



Fair Campaign Practices Commission
Open Government Commission

CONCURRENT REGULAR MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

MEETING AGENDA

October 20, 2022

6:00 p.m.

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Fair Campaign Practices Commission and Open Government Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Members of the public interested in attending will be able to observe and address the meeting using the following information:

Please use the following link to join the meeting: <https://us02web.zoom.us/j/84333850180>

Or Telephone: +1 669 900 6833

Meeting ID: 843 3385 0180

Secretary: Samuel Harvey

The Commission may act on any item on this agenda

1. Call to Order 6:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes for September 8, 2022 FCPC-OGC Special Meeting

Fair Campaign Practices Commission (FCPC) Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.

6. Report from officeholder accounts subcommittee regarding regulation of officeholder accounts; discussion and possible action.
7. City Council referral – Review contribution limits under BMC § 2.12.415; discussion and possible action.

Open Government Commission (OGC) Agenda

8. Reports.
 - a. Report from Chair.
 - b. Report from Staff.

Informational items

9. November 8, 2022 General Election Public Finance Matching Funds Report
10. Adjournment.

Communications

- None

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD). Please refrain from wearing scented products to this meeting.

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4th Fl., Berkeley, CA.



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

September 8, 2022

CONCURRENT SPECIAL MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION AND THE OPEN GOVERNMENT COMMISSION

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting was conducted exclusively through teleconference and Zoom videoconference.

Secretary: Samuel Harvey

Members Present: Alison Bernstein, Janis Ching, Pedro Hernandez, Patrick O'Donnell, James, Hynes

Also Present: Samuel Harvey, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:05 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment**

No speakers.

4. **Approval of Minutes:**

- a. June 16, 2022 FCPC-OGC Concurrent Regular Meeting
- b. August 25, 2022 FCPC-OGC Concurrent Special Meeting

- a. Public comment: none.
- b. Commission discussion and action.

Motion to approve minutes with minor edit to correct Members Present (M/S/C: Ching/Hernandez; Ayes: Ching, Hernandez, O'Donnell, Hynes; Noes: none; Abstain: none; Absent: Blome, Bernstein, Tsang.)

FCPC Agenda

5. **Reports**
 - a. Report from Chair
 - b. Report from Staff

6. **Report from officeholder accounts subcommittee**
 - a. Public comment: none.
 - b. Commission discussion and action.

Motion to reconvene officeholder accounts subcommittee and consider feedback on item and discussion from this meeting and return with a proposal at the next FCPC meeting (M/S/C: O'Donnell/Ching; Ayes: Bernstein, Ching, Hernandez, O'Donnell, Hynes; Noes: none; Abstain: none; Absent: Blome, Tsang.)

7. **City Council referral – Review contribution limits under BMC § 2.12.415**
 - a. Public comment: none.
 - b. Commission discussion and action

Motion to continue discussion on item to next meeting and request staff provide public financing information used by Commission in considering amendments to BERA in 2021 (M/S/C: Ching/Bernstein; Ayes: Bernstein, Ching, Hernandez, O'Donnell, Hynes; Noes: none; Abstain: none; Absent: Blome, Tsang.)

OGC Agenda

8. **Reports**
 - a. Report from Chair.
 - b. Report from Staff.

Joint FCPC-OGC Agenda

9. **Commission Secretary Presentation: Due Process in FCPC and OGC Quasi-Judicial Proceedings**

10. **Adjournment**

Motion to adjourn. (M/S/C: O'Donnell/Ching; Ayes: Bernstein, Ching, Hernandez, O'Donnell, Hynes; Noes: none; Abstain: none; Absent: Blome, Tsang.)

The meeting adjourned at 8:50 p.m.



Date: October 14, 2022

To: Fair Campaign Practices Commission

From: Subcommittee on Officeholder Accounts

Subject: Proposed Legislation Providing for Regulation of Officeholder Committees and Accounts

For consideration by the Fair Campaign Practices Committee (“FCPC” or “Commission”), the Subcommittee on Officeholder Accounts (“subcommittee”) previously prepared and submitted to the FCPC a draft legislative proposal relating to officeholder committees and accounts. The draft ordinance was developed in response to the City Council’s reference in November 2021 to the FCPC of its proposal to authorize and regulate privately funded officeholder accounts.

Based on the discussion at the FCPC’s June 16, and September 8, 2022 meetings, the subcommittee has updated the memorandum, the proposed ordinance, and the chart comparing the subcommittee’s draft FCPC proposal with the Council’s November 2021 proposal. Copies of the updated ordinance and chart are attached, along with a supplemental memorandum providing more information about the proposed cumulative annual contributions to officeholder accounts.

EXECUTIVE SUMMARY

This memorandum provides historical background on the proposals relating to officeholder accounts and identifies some of the key the issues involved. It summarizes the main provisions of the draft FCPC proposal for regulating officeholder accounts, describes how the FCPC proposal differs from the Council proposal, and explains the reasons why, if an ordinance allowing privately funded officeholder account is to be enacted, the FCPC proposal for regulating such accounts should be enacted rather than the Council version. Finally, the memorandum discusses possible actions or recommendations that the FCPC might take.

The FCPC is concerned about the influence of private money on American politics and government. The Commission believes that public offices generally should be publicly funded and funded at a level adequate for elected officials to perform their duties. If it is necessary to allow for some private contributions to support the operation of public

offices, any such funding must be strictly limited and the receipt and expenditure of private funds must be carefully regulated and fully transparent.

The main differences between the draft FCPC proposal and the Council proposal on officeholder committees and accounts are as follows:

- **Elected officeholders eligible to establish accounts.** The Council proposal would authorize all 24 elected city officials (i.e., the mayor, council members, school board members, rent stabilization board members, and auditor) to establish officeholder accounts and committees. The draft FCPC proposal would strictly limit the officeholders eligible to establish officeholder committees and accounts to *only* the city's nine principal elected officials (i.e., the mayor and eight council members). So far as is known, no one in any of the 15 additional elected officeholder positions proposed by the Council has ever had an officeholder committee and no need has been shown for authorizing the creation of such committees for all of these offices. Establishment of these additional officeholder committees is unnecessary, would create administrative burdens, and would impose unnecessary costs on the city.
- **Cumulative contributions limits.** The Council proposal provides that, for each officeholder representing a district in the city (that is, for each council member), total contributions from all contributors shall not exceed \$5,000 annually; and for each officeholder elected citywide (i.e., mayor, school board members, rent stabilization board members, and auditor), the annual contribution limit would be four times the maximum amount allowed for members representing districts—that is, \$20,000. The FCPC proposal would limit the total annual contributions to the officeholder accounts of council members to \$5,000, the same as the council proposal. But it would limit the total annual contributions to the mayor to \$10,000. And it would not allow any private contributions to any of the other 15 elected city officers for officeholder purposes: the FCPC believes that, if any of these additional officials needs assistance, the funding should be provided publicly.
- **Individual contribution limits.** The Council and FCPC proposals differ in several significant ways regarding the individual limits on contributions to officeholder committees and accounts. *First*, regarding the maximum amount allowed annually for contributions to officeholder accounts, the Council proposes using the \$250 contribution limit prescribed for privately financed campaigns whereas the FCPC proposes using the \$50 limit for qualifying contributions under the city's public financing law (now \$60, adjusted for cost of living). The lower limit proposed by the FCPC would help prevent individual contributors from unduly influencing officeholders and help level the playing field, so that all council members could raise funds equally rather than enabling members from wealthier districts with wealthier constituents to raise large contributions. *Second*, both the Council and FCPC proposals would prohibit contributions from organizations and entities. But the FCPC proposal would also limit contributors to natural residents of the City of Berkeley' this would reduce outside influence and give priority to

representing Berkeley citizens. *Third*, the Council proposal would allow individual council members to give unlimited amounts to support their own offices and not require them to report such contributions. The FCPC proposal would establish limits on how much an officeholder can give to their own account and require all such contributions to be reported.

- **Permissible and prohibited officeholder expenditures.** Both the Council and FCPC proposals contain lists of expenditures that are permissible and prohibited. The lists are similar, but contain a few important differences. For instance, the Council proposal would permit officeholder accounts to be used to expend funds for attorney’s fees and other cost relating to litigation, administrative procedures, and other similar processes. By contrast, the FCPC proposal would remove the payment of these litigation and other legal expenses from the permitted list of officeholder expenditures and place them on the list of prohibited expenditures. In addition, the Council proposal includes—on the list of permissible constituent communications—mailings, newsletters, and other paper communications. The FCPC proposal would allow for such paper communications, but would provide additional restrictions on these constituent communications to ensure that they are not misused for campaign purposes.
- **Officeholder committees – committee required to file.** Both proposals require officeholders to file a statement of organization of an officeholder committee before accepting contributions. The FCPC proposal adds two provisions to this section. *First*, it would require all eligible officeholders who, directly or indirectly, from an authorized person **or themselves**, receive contributions or who make expenditures that total more than **\$250**, to establish an “officeholder committee” and open an “officeholder account.” *Second*, all eligible officeholders who do not directly or indirectly, from an authorized person **or from themselves**, receive contributions or make expenditures that total more than **\$250** must file a verified statement that they are not required to establish a committee or open an account because the amounts received or expended to not exceed the amounts specified for filing a committee. **[Based on the discussion at the FCPC meeting on September 8, 2022, the Commission will want to consider the highlighted provisions further. For more information see page 13 below.]**
- **Reporting dates for filing statement.** The Council proposal provides that all contributions received and expenditures made from officeholder accounts must be reported in accordance with the filing dates prescribed by state law for campaign committee statements. Because there are various filing dates prescribed state law relating to different types of campaign committee statements, this provision is ambiguous and potentially burdensome. To clarify the law and make it more flexible, the FCPC proposal would provide that each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for semi-annual campaign committee statements, unless the Commission determines that other dates are more appropriate.

