



Fair Campaign Practices Commission

PUBLIC HEARING

March 14, 2023

To: Honorable Mayor and Members of the City Council

From: Jim Hynes, Chair, Fair Campaign Practices Commission

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission

Subject: Amendments to Berkeley Election Reform Act cost of living adjustment provisions

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to (1) clarify that cost of living adjustments for the \$250 campaign contribution limit to be performed in every odd-numbered year shall be rounded to the nearest ten dollars (\$10), and (2) providing that all cost of living adjustments required by BERA be performed by March instead of January of each odd-numbered year to coincide with the availability of necessary data.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Election Reform Act (“BERA”) were approved by the Fair Campaign Practices Commission (“FCPC”) at its regular meeting of January 19, 2023.

Action: M/S/C (Ching/Tsang) Motion to approve staff’s recommended BERA amendments for submission to the City Council.

Vote: Blome, Ching, Hernandez, O’Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

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 Berkeley Election Reform Act (BMC Ch. 2.12.) (“BERA”), the FCPC is required to adjust various dollar amounts in accordance with changes in cost of living every odd-numbered year.

These dollar amounts include the following amounts under the City’s Fair Elections (public financing) program:

1. Qualified contributions (BMC § 2.12.167)
2. Minimum qualified contributions required for public financing qualification (BMC § 2.12.500.A.3)
3. Aggregate per-candidate matching funds payments (BMC § 2.12.505.B.)
4. Maximum value of capital assets purchased with public financing funds (2.12.530.B.3.b.)

In 2021, the FCPC and City Council approved an amendment to BERA which provides that the \$250 contribution limit for candidates not participating in public financing shall be adjusted for cost of living in every odd-numbered year. (See BMC § 2.12.415.)

This proposed amendment would make the following changes:

- a. Clarify that the \$250 contribution limit shall be adjusted in \$10 increments

Pursuant to section 2.12.545, the above adjustments for the public financing program are to be rounded to the nearest \$10 (or \$1,000 for aggregate candidate payments under 2.12.505.B). This ensures that dollar amounts are adjusted to simple numbers that do not include fractions of a dollar. It also ensures that amounts will not be changed if the cost of living results in an adjustment of less than \$5.

During the FCPC’s 2021 discussion of adjusting the \$250 contribution limit for candidates not participating in public financing, it was understood that the same \$10 adjustment rounding would apply to adjustments to the \$250 limit. However, this change was not enshrined in the resulting amendment. As a result, the required adjustment to \$250 could result in an adjustment of only a few dollars, including fractions of a dollar. This proposed amendment to BERA section 2.12.415 would clarify that the \$10 rounding applied to other adjusted BERA amounts will also apply to adjustments to the \$250 contribution limit

- b. Change timing of cost of living adjustments to coincide with availability of data

BERA provides that the FCPC shall approve the cost of living adjustments in January of each odd-numbered year. The City Clerk Department prepares the proposed adjustments based on data made available by the U.S. Bureau of Labor Statistics (“BLS”). This year, BLS did not make the necessary data available until the end of January 2023. This was also the case during the previous round of adjustments in 2021. The proposed amendment would change the timing of the adjustment from January to March in order to allow sufficient time for City staff to acquire the needed data, calculate the necessary

adjustments, and prepare a proposal for the FCPC. This change may be accomplished by amending BERA sections 2.12.415 and 2.12.545 as proposed.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

The proposed BERA amendments will add clarity to the BERA cost of living adjustment process and ensure that City deadlines for making those adjustments coincide with the availability of necessary data.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

Staff concurs with the content and recommendations of the Commission's report.

CONTACT PERSON

Jim Hynes, Chair, Fair Campaign Practices Commission, (510) 981-6998
Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission (510) 981-6998

Attachments:

1. Proposed ordinance amending BERA

ORDINANCE NO. _____

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.415 is amended to read as follows:

2.12.415 Persons other than candidate – Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars (\$250). The Commission shall adjust the dollar amount in this Section for cost of living changes pursuant to 2.12.075 in JanuaryMarch of every odd-numbered year, or as soon thereafter as practicable. Such adjustments shall be rounded to the nearest ten dollars (\$10). For purposes of this section single election is a primary, general, special, runoff or recall election

Section 2. The Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

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 2.12.530B.3.b for cost of living changes pursuant to Section 2.12.075 in JanuaryMarch of every odd-numbered year, or as soon thereafter as practicable, 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.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The public may participate in this hearing by remote video or in-person.

Notice is hereby given by the City Council of the City of Berkeley that a public hearing will be conducted by said city council of the City of Berkeley at which time and place all persons may attend and be heard upon the following:

The Fair Campaign Practices Commission of the City of Berkeley is proposing amendments to the Berkeley Election Reform Act related the cost-of-living adjustment provisions.

The hearing will be held on, March 14, 2023 at 6:00 p.m. in the School District Board Room, 1231 Addison Street, Berkeley, CA 94702.

For further information, please contact Samuel Harvey, Commission Secretary at (510) 981- 6998.


A copy of the staff report for this hearing will be available on the City's website at www.berkeleyca.gov as of **March 2, 2023**. Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology, as well as any health and safety requirements for in-person attendance.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, or e-mailed 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 or in person 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: March 3, 2023 pursuant to Berkeley Municipal Code Section 2.12.051

~~~~~  
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 March 2, 2023.

  
\_\_\_\_\_  
Mark Numainville, City Clerk

