rent Stabilization Board
Berkeley Working Families	Christina Murphy	support	734	Rent Stabilization Board
Berkeley Working Families	Igor Tregub	support	734	Rent Stabilization Board
Berkeley Working Families	Leah Simon-Weisberg	support	734	Rent Stabilization Board

## 2018

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Office Sought	Candidate	Total Expenditures
Auditor	Jennifer Wong*	\$ 24,875
Auditor	Vladislav Davidzon	\$ 14,714
Auditor	John Selawsky	\$ 1,970
Rent Stabilization Board	James Chang*	\$ 9,749
Rent Stabilization Board	Judy Hunt	\$ 5,161
Rent Stabilization Board	Maria Poblet*	\$ 2,089
Rent Stabilization Board	John Selawsky*	\$ 1,970
Rent Stabilization Board	Solomon Alpert*	\$ 1,959
Rent Stabilization Board	Paola Laverde*	\$ 1,844
School Board Trustee	Ty Alper*	\$ 37,567
School Board Trustee	Julie Sinai*	\$ 29,767
School Board Trustee	Ka'Dijah Brown*	\$ 10,594
School Board Trustee	Lea Baechler-Brabo	\$ 500

### Independent Expenditures

Committee	Candidate	Support or Opp	Total Expenditures	Office Sought
California Federation Of Teachers	Jule Sinai	support	2,420	School Board
California Federation Of Teachers	Ka'Dijah Brown	support	2,420	School Board
California Federation Of Teachers	Ty Alper	support	2,420	School Board

## 2020

Office Sought	Candidate	Total Expenditures
Rent Stabilization Board	Andy Kelley*	\$ 16,104
Rent Stabilization Board	Bahman Ahmadi	\$ 13,600
Rent Stabilization Board	Soulmaz Panahi	\$ 11,970
Rent Stabilization Board	Dan McDunn	\$ 8,756
Rent Stabilization Board	Leah Simon-Weisberg*	\$ 8,646
Rent Stabilization Board	Wendy Hood	\$ 7,638
Rent Stabilization Board	Carole Marasovic	\$ 6,762
Rent Stabilization Board	Pawel Moldenhawer	\$ 5,823
Rent Stabilization Board	Timothy Johnson*	\$ 4,848
Rent Stabilization Board	Mari Mendonca*	\$ 4,547
Rent Stabilization Board	Dominique Walker*	\$ 4,115
School Board Trustee	Ana Vasudeo*	\$ 23,061
School Board Trustee	Laura Babbit*	\$ 12,291
School Board Trustee	Michael Chang	\$ 16,503
School Board Trustee	Jose Bedolla	\$ 3,371
School Board Trustee	Esfandiar Imani	\$ 2,732

## Independent Expenditures

Committee	Candidate	Support or Oppose	Expenditures	Office Sought
National Association Of Realtors Fund	Bahman Ahmadi	support	54,143	Rent Stabilization Board
National Association Of Realtors Fund	Dan McDunn	support	17,791	Rent Stabilization Board
National Association Of Realtors Fund	Soulmaz Panahi	support	17,791	Rent Stabilization Board
National Association Of Realtors Fund	Wendy Saenz Hood Ne	support	17,791	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Pawel Moldenhawer	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Wendy Saenz Hood Ne	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Dan McDunn	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Soulmaz Panahi	support	5,756	Rent Stabilization Board
Committee For Ethical Housing, Suppo	Bahman Ahmadi	support	5,756	Rent Stabilization Board