- **Record-keeping and auditing requirements.** The FCPC proposal adds two new sections to specify (1) the record-keeping requirements that apply to officeholder committees and accounts, and (2) the auditing procedures that will apply to those committees and accounts. These new provisions are based on provisions elsewhere in BERA and under state law applying to officeholder committees and accounts. These additional provisions will help ensure that officeholder committees and accounts are properly operated, reviewed, and reported to the public, thereby enhancing public confidence in their elected officials.
- **Enforcement.** Both the Council and FCPC proposals provide that the enforcement provisions in Article 7 of BERA apply to officeholder committee and accounts. The FCPC proposal further provides that the limitations on contributions in Article 6 applies to officeholder accounts, so that if there is any violation of the restrictions on officeholder contributions, the treasurer shall promptly pay an amount equal to any excess contributions received into the city's general fund. Also, the FCPC proposal has added a provision to the enforcement section that provides that, if the Commission determines, after notice and a hearing, that an officeholder has committed a substantial violation of the regulations relating to officeholder accounts, it may suspend or terminate the officeholder's committee and account and may prohibit the officeholder from establishing, maintaining, or operating such a committee or account in the future.

BACKGROUND

Private contributions to officeholder accounts are regulated for elected state officeholders including the governor and members of the Legislature. State law provides individual and cumulative limits on contributions to officeholder accounts and includes requirements for reporting, recording keeping, and auditing. (Gov't Code § 85316(b); Cal. Code Regs. § 18531.62.) By contrast, the Berkeley Election Reform Act does not currently expressly regulate or prohibit private contributions to officeholder accounts of elected city officials. Under existing law, if funds for officeholder accounts are used for Berkeley campaign purposes, this may implicate various parts of the Berkeley campaign financing law and may trigger various local and state legal requirements. But many aspects of officeholder accounts at the local level are unregulated and such accounts are subject to potential abuse.

The Berkeley Election Reform Act provides that "Public officials . . . should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (BERA, section 1.12.010.) The Commission has long been concerned about the possible adverse influence of private funding on local politics and government. In 2019, the Commission started discussing whether there is a need to amend the local campaign finance law relating to officeholder accounts to better protect the public interest and preserve the impartiality of elected officials. In this regard, it considered both government funded officeholder accounts (so-called D-13 accounts) and privately funded officeholder accounts. Regarding privately funded accounts, the Commission considered three options: (1)

leaving the law on these officeholder accounts unchanged; (2) prohibiting privately funded officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing privately funded officeholder accounts but limiting their use and imposing restrictions and requirements on them (an approach used by the City of Oakland).

At its regular meeting on November 21, 2019, the Commission voted to recommend amendments to the BERA that would prohibit privately funded officeholder accounts. The Commission submitted its proposal to the Council on February 4, 2020.¹ The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.”

The Council, at its February 4, 2020 meeting, discussed the issues of officeholder accounts. It had a lengthy discussion about the publicly funded D13 accounts. At that meeting, the Council also decided not to approve the FCPC recommendation to prohibit privately funded officeholder accounts. Instead, the City Council referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration.

At a special meeting on March 9, 2020, the Agenda and Rules Committee had an initial discussion of these topics. It was agreed that the Council Committee would work collaboratively with the FCPC and Open Government Commission (OGC) on matters relating to D13 accounts and officeholder accounts. The FCPC and the OGC submitted recommendations to the Council related to this process, which were included as part of the discussions regarding officeholder and D-13 accounts.

Besides the FCPC’s concerns about privately funded officeholder accounts, the OGC was concerned about the practice of councilmembers appearing to make individual donations to community organizations using their publicly funded D-13 accounts. The issues relating to D-13 grant practices have been resolved separately. On March 9, 2021, the Council approved a recommendation by the OGC, supported by the Agenda and Rules Committee, to have donations to private non-profit organizations made by the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The Agenda and Rules Committee continued to discuss the question of privately funded officeholder accounts at multiple meetings in early 2021, with input from three FCPC-OGC Commissioners. On March 29, 2021, the Agenda and Rules Committee took action to send this item to the Council with two proposed alternatives: (1) a proposal by the Agenda and Rules Committee to regulate officeholder accounts in a manner based

¹ https://www.cityofberkeley.info/Clerk/City_Council/2020/02_Feb/Documents/2020-02-04_Special_Item_02_Amendments_to_the_Berkeley_pdf.aspx.

on exiting regulation of campaign committees, and (2) the proposal by the FCPC to prohibit officeholder accounts.

The Council considered these two proposals at its meeting on November 9, 2021. The Council first considered the option of referring the proposal to prohibit officeholder accounts to the FCPC. This motion failed by a vote of 4 to 5. The Council then considered then the option of referring the Agenda and Rules Committee’s proposal for regulating officeholder accounts to the FCPC. This motion passed by a vote of 6 to 3. Thus, the Council’s reference of its regulated proposal has been presented to the FCPC for its consideration.

In January 2022, the FCPC considered the Council’s referral. The Commission discussed the regulated approach proposed by the Council, as well as prohibiting officeholder accounts. It did not support the Council’s proposal for regulating officeholder accounts, at least as drafted. Concerns expressed included that: the Council’s version would apply to all 24 elected city officials, not just the mayor and council members, which is unnecessarily broad; the individual and cumulative amounts of the proposed contributions allowed were too high; the proposal would allow the use of officeholder funds to be used for legal defense purposes, which would be improper; and the proposal does not provide for audits of officeholder accounts. The FCPC formed a subcommittee and directed it to prepare an alternative proposal for regulating officeholder accounts in Berkeley that would reflect the members’ concerns, and to bring it back to the full Commission.

The subcommittee has prepared a possible alternative proposal for regulating officeholder accounts and submits it to the FCPC for its consideration.

COMMISSION’S PROPOSAL FOR ORDINANCE ON OFFICEHOLDER ACCOUNTS

This section summarizes the main provisions of the proposed FCPC ordinance, describes how the FCPC proposal differs from the Council version, and explains the reasons the FCPC proposal is preferable.

Article 9. Officeholder Committees and Accounts

Both the Commission and the Council have placed their main legislative proposals concerning officeholder accounts in a new Article 9. While there is considerable overlap between the two versions of Article 9, there are also important differences, as explained further below. The Commission version also includes some new sections, for which nothing comparable exists in the Council version.²

Section 2.12.600. Regulation of officeholder committees and accounts

The FCPC proposal includes a statement that the purpose of Article 9 is to establish limits on the amounts of contributions to officeholder accounts, as authorized by state law. (Section 2.12.600.A.) It further states that the purposes of the article include (1) providing adequate funds, if needed, for the City of Berkeley’s principal elected officials

² All references to “section” or “sections” refer to a section or sections of the Berkeley Election Reform Act (BERA), unless otherwise specified.

to fully and effectively performs their duties of their office; (2) ensuring transparency and openness of city business and its officials; and (3) preserving public confidence in the city and its key officeholders. (Section 2.12.600.B.)

The Council version does not include any general or specific provisions about the purposes of Article 9 comparable to 2.12.600A. and B. The statements of purpose in the FCPC version will assist the public to better understand the ordinance and help persons interpreting it to apply its provisions properly.

The Council version of section 2.12.600 also included provisions very broadly defining “officeholder” and exempting officeholders from reporting expenditures of personal funds for their own officeholder accounts. In the FCPC version, these provisions have been deleted from section 2.12.600 and replaced by substantively different provisions elsewhere in BERA, as explained further below. (See sections 2.12.157, 2.12.601, 2.12.603.)

Section 2.12.601. Officeholders eligible to establish officeholder committees and accounts

The FCPC proposal provides that the Mayor and City Council members are the “eligible officeholders” under Article 9. They are the *only* elected officials who may establish officeholder committees and accounts. (Section 2.12.601.A; see also section 2.12.157.A.) All other elected city officials would be prohibited from establishing an officeholder committee or account or from receiving any contributions or making any expenditures associated with holding office, except that these other non-eligible elected officials would be allowed to personally contribute incidental expenses not to exceed \$250 to the operation of their offices.

The FCPC proposal differs significantly from the Council’s version in narrowing the number of elected officials eligible to receive private funding to the nine principal elected officials in the city: the mayor and the eight members of the City Council. The Commission does not support the extending the authorization to receive private funding for officeholder operations to include the members of the School Board (5 members) and the Rent Stabilization Board (9 members), and the city auditor (1 person). These 15 additional officials have historically never required such additional private funding and no need has been shown for authorizing it. Making these elected officials dependent on private funding is not good policy. If they need any additional funding, the City of Berkeley—not private contributors—should provide it. (See section 2.12.601.C. below). These other officials’ time should be devoted to their official duties, not to fundraising for their offices. Lastly, including these 15 additional officials in the regulated program would impose undue administrative burdens on the city government and the Commission, which may be costly and time-consuming.

In addition to specifying which officeholders are eligible for receiving and expending private funds, section 2.12.601 provides that nothing in it prohibits the City from providing financial support and assistance to officeholders who are not eligible to establish committees or accounts to enable them to perform the duties of their offices.

(Section 2.12.601.C.) This is a new provision, not included in the Council proposal. It highlights the point that public funding of officeholders is, and should remain, an option instead of private funding.

Finally, section 2.12.601 provides that nothing in the section requires an eligible officeholder to open an officeholder committee, contribute to such a committee, or spend person funds on their own officeholder expenses. (Section 2.12.601.D.) The FCPC believes that these are sound policies, underscoring that officeholding should not be dependent on private funding or the personal financial contributions of officeholders. The Council version included a similar provision in section 2.12.600.B.

Section 2.12.602. Cumulative contribution limits

As a preliminary matter, with regard to the Council members' and mayor's offices, the FCPC notes that City provides public funding for those offices through the D-13 accounts. If additional private funding is needed for their support, the cumulative and individual amounts of the private contributions should be strictly limited.

The FCPC proposal provides that, for the office of mayor, total contributions to an officeholder account from all contributors shall not exceed \$10,000 in the aggregate for a calendar year. (Section 2.12.602.A.) The proposal further provides that, for each member of the City Council, total contributions to an officeholder account from all contributors shall not exceed \$5,000 in the aggregate per calendar year. (Section 2.12.603.B.) The dollar amounts of these cumulative limits will be adjusted periodically as provided in section 2.12.545. (Section 2.12.602.C.)

The establishment of cumulative limits is a reasonable means to regulate contributions. Similar cumulative limits for officeholder contributions have been enacted for all statewide elected offices, including the Governor, members of the Senate and Assembly, and other offices. (See Cal. Gov. Code, § 85316(b)(2).) The amounts proposed by the FCPC are reasonable and will ensure that the amounts contributed do not exceed what is necessary for conducting local Berkeley officeholder's official business.

The FCPC's proposal on cumulative contributions for City Council members is similar to the Council's: it provides for a limit of up to \$5,000 annually (to be adjusted under section 2.12.545) for each officeholder account. However, it would allow only up to \$10,000 annually (to be adjusted) for the mayor's officeholder account, instead of the \$20,000 (to be adjusted) proposed by the Council, because there has not been a showing that the mayor's office requires the substantially higher cumulative amount.

For the benefit of the FCPC, a Supplemental Memorandum Regarding Annual Limits on Contributions to Officeholder Accounts has been prepared by the subcommittee. It provides information on the contribution limits in some other cities (Oakland and Los Angeles). It also provides information about the cost of mailings to constituents in a council member's district in Berkeley. A copy of the supplemental memorandum is included in the attachments to this memorandum.

The FCPC proposal also does not authorize any cumulative amounts—or any contributions at all—for the for local elective officers other than the mayor and council members, for the reasons explained previously. (The Council proposal would have authorized those elected officials, as citywide elected officials, to receive up to four times the maximum amount allowed for council members representing districts—that is, up to \$20,000 (to be adjusted), a large amount for which there does not appear to be any justification.)

Section 2.12.603 Individual contributions - Restrictions - Limits on contributions

Limits on individual contributors

The FCPC's proposal provides that only a natural person who is a resident of Berkeley shall make a contribution to an officeholder committee or account. In addition, the proposal would make the prohibition against contributions by organizations and entities to candidates and committees in section 2.12.440 applicable to officeholder committees and accounts. (Section 2.12.603.A.)

This proposal differs from the Council's proposal insofar as that proposal contains the prohibition against contributions by organizations and entities but does not prohibit contributions by person who are not residents of Berkeley. (See Council proposal, section 2.12.615.) The FCPC considers the additional requirement of limiting contributions to natural persons residing in Berkeley to be valuable in that it would limit the influence of outsiders on Berkeley officeholders. It is important that Berkeley officeholders be responsible first and foremost to their own citizens. Restricting private contributions from non-residents will help promote this goal and avoid undue outside influence.

Limits on the amounts of contributions

The FCPC's proposal provides that no individual contributor shall make, and no eligible officeholder shall accept, a contribution per person for the calendar year whose value totals more than the maximum amount of a "qualifying contribution" permitted under section 2.12.167 (\$50), as adjusted periodically as provided in section 2.12.545. (Section 2.12.603.B.) This amount is currently set at \$60. This proposed limit on individual contributions is significantly less than that proposed by the Council. The Council would use the \$250 campaign contribution limit in section 2.12.415 as the limit on individual contributions to officeholder accounts. (See Council Proposal, section 2.12.615.A.)

The FCPC's proposed lower limit on individual contributions is based on sound public policy and should result in fairer results. The lower contribution limit will ensure that no single private individual can unduly influence—or appear to unduly influence—any principal elected official of the City. Also, this lower limit will help level the playing field; it will enable all eligible elected officials alike to be able to collect small contributions from numerous constituents, rather than enabling a few members from wealthier districts to collect larger contributions from wealthier constituents and thereby reap the benefits of establishing officeholder committees and accounts. If a regulated approach to

officeholder accounts is to be enacted, it must not create disparities in the resources available to different Council members based on the wealth of their districts or of their constituents.

Restrictions on officeholders' personal contributions

The FCPC proposal would place limits on the amount that an officeholder can personally contribute to their own officeholder committee and expend on officeholding business; and it would require officeholders to report all their contributions and expenditures.

Specifically, new section 2.12.603.D.1. provides that all contributions by an officeholder shall be made through an officeholder committee and placed in an officeholder account, and these contributions shall be reported like all other contributions.

New section 2.12.603.D.2. provides that the total amount contributed by an eligible officeholder and all other contributors per calendar year combined shall not exceed the cumulative contribution limit in section 2.12.602. The FCPC proposal to restrict the amount that an officeholder can contribute personally to their own account and require officeholders to report their contributions and expenditures differs significantly from the Council version. In the Council proposal, there would be no limits on the amount that an officeholder could contribute to their own officeholder committee or spend on officeholder expenses, either through or not through an officeholder committee. (Council proposal, section 2.12.615.C.) Also, the Council's proposal would exempt officeholders from reporting on their personal contributions and expenditures. (Council proposal, section 2.12.600.C.)

The FCPC proposal is based on better public policy, will be much more transparent, and will produce fairer results. In previous discussions, members of the City Council have repeatedly stated that they believe that one important reason for authorizing officeholder accounts is to level the playing field among council members and districts. But the specific provisions in the Council's draft ordinance allowing officeholders to spend unlimited personal funds on their offices would have the opposite effect. These provisions would allow more affluent council members to contribute unlimited amounts for the purpose of maintaining their offices, while less economically privileged members would not be able to afford such expenditures. Furthermore, by exempting members from reporting their own contributions and expenditures, the public would be deprived of the ability to know how the public's business is being financed and managed. Hence, the FCPC proposal establishing limits on personal contributions and expenditures and requiring reporting by all, including incumbent officeholders, is preferable.

Section 2.12.604 Limits and requirements for contributions and expenditures

Both the FCPC and City Council's proposals provide that various provisions in BERA—such as those prohibiting contributions from persons except in their legal name and prohibiting anonymous contributions—shall apply to officeholder committees and accounts under Article 9. The FCPC version has revised the section for clarity and relocated it.

Section 2.12.610 Permissible officeholder expenditures

This section provides a list of permissible officeholder expenditures. This is important so that officeholders will know clearly what kinds of expenditures that they may lawfully make.

The FCPC version is section is similar to the Council's. However, it has been renumbered and relocated (from section 2.12.606 to 2.12.610). Also, a cross reference has been added to new section 2.12.612.F. on constituent communications to clarify that there are limitations that apply to the use of officeholder funds for constituent communications. In addition, the FCPC has deleted the council's proposed subpart J, which would have permitted officeholders to expend officeholder funds for attorney's fees and other costs relating to litigation, administrative procedures, or other similar processes.

Attorney's fees and costs are not appropriate expenditures to be made from officeholder accounts. Other state and local laws do not include these in this category for good reasons. The raising and expenditure of funds for legal defense purposes are not ordinary office expenses, raise many complex legal and ethical issues, and require separate, detailed provisions if they are to be lawful and appropriate. Hence, attorney's fees and costs should not be listed as permissible officeholder expenses in section 2.12.610.

Section 2.12.611 Prohibited officeholder expenditures

This section contains a list of prohibited officeholder expenses. It is important that officeholders have this list so that they will know what kinds of expenditures they are prohibited from making from officeholder accounts.

The FCPC version is section is similar to the Council's. However, it has been renumbered and relocated (from section 2.12.604 to 2.12.611). Also, it contains three significant changes.

First, in the FCPC proposal, subsection B. prohibiting expenditures for campaign consulting, research, etc. has the additional words "or for any other campaign expenditures of any kind" added at the end of the sentence. This clarifies that no officeholder funds may be used for any kind of campaign purposes. The basic premise of Article 9 is that officeholder accounts are not campaign accounts and can never be used for campaign purposes. Officeholder funds should be used solely for legitimate expenses for operating an office. The added words in subsection B. underscore that all campaign funds should be entirely separate and should be strictly regulated by other provisions in BERA and state law.

Second, new subsection E. has been added that prohibits the use of officeholder funds for attorney's fees and costs of litigation. As explained above under section 2.12.610, the use of officeholder accounts to pay for attorney's fees and cost is not appropriate and should be expressly prohibited.

Third, new subsection F. has been added that prohibits officeholder committee funds from being used to make expenditures or contributions to any business, corporation of other entity, whether for profit or non-profit, for any purpose other than in payment for the expenses of an eligible official incurred in the course of operating that official's office and performing that official's official duties of officer. This prohibition would prohibit an officeholder committee from using officeholder funds to give funds to organizations, including non-profits, to conduct such an organization's business or operations. The City Council would still be free to allocate public funds to such an organization to the extent otherwise permitted by law; but officeholder committee funds could not be used for that purpose.

Section 2.12.612. Constituent and community communications

This new section has been added to ensure that funds from officeholder accounts for constituent and community communications are used only for legitimate officeholder purposes, and never for campaign purposes. The council proposal contains no equivalent provision.

Section 2.12.620 Prohibitions on transfer or reallocation of funds

The proposal includes this provision prohibiting the transfer or relocation of funds because the receipt an officeholder committee of any funds from any campaign committee, or the transfer of officeholder funds to any kind of campaign purposes, would violate the basic principle that these funds should be kept strictly separate. Both the FCPC and the Council proposals contain this identical provision.

Section 2.12.621 Prohibition on simultaneously maintaining officeholder and campaign committees

This provision is included because it ensures that officeholder activities and campaign activities will be kept strictly separate, administered separately, and reported separately. Both the FCPC and the Council proposals contain this identical provision.

Section 2.12.625 Officeholder committees and public financing

The FCPC proposal adds this section to clarify that individuals who have an officeholder account may participate in the City's public campaign financing program, provided that they comply with Article 9.

Section 2.12.630 Statement of organization – Committee required to file

The FCPC and council's proposals both contain the provisions that (1) every officeholder shall file a statement of organization with the City Clerk before accepting contributions, and (2) the date an officeholder committee is formed by filing the statement of organization shall determine the officeholder committee's obligations to file statements and reports. (Section 2.12.630.B.and C.)

The FCPC proposal would also add two subsections. The first new subsection provides that every eligible officeholder who directly or indirectly, from any authorized person or from themselves, receives contributions that cumulatively total more than two hundred fifty dollars (\$ 250) in a calendar year or makes expenditures exceeding two hundred

fifty dollars (\$250) in a calendar year for expenses related to holding office shall establish an “officeholder committee” and shall open an “officeholder account” as defined in section 2.12.157. (Section 2.12.630.A.) This new provision is consistent with the approach to establishing a committee for campaign purposes under BERA, section 2.12.095.

The second new subsection provides that every eligible officeholder who does not directly or indirectly, from any authorized person or from themselves, receive contributions that cumulatively total more than two hundred fifty dollars (\$250) in a calendar year or make expenditures exceeding two hundred fifty dollars (\$250) in a calendar year for expenses related to holding office shall file a verified certificate stating that they are not required to establish a committee or open an account because the amounts received or expended, if any, do not exceed the amounts specified in subsection A. above. (Section 2.12.630.D.) The certificates required by that subsection shall be filed on the dates prescribed by section 2.12.650. This new provision is consistent with the reporting requirements for campaign candidates who raise or expend only small amounts and are allowed to file a short form statement rather than a complete campaign statement, (See section 2.12.270.C.)

These two new provisions would make it easier for officeholders who receive or expend only minimal amounts and do not intend to raise funds for officeholder purposes to comply with the law, while requiring them to publicly report those facts by regularly filing the appropriate certification.

Two additional issues were raised at the FCPC’s September 8, 2022 meeting, which require further committee discussion. First, should the proposed threshold amount at which the requirement for filing a Statement of Organization for officeholder committees be changed? The amount of \$250 is based on the amount that currently triggers a filing requirement for campaign committees. (See BERA, sections 2.12.095 and 2.12.255.) If the threshold amount for establishing officeholder committees is to be different (e.g., larger or smaller), what is the rationale? And if the amount to be set for officeholder committees is to be different from \$250, what amount would be appropriate?

Second, the proposal currently bases the threshold amount for filing a Statement of Organization on the total amount of the contributions from authorized persons and the officeholder. This—and the related reporting requirements--would insure that the public knows how much the officeholder as well as others are contributing to officeholder accounts. This information is necessary to determine whether the cap on total contributions under section 2.12.602 and individual contributions under section 2.12.603 are reached. The FCPC should discuss the implications of limiting the threshold requirement for filing to contributions by persons other than the officeholder. Furthermore, if the Commission ultimately decides that there should not be any limitations on the amounts of the contributions made by officeholders themselves, that would be a significant change, probably requiring modifications to a number of other sections of the proposed ordinance besides section 2.12.630.

Section 2.12.631 Statement of organization – Information required

Both the FCPC and Council proposals contain this section that prescribes the information that the statement of organization is required to contain. (The FCPC version section has also been renumbered.)

Section 2.12.632 Statement of organization – Change of Information – Amendment required

Both the FCPC and Council proposals contain this section that prescribes the time by which any change to the statement of organization shall be filed—that is, ten days. (The FCPC version section has also been renumbered.)

Section 2.12.640 Officeholder committee treasurer

Both the FCPC and Council proposals contain this section that requires the appointment of a treasurer and compliance with the requirements for treasurers under section 2.12.245. (The FCPC version section has also been renumbered.)

Section 2.12.641 Officeholder account – Establishment required – Procedure for use

Both the FCPC and Council proposals contain this section that requires the treasurer to establish and manage a checking account. The FCPC proposal has modified the provision to clarify that the checking account must a separate account used exclusively for the purposes of the officeholder committee. (The FCPC version section has also been renumbered.)

Section 2.12.650 Reporting – Officeholder statements – Content – Filing dates

Under the FCPC proposal, this section requires that all contributions received and expenditures made from an officeholder account must be reported and the committee statements must provide all the information required by section 2.12.280 for campaign statements. While the Council proposal may have assumed these requirements, the FCPC proposal makes them explicit, which will improve the clarity, implementation, and enforcement of the ordinance.

The FCPC proposal also modifies the Council proposal regarding the time of filing officeholder committee statements, to provide that each statement shall be filed in accordance with the filing dates prescribed by state law for semi-annual campaign statements, unless the Commission determines that other dates are more appropriate. (The underlined provisions are new.) The FCPC's proposed changes to this section improve it by (1) making the timing of filing of officeholder statements clearer because there are many different possible dates for filing campaign statements, many of which would seem to be inapplicable, and (2) giving the Commission the discretion to adjust the filing dates if another date or dates prove to be more appropriate for officeholder statements than the semi-annual campaign filing dates.

Section 2.12.655 Filing requirements

Both the FCPC proposal and the Council proposal require all reports and statements required by Article 9 to comply with certain filing requirements contained in sections of the BERA relating to the filing of campaign statements—for example, the signature and

verification requirements in section 2.12.025 and the provision on where to file in section 2.12.230. Including these requirements will facilitate the filing of statements and reports and ensure their accuracy.

The FCPC version has modified the Council's proposed language in the section to be clearer and has relocated the provisions placed by the Council in section 2.12.675 to this section 2.12.655, a more logical location. Also, the FCPC version has cross-referenced the verification requirements in section 2.12.025, as the Council's version had; but it has deleted the Council's additional subpart B. on verification in section 2.12.675, which appears to be inconsistent with the cross-referenced section 2.12.025 on verification, is difficult to understand, and could be difficult to implement or enforce.

Section 2.12.658 Requirements for public inspection, preservation, and City Clerk's responsibilities

The FCPC proposal has added a separate section providing that all reports and statements required by Article 9 shall be subject to the same provisions for public inspection, preservation, and Clerk's responsibilities as provided for campaign reports and statements in sections 2.12.040, 2.12.045, and 2.12.050. The Council proposal had provided in its proposed section 2.12.675 for the same provisions of the BERA to be applicable to reports and statements in Article 9. Requiring compliance with these additional sections of BERA, as both the FCPC and the Council propose, will ensure the transparency of the reports and statements.

For the sake of clarity, the FCPC has placed this provision in a separate new section 2.12.658, with a title that expressly identifies the content of the section, rather than in section 2.12.655 on filing requirements or the Council's proposed section 2.12.675.

Section 6.12.660 Termination of officeholder committees upon leaving office

Both the FCPC and Council proposals contain this section which provides that officeholders who do not run for re-election or seek a subsequent public office shall terminate their officeholder committee with 90 days of leaving office. It further provides that, following the date of leaving office, officeholders shall not make any new expenditures from their committee except for: (1) paying for legitimate officeholder expenses accrued before leaving office; (2) repaying contributions on a pro rata basis; or (3) donating funds to the City's general fund. These provisions will assist in implementing and administering the law by clarifying exactly what officeholders must do—and must not do—in terminating their officeholder committees and accounts. (Section 2.12.660.A.–B.)

The FCPC proposal would add an additional requirement to this section. It would require officeholders terminating their officeholder accounts to file a statement regarding the disposition of all funds from the account. This will ensure that the Commission and the public are aware of that all officeholder funds have been properly disposed of. (Section 2.12.660.A.–B.)

The FCPC version has also renumbered this section from 2.12.612 to 2.12.660.

Section 2.12.670 Records of officeholder accounts

The FCPC proposal adds a new section on record-keeping requirements. First, these provisions provide, among other things, that it is the duty of officeholders and treasurers to maintain detailed accounts, records, bills, and receipts necessary to prepare officeholder statements and to establish that the statements are accurate and properly filed. These provisions are consistent with state and local law relating to recordkeeping. (See Gov't Code § 84104; 2 Cal. Code Reg. § 18401; BERA, section 2.12.250.D.–E.)

Second, the section provides that records relating to officeholder accounts shall be retained for a period of at least four years after the adoption of a final audit report or five years from the date of any violation. This is consistent with state and local law. (See 2 Cal. Code Reg. §§ 18401 and 18531.62; BERA, section 2.12.250.D.–F.)

Finally, the section provides that officeholders and treasurers shall make available to the Commission and other authorities or their designees specified in section 2.12.250, on demand, the details of any officeholder account requested and the records supporting it. This is consistent with state and local law. (See Gov't Code § 90001(i); 2 Cal. Regs. § 18401; BERA, section 2.12.250.F.)

Section 2.12.675 Audits of officeholder committees and accounts

The FCPC proposal provides for regular audits of officeholder committees and accounts. It provides that the City Auditor shall audit all officeholder committees and accounts every two years beginning in 2024. The audits shall cover the preceding two-year period ending July of every even numbered year. The final audits shall be publicly filed with the Clerk and copies shall be sent to the FCPC for review not later than October 1 of the even year when the audits were scheduled to be prepared and filed. (Section 2.12.685.A.)

The FCPC proposal further provides that, if any audit or audits are not completed, finalized, and filed by October 1, the Clerk shall promptly notify the Commission and the affected officeholder and treasurer. Upon receipt of this notice, the officeholder committee shall immediately cease operations, including collecting contributions and making expenditures, until the final audit or audits have been filed, copies sent to the Commission, and the Commission has approved the audits. (section 2.12.685.B.)

Unlike the FCPC proposal, the Council proposal does not include any provision regarding audits. Providing for regular audits of officeholder committees and accounts is good practice, ensures compliance with the law, and is consistent with state law relating to the regulation of officeholder committees and accounts. (See Gov't Code § 90001; 2 Cal. Code Reg. § 18531.62(c)(4).) The state's requirement for regular audits of officeholder accounts is superior to the current provision in BERA for auditing campaign accounts (see BERA, section 2.12.250.G), which has proven ineffective. In most

instances, BERA is more rigorous than state law; with regard to the auditing of officeholder committees and accounts, it should also be at least as rigorous.

Finally, with respect to the cost of audits, these should be minimal. At least until recently, only one Member of the Council has maintained an officeholder account. Even if other Members and the Mayor establish such accounts in the future, the burden of auditing these few additional accounts every two years should not be substantial and would be outweighed by the benefits of creating greater public confidence in the city's principal officeholders by assuring that all private contributions to them are being properly regulated. Naturally, if the authorization to establish officeholder committees were to be expanded to all elected city officials, as proposed by the Council, that would greatly increase the costs of auditing; but that is not proposed by the Commission.

Section 2.12.685 Enforcement

Both the FCPC and the Council proposals provide that the violations of Article 9 involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of BERA. (Section 2.12.685.A.) The FCPC proposal also makes the limitations on contributions in Article 6 explicitly applicable to Article 9. This means that, if any person is found guilty of violating the terms of the chapter, the treasurer who received part or all of the contributions which constitute the violation shall pay promptly, from available officeholder account funds, if any, the amount received by such persons in excess of the amount permitted by the chapter for deposit in the general fund,

In addition, the FCPC proposal adds a provision that, if the Commission determines, after notice and a hearing, that an officeholder has committed a substantial violation of the regulations relating to officeholder accounts, it may suspend or terminate the officeholder's committee and account and may prohibit the officeholder from establishing, maintaining, or operating such a committee or account in the future. This provision ensures that, in addition to monetary penalties, the Commission—acting in accord with due process—may take action to stop misconduct, and to prevent further abuses, if an officeholder commits serious violations of Article 9.

Other Sections of the Berkeley Municipal Code Amended by the Proposed Legislation

In addition to proposing new Article 9, the Commission's and the Council's proposals on regulated officeholder accounts make conforming changes to other sections of the Berkeley Municipal Code, including the Lobbying Registration Act Chapter, 2.09. and the Berkeley Election Reform Act, Article 2 (Definitions). As previously in this memorandum, the following summarizes the provisions of the FCPC's proposal amending other code sections, describes whether the Commission's proposal regarding these code sections differs from the Council's version, and if so, explains the reasons the Commission is recommending its version rather than the Council version.

Lobbyist Registration and Regulation, Chapter 2.09

The FCPC does not think that the Lobbyist Registration Act should be amended at this point. By contrast, the Council's proposal would amend subsection A.6. of that Act to add to the list of exceptions to the ordinance's \$240 annual contribution limit a provision that includes "officeholder contributions." The FCPC recommends against including this provision. The FCPC does think that such an amendment is either necessary or desirable. Rather, it would be inconsistent with the new officeholder ordinance and might well undermine it.

The Lobbyist Registration Act should be fully consistent with the new officeholder committee and account provisions in the BERA. However, if the ordinance were changed to provide an exception for contributions to officeholder accounts, lobbyists who are not natural persons residing in the City of Berkeley might arguably be eligible under the Lobbyist Registration Act to provide unreported gifts to an officeholder with a cumulative value of \$240 in a calendar year for the purposes of financing an elected official's office. This would be contrary to the purposes of the officeholder account ordinance. Hence, to avoid inconsistency and fully implement new Article 9 on officeholder committees and accounts, the FCPC's recommendation to leave section 2.09.220 unchanged should be adopted rather than the Council's version.

Election Reform Act, Definitions

Both the FCPC and Council proposals would provide definitions of "contribution" and "expenditures" for the purposes of Article 9 based on the definitions of these terms for campaign finance purposes. (See sections 2.12.100 and 2.12.130.) The FCPC uses the same broad definitions of the terms as provided in BERA for campaign contributions and expenditures. The Council proposal, however, would significantly narrow the definitions of "contribution" to mean only "a monetary payment," thereby omitting the numerous other forms of contributions (such as loans, advances, pledges, or "anything of value"). Similarly, the council proposal would narrow the definition of "expenditure" to mean a "payment of money," thereby omitting many other forms of contributions (such as pledges or promises "of anything of value").

There is no sound policy reason for restricting the definitions of "contribution" or "expenditures" to transactions involving money. Non-monetary forms of contributions and expenditures, which have a monetary value that could be quite large, can assist and influence public officials and the conduct of public business; they should be reported by officeholders. Hence, the definitions proposed by the FCPC should be adopted.

The FCPC and the Council also both propose definitions of "officeholder committee" (See section 2.12.157.) The FCPC proposal provides that the Mayor and City Council members are the "eligible officeholders" under Article 9. They are the *only* elected officials who may establish officeholder committees and accounts. (Section 2.12.601.A; see also section 2.12.157.A.) All other elected city officials would be prohibited from establishing an officeholder committee or account or from receiving any contributions or making any expenditures associated with holding office. Hence, the FCPC's proposed

definition of “officeholder committee” defines it as a committee established by eligible officeholders—that is, the mayor and City Council members. By contrast, the council proposes that “officeholder committee” be defined as one established by any elected official (24 positions) under the Charter of the City of Berkeley. For the reasons explained above, the FCPC does not believe that such a broad authorization of the use of officeholder committees is necessary or desirable.

In addition to recommending defining “officeholder committee” as recommended, the FCPC proposes including in section 2.12.157 a definition of “officeholder account” because this term is used frequently in new Article 9 governing officeholder committees and accounts

Cost of Living Adjustments

A final subject that is addressed in both the FCPC and Council’s proposals is whether to provide for cost-of-living adjustments for the dollar amounts provided in Article 9 for cumulative limits on contributions, individuals contribution limits, and other specified dollar amounts. On this issue, the FCPC and Council are in general agreement that these adjustments are appropriate.

The cost-of-living adjustments are provided for in section 2.12.545. The Council proposal provided for adjustments to the dollar amounts provided in sections 2.12.167, 2.12.500.A.3, 2.12.505.B, 2.12.530.B.3.b, 2.12.167, 2.12.500.A.3, and 2.12.530.B.3.b., and section 2.12.602. The FCPC proposal has added similar adjustments to the dollar amounts specified in section 2.12.603. Providing for these adjustments is important, particularly if inflation continues to be a problem, to ensure that the dollar limits established at this time are still realistic and appropriate in the future, without requiring ongoing legislation to adjust those amounts.

FCPC ACTIONS OR RECOMMENDATIONS

The FCPC, after fully considering the issues, should respond to the reference from the Council. This response should include a recommendation. Based on the discussion so far, it is evident that the FCPC would not simply accept the Council’s proposal, as drafted. Instead, the FCPC’s might recommend that the Council approve the alternative FCPC proposal for an ordinance regulating officeholder committees and accounts; or, alternatively, the FCPC might develop some other recommendation or recommendations, including reiteration of its previous recommendation to prohibit officeholder accounts or it might recommend changing the approach to D-13 accounts.

Whatever the FCPC recommends, it should be remembered that it will ultimately require a 2/3 majority vote of both the FCPC and the City Council (that is, the “double green light”) to amend BERA.

Attachments:

1. Fair Campaign Practices Commission Proposal to Amend BERA to allow for regulated officeholder accounts (“FCPC Proposal”).
2. Chart Comparing Council Proposal and FCPC Proposal.

Fair Campaign Practices Commission's Proposed Draft Amendments to the
Berkeley Election Reform Act Relating to Officeholder Accounts
(Revisions to the City Council's Proposed Amendments Approved November
9, 2021)

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT AND
LOBBYIST REGISTRATION ACT TO REGULATE
OFFICEHOLDER COMMITTEES

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

Section 1. That Berkeley Municipal Code section 2.12.100 is amended to
read as follows:

Section 2.12.100 Contribution.

A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund- raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.

B. In the case of an officeholder committee, "contribution" means a monetary payment or other contribution as defined in A above to an

officeholder committee to be used for expenses associated with holding City office, and not for campaign purposes, as provided in Article 9 of this Chapter.

Section 2. That Berkeley Municipal Code section 2.12.130 is amended to read as follows:

Section 2.12.130 Expenditure.

A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

B. In the case of an officeholder committee, "expenditure" means payment of money or other expenditure as defined in A above by an officeholder committee for expenses associated with holding elective office in the City of Berkeley, and not for campaign purposes, as provided in Article 9 of this Chapter.

Section 3. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

Section 2.12.157 Officeholder committee and officeholder account.

A. "Officeholder committee" means a committee established by an officeholder eligible to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter. The eligible officeholders under that Article are the Mayor and Members of the City Council.

B. "Officeholder account" means a bank account maintained by an eligible officeholder or by any person or committee on behalf of an eligible officeholder, and whose funds are used exclusively for expenses associated with holding office and not for direct campaign purposes, as provided in Article 9 of this Chapter.

Section 4. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

Section 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, 2.12.602, and 2.12.603.~~ 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 2.12.603.B.,~~ and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.

Section 5. That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows:

Article 9. Officeholder Committees and Accounts

Section. 2.12.600 Regulation of officeholder committees and accounts.

A. The City of Berkeley hereby enacts a comprehensive ordinance for the purpose of regulating officeholder committees and accounts, including establishing limits on the amounts of contributions to these accounts, as authorized by California Government Code sections 85316, 85702.5. and other applicable state law.

B. The purposes of regulating officeholder committees and accounts include:

1. To provide adequate funds, if needed, for the City of Berkeley's principal elected officials to fully and effectively perform the duties of their office;
2. To ensure transparency and openness in the funding of city government;
3. To prevent the improper influence of private funds on the operations of city business and its officials; and
4. To preserve public confidence in the city and its key officeholders.

Section 2.212.601 Officeholders eligible to establish officeholder committees and accounts.

A. The Mayor and City Council Members are “eligible officeholders” under this Article. They are permitted to establish an officeholder committee and an officeholder account, as defined in section 2.12.157A–B. The Mayor and Council Members are the only elected officeholders in the City of Berkeley authorized to establish, maintain, and use committees and officeholder accounts for the purposes of this Article.

B. All elected city officials other than the Mayor and City Council Members are not eligible officeholders. They are prohibited from establishing an officeholder committee or an officeholder account or from receiving any contributions or making any expenditures associated with holding elective office in the City, except that non-eligible officeholders may personally contribute incidental expenses, in a value not to exceed two hundred fifty dollars (\$ 250), to the operation of their offices.

C. Nothing in this section shall prohibit the City from providing financial support and assistance to those officeholders who are not eligible to establish officeholder committees or accounts to enable them to perform their duties of office.

D. Nothing in this section shall require an eligible officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee or to spend personal funds on their own officeholder expenses.

Section 2.12.602 Cumulative contribution limits

A. For the office of Mayor, total contributions to an officeholder account from all contributors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year.

B. For each Member of the City Council, total contributions to an officeholder account from all contributors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

C. The dollar amounts of the cumulative campaign limits provided for in A.

and B. shall be adjusted periodically as provided in section 2.12.545.

Section 2.12.603 Individual contributions – Restrictions – Limits on contributions.

A. Only a natural person who is a resident of the City shall make a contribution to an officeholder committee or account. The prohibition against contributions from organizations and entities to candidates and committees in section 2.12.440 applies to contributions to officeholder committees and accounts under this Article.

B. No individual contributor shall make, and no eligible officeholder shall accept, a contribution per person for the calendar year whose value totals more than the maximum amount of a “qualifying contribution” permitted under section 2.12.167. A “contribution,” for the purposes of this section includes the payment of money or other contribution as defined in section 2.12.100 A–B.

C. The dollar amounts of the individual contribution limits provided for in B. shall be adjusted periodically as provided in section 2.12.545.

D. An eligible officeholder may personally contribute an amount to their officeholder account greater than provided in B. and C. provided:

1. All contributions by the officeholder shall be made through an officeholder committee and shall be placed in an officeholder account, and reports of all contributions and expenditures shall made as provided in this Article; and

2. The total amount contributed by the officeholder and all other contributors per calendar year combined shall not exceed the cumulative contribution limit in section 2.12.602.

Section 2.12.604 Limits and requirements for contributions and expenditures

All requirements and prohibitions applicable to campaign contributions and expenditures in the Berkeley Election Reform Act shall apply to contributions and expenditures relating to officeholder committees and accounts, including the requirements for a written instrument under section 2.12.300, the prohibitions on contributions from persons using other than their legal name under section 2.12.305, the prohibitions on contributions from persons on

behalf of other persons under section 2.12.310, the prohibitions relating to contributions by agents or independent contractors on behalf of a committee under section 2.12.315, and the prohibitions on anonymous contributions under section 2.12.320.

Section 2.12.610 Permissible officeholder expenditures.

An officeholder committee may make expenditures only for the following purposes:

A. Expenditures for fundraising for the officeholder committee.

B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.

C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.611.D.

D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.

E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include:

1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including registration or other attendance fees, travel, lodging, food, and incidentals;

2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and

3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose.

F. Expenditures for constituent and community communications, including:

1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or other matters of public concern or interest;
2. An officeholder's website and social media;
3. Email and address list management.

The expenditures permitted for communications under 1–3 must be consistent with, and shall not violate, the restrictions on the use of officeholder account funds for communications in section 2.12.612 of this Article.

G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.

H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.

I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.

Section 2.12.611 Prohibited officeholder expenditures.

An officeholder committee shall not make expenditures for the following purposes:

A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure,

B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office or for any other campaign expenditures of any kind.

C. Membership in any athletic, social, fraternal, veterans or religious

organization.

D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.

E. Expenditures for attorney's fees or for any other costs of litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status and an elected officer; this prohibition includes, but is not limited to, any expenditures for expenses incurred in defending against claims or potential claims of fraud, malfeasance, discrimination, harassment, or abuse.

F. Expenditures or contributions to any business, corporation or other entity, whether for profit or non-profit, for any purpose other than in payment for expenses or costs of an eligible elected official incurred in the course of operating that official's office and performing that individual's official duties of office.

G. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506, and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.

Section 2.12.612. Constituent and community communications.

A. Funds from an officeholder account shall be used for constituent and community communications only as permitted by this section.

B. Funds from an officeholder account may be used for constituent and community communications only as follows:

1. No funds from an officeholder account shall be used, directly or indirectly, for any campaign purposes. This means that these funds may not be used in support or opposition to any candidate or ballot measure in the City; and they may not be used to solicit campaign funds, to notify the public about campaign events, to provide information about a candidate, or for any other

campaign-related purpose.

2. Communications paid from officeholder accounts should provide constituents and the community with information directly related to the officeholder's governmental duties, the activities of city government, and to announcements of official agency events. These communications must be clearly identified as "Constituent and Community Communications," and shall state that they are being funded by the elected official's officeholder committee.

3. Notwithstanding Government Code section 89002, officeholder communications with constituents may include mass mailings provided that they comply with 1-2 above or, alternatively, with section 89002(b). Copies of all mass mailings under this section shall promptly be sent to the Commission and shall be part of the public record.

Section 2.12.620 Prohibitions on transfer or reallocation of funds.

The following restrictions apply to the transfer or reallocation of officeholder funds:

A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

B. No funds may be contributed, redesignated, or transferred from an officeholder committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.

C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.

D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.

Section 2.12.621 Prohibition on simultaneously maintaining officeholder and campaign committees.

A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state, or federal elective office.

B. A candidate who is elected to any elective office in the City must terminate their campaign committee before opening an officeholder committee.

C. An officeholder must terminate any open officeholder committee before filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.

For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee before accepting the campaign committee Statement of Organization.

Section 2.12.625 Officeholder committees and public financing.

Individuals who have established, maintained, and used an officeholder committee may participate in the City’s public campaign financing program under Article 8, the Fair Elections Act, provided that they comply with the requirements of this Article, including terminating any open officeholder committee before filing a Statement of Organization for a campaign committee for elective office.

Section 2.12.630 Statement of organization – Committee required to file.

A. Every eligible officeholder who directly or indirectly, from any authorized person **or from themselves**, receives contributions that cumulatively total more than **two hundred fifty dollars (\$250)** in a calendar year or makes expenditures exceeding **two hundred fifty dollars (\$250)** in a calendar year for expenses related to holding office shall establish an “officeholder committee” and shall open an “officeholder account” as defined in section 2.12.157.

B. Every officeholder committee shall file with the City Clerk a Statement of Organization for the officeholder committee before accepting contributions.

C. The date on which an officeholder committee is formed by filing a Statement of Organization shall determine the officeholder committee’s

obligation to file statements and reports required by this chapter.

D. Every eligible officeholder who does not directly or indirectly, from any authorized person **or from themselves**, receive contributions that cumulatively total more than **two hundred fifty dollars (\$ 250)** in a calendar year or make expenditures exceeding **two hundred fifty dollars (\$250)** in a calendar year for expenses related to holding office shall file a verified certificate stating that they are not required to establish a committee or open an account because the amounts received or expended, if any, do not exceed the amounts specified in subsection A. above. Every eligible officeholder shall file the certificate required by this subsection on the dates prescribed under section 2.12.650, notwithstanding the fact they are not required to file a complete report under that section.

2.12.631 Statement of organization – Information required.

The statement of organization for an officeholder committee required by Section 2.12.630 shall include:

- A. The name, street address and telephone number of the officeholder committee;
- B. The name of the officeholder;
- C. The full name, street address and telephone number of the treasurer and other principal officers;
- D. The elected office held by the officeholder;
- E. The account number and name of the bank at which the checking account, required by Section 2.12.641, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- F. The cash on hand at the time of filing the statement of organization;
- G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this Chapter.

Section 2.12.632 Statement of organization – Change of Information – Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.

Section 2.12.640 Officeholder committee treasurer.

Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.

Section 2.12.641 Officeholder account – Establishment required – Procedure for use.

An officeholder committee treasurer shall establish and manage a separate checking account exclusively for the purposes of the committee. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article. Consistent with this Article and notwithstanding 2.12.250.D., the treasurer of an officeholder account committee shall not accept any monetary or non-monetary contribution with a value in excess of fifty dollars (\$50) and must retain itemized receipts or vouchers of all contributions.

Section 2.12. 650 Reporting – Officeholder statements – Content – Filing dates.

A. All contributions received for, and all expenditures made from, each officeholder account during a calendar year shall be reported as prescribed in B. and C. below.

B. Officeholder committee statements required by this Article shall include all applicable information required for campaign committee statements by Section 2.12.280.

C. Each eligible officeholder who maintains an officeholder committee and account shall file a statement containing all the required information one or more times each calendar year, as prescribed by the Commission. Unless the Commission prescribes otherwise, each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for semi-annual campaign committee statements. If the

Commission determines that other dates are more appropriate for the filing of officeholder committee statements, the Commission shall set the necessary filing dates.

Section 2.12.655 Filing requirements.

All reports and statements required to be filed by this Article shall be subject to the filing requirements and other provisions of the Berkeley Election Reform Act relating to the filing of campaign reports and statements, including the signature and verification requirements in section 2.12.025, the provisions on where to file in section 2.12.030, the requirement to file electronically in section 2.12.032, the filing procedures in section 2.12.033, and the provision that no fee or charge shall be collected by the City Clerk for the filing of the statement or report under section 2.12.035.

Section 2.12.658 Requirements for public inspection, preservation, and City Clerk’s responsibilities.

All reports and statements required by this Article shall be subject to the same provisions for public inspection, preservation, and City Clerk’s responsibilities as provided for campaign reports and statements in sections 2.12.040, 2.12.045, and 2.12.050.

Section 2.12.660 Termination of officeholder committees upon leaving office.

A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office. The Commission may for good cause extend the termination date.

B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.
2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.
3. Donating funds to the City’s general fund.

C. The officeholder terminating an officeholder account shall file a statement regarding the disposition of all funds from the account, including the identification of all persons and entities that have received funds from the account and the amounts distributed. The officeholder closing the account must verify the statement and file it electronically no later the date prescribed for the termination of the officeholder account or the approved extension thereof. The Commission may require the statement to be provided on a form prescribed by the Commission.

Section 2.12.670 Records of officeholder accounts.

A. The officeholder and treasurer of an officeholder committee are subject to record keeping requirements.

B. It is the duty of each officeholder and each treasurer for an officeholder committee to maintain detailed accounts, records, bills, and receipts necessary to prepare officeholder statements, to establish that the statements were accurate and properly filed, and to otherwise comply with the provisions of this Article. Officeholders and treasurers must also maintain records of the cumulative amount of all contributions and expenditures.

C. The detailed accounts, records, bills, and receipts shall be retained by the officeholder and treasurer for a period specified by the Commission. The records shall be retained for a period of at least four years after the adoption of a final audit report or five years from the date of any alleged violation, whichever is less, unless the Commission provides otherwise.

D. In the event that a person alleged to have violated this Article fails to produce documents in response to a court order to produce the records sought by subpoena, the five-year period in C. above shall be tolled for the period of delay from the date of filing of the motion to compel until the date the documents are produced.

E. Officeholders and treasurers shall make available to the Commission and other authorities or their designees specified in section 2.12.250.F, on demand, the details of any account requested and the records supporting it, and shall sign a waiver permitting those authorities or their designees to inspect officeholder account records maintained by the bank in which the officeholder account is opened.

Section 2.12.675 Audits of officeholder committees and accounts.

A. Officeholder committees and officeholder accounts are subject to audits.

B. The City Auditor shall audit all officeholder committees and officeholder accounts every two years beginning in 2024. The audits shall cover the preceding two-year period ending July 1 of every even-numbered year. The final audits shall be publicly filed with the City Clerk and copies shall be sent to the Commission for review no later than October 1 of the even-numbered year when the audits are scheduled to be prepared and filed.

C. In the event that any audit or audits are not completed, finalized, and filed by October 1, the Clerk shall promptly notify the Commission and the affected officeholder and treasurer responsible for the officeholder committee. Upon receipt of this notice, the officeholder committee shall immediately cease operations, including collecting contributions and making expenditures, until the final audit or audits have been filed, copies have been sent to the Commission, and the Commission has approved the audit.

Section 2.12.685 Enforcement.

A. Violations of this article involving the unlawful use of officeholder committees and accounts are subject to the limitations on contributions in Article 6 and the enforcement procedures and penalties in Article 7 of this Chapter. For the purposes of Article 9, section 2.12.435 is modified to provide that, if any person is found guilty of violating the terms of this Article, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available funds in the officeholder account, if any, the amount received in excess of the amount permitted by this Article to the City for deposit in the City's general fund.

B. In addition to the limitations, enforcement procedures, and penalties in Articles 6 and 7, if the Commission determines, after notice and a hearing, that an officeholder has committed a substantial violation of the regulations relating to officeholder accounts, it may suspend or terminate the officeholder's committee and account and may prohibit the officeholder from establishing, maintaining, or operating such a committee or account in the future.

Section	Council Version	FCPC Version	Difference/Rationale
<p>2.09.220 Restrictions on payments and expenses benefiting local public officials.</p>	<p>A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:</p> <ol style="list-style-type: none"> 1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event; 2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed; 3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present; 4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an 	<p>[The FCPC proposal recommends no amendments to section 2.09.220 of the Berkeley Lobbyist Registration Act.]</p>	<p>The Council's proposal would amend subsection A.6. of the Lobbyist Registration Act to add to the list of exceptions to the ordinance's \$240 annual contribution limit a provision that includes "officeholder contributions." The FCPC recommends against including this provision. The FCPC does think that such an amendment is either necessary or desirable. Rather, it would be inconsistent with the new officeholder ordinance and might well undermine it.</p> <p>The Lobbyist Registration Act should be fully consistent with the new officeholder committee and account provisions in the BERA. However, if the ordinance were changed to provide an exception for contributions to officeholder accounts, lobbyists who are not natural persons residing in the City of Berkeley might arguably be eligible under the Lobbyist Registration Act to provide unreported gifts to an officeholder with a cumulative value of \$240 in a calendar year for the purposes of financing an elected official's office. This would be contrary to the purposes of the officeholder account ordinance. Hence, to avoid inconsistency and fully implement new Article 9 on officeholder committees and accounts, the FCPC's recommendation to leave section 2.09.220 unchanged should</p>

	<p>organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;</p> <p>5. informational material;</p> <p>6. campaign or officeholder contributions not to exceed the limits imposed by the Berkeley Election Reform Act or state law, as applicable; and</p> <p>7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section. For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.</p> <p>B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.</p> <p>C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the</p>	<p>B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.</p> <p>C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.</p> <p>D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason</p>	<p>be adopted rather than the Council's version.</p>
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	<p>personal benefit of a member of the immediate family of one of these individuals.</p> <p>D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.</p>	<p>to know that the third-party is providing the payment or expense on behalf of a lobbyist.</p>	
<p>Section 2.09.100 Contribution.</p>	<p>A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund- raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a</p>	<p>A. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund- raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance,</p>	<p>Both the FCPC and Council proposals would provide definitions of "contribution" and "expenditures" for the purposes of Article 9 based on the definitions of these terms for campaign finance purposes. The FCPC uses the same broad definitions of the terms as provided in BERA for campaign contributions and expenditures. The Council proposal, however, would significantly narrow the definitions of "contribution" to mean only "a <u>monetary</u> payment," thereby omitting the numerous other forms of contributions (such as loans, advances, pledges, or "anything of value"). Similarly, the council proposal would narrow the definition of "expenditure" to mean a "payment of <u>money</u>," thereby omitting many other forms of contributions (such as pledges or promises "of anything of value").</p> <p>There are no good policy reasons for restricting the definitions of "contribution" or "expenditures" to transactions involving <u>money</u>. Non-monetary forms of contributions and</p>

	<p>committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.</p> <p><u>B. In the case of an officeholder committee, "contribution" means a monetary payment to an officeholder committee to be used for expenses associated with holding City office, and not for campaign purposes, as provided in Article 9 of this Chapter.</u></p>	<p>deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars.</p> <p><u>B. In the case of an officeholder committee, "contribution" means a monetary payment or other contribution as defined in A above to an officeholder committee to be used for expenses associated with holding City office, and not for campaign purposes, as provided in Article 9 of this Chapter.</u></p>	<p>expenditures, which have a monetary value that could be quite large, can assist and influence public officials and the conduct of public business; they should be reported by officeholders just as they are by persons campaigning for public office. Hence, the definitions proposed by the FCPC should be adopted.</p>
<p>Section 2.12.130 Expenditure.</p>	<p>A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of</p>	<p>A. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer,</p>	<p>See difference/rationale explaining the reasons for preferring the FCPC definition of "contribution" instead of the Council definition under section 2.09.100 above.</p>

	<p>value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.</p> <p>B. In the case of an officeholder committee, "expenditure" means payment of money by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.</p>	<p>payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.</p> <p>B. In the case of an officeholder committee, "expenditure" means payment of money or other contribution as defined in A. above by an officeholder committee for expenses associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.</p>	
<p>Section 2.12.157 Officeholder committee. [Renamed: Officeholder committee and account.]</p>	<p>"Officeholder committee" means a committee established by an Elective Officer of the City of Berkeley, as defined in Article V Section 8 of the Charter of the City of Berkeley, to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter.</p>	<p>A. "Officeholder committee" means a committee established by an officeholder eligible to receive contributions and make expenditures associated with holding elective office in the City of Berkeley as provided in Article 9 of this Chapter. The eligible officeholders under that Article are the Mayor and Members of the City Council.</p> <p>B. "Officeholder account" means a bank account maintained by an eligible officeholder or by any person or committee on behalf of an eligible officeholder, and whose funds are used exclusively for expenses associated with holding office and not for direct campaign purposes, as provided in Article 9 of this Chapter.</p>	<p>A basic difference between the approach to officeholder accounts proposed by the Council and the approach proposed by the FCPC is that the Council proposes to make the ordinance authorizing and regulating private contributions to officeholder committees and accounts applicable to all 24 elective offices in the City, whereas the FCPC proposes that, if such an ordinance is necessary, it should apply only to the City's nine principal elective officers—that is, the mayor and members of the city council. This difference in the proposed scope of Berkeley's law on officeholder accounts is reflected in the different definitions of "officeholder committee" proposed in section 2.12.157.</p>

			<p>The FCPC is concerned about the influence of private money on American government. Generally, the Commission believes that public offices should be publicly funded. If it is necessary to allow for some private contributions to local public offices, any such funding should be limited in scope and the receipt and expenditure of all such funds should be carefully regulated. Hence, the FCPC does not support expanding the proposed new law to permit the creation of officeholder committees and accounts to any elective city officials except for mayor and members of the Council. No need has been shown for such an expansion; it would create ethical risks and practical problems; and it might impose significant costs on the City of Berkeley to regulate the additional 14 elective offices. If other elected officials need more financial support, the Commission believes the City should provide it.</p> <p>In addition to recommending defining “officeholder committee” as recommended, the FCPC proposes including in section 2.12.157 a definition of “officeholder account” because this term is used frequently in new Article 9 governing officeholder committees and accounts.</p>
Section 2.12.545 Cost	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	The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B	Both the FCPC and Council’s proposals provide for cost-of-living adjustments for the dollar amounts

<p>of living adjustments.</p>	<p>and 2.12.602 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 Sections 2.12.505.B and 2.12.602.</p>	<p>and, 2.12.530.B.3.b, 2.12.602 and 2.12.603 or 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, 2.12.530.B.3.b, and 2.12.603.B. and one thousand dollars (\$1,000) with respect to Sections 2.12.505.B and 2.12.602.</p>	<p>provided in Article 9 for cumulative limits on contributions, individuals contribution limits, and other specified dollar amounts. On this issue, the FCPC and Council are in general agreement that these adjustments are appropriate.</p> <p>The cost-of-living adjustments are provided for in section 2.12.545. The Council proposal provided for adjustments to the dollar amounts provided in sections 2.12.167, 2.12.500.A.3, 2.12.505.B, 2.12.530.B.3.b, 2.12.167, 2.12.500.A.3, and 2.12.530.B.3.b., and section 2.12.602. The FCPC proposal has added similar adjustments to the dollar amounts specified in section 2.12.603. Providing for these adjustments is important, particularly if inflation continues to be a problem, to ensure that the dollar limits established at this time are still realistic and appropriate in the future, without requiring ongoing legislation to adjust those amounts.</p>
<p>Article 9. Officeholder Committees [Renamed: Officeholder Committees and Accounts]</p>			<p>The key provisions of both the Council and the FCPC proposals are contained in new Article 9. There are significant differences, however, in the specific provisions of Article 9 as proposed by the two bodies, as explained below.</p>
<p>Section. 2.12.600 Regulation of officeholder</p>	<p>A. Elective Officers (the “officeholder” or officeholders”) shall each be permitted to establish one officeholder committee, as defined in Section 2.12.157.</p>	<p>A. The City of Berkeley hereby enacts a comprehensive ordinance for the purpose of regulating officeholder committees and accounts, including</p>	<p>The FCPC proposal includes a statement that the purpose of Article 9 is to establish limits on the amounts of contributions to officeholder</p>

<p>committees. [Renamed: Regulation of officeholder committees and accounts]</p>	<p>B. Nothing in this section shall require an officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder committee to spend personal funds on their own officeholder expenses.</p> <p>C. Expenditures of an officeholder's personal funds for their own officeholder expenses which are not contributed to an officeholder committee are not reportable under this chapter.</p>	<p>establishing limits on the amounts of contributions to these accounts, as authorized by California Government Code sections 85316, 85702.5. and other applicable state law.</p> <p>B. The purposes of regulating officeholder committees and accounts include:</p> <ol style="list-style-type: none"> 1. To provide adequate funds, if needed, for the City of Berkeley's principal elected officials to fully and effectively perform the duties of their office; 2. To ensure transparency and openness in the funding of city government; 3. To prevent the improper influence of private funds on the operations of city business and its officials; and 4. To preserve public confidence in the city and its key officeholders. 	<p>accounts, as authorized by state law. (Section 2.12.600.A.) It further states that the purposes of the article include (1) providing adequate funds, if needed, for the City of Berkeley's principal elected officials to fully and effectively performs their duties of their office; (2) ensuring transparency and openness of city business and its officials; and (3) preserving public confidence in the city and its key officeholders. (Section 2.12.600.B.)</p> <p>The Council version does not include any general or specific provisions about the purposes of Article 9 comparable to 2.12.600A. and B. The statements of purpose in the FCPC version will assist the public to better understand the ordinance and help persons interpreting it to apply its provisions properly.</p> <p>The Council version of section 2.12.600 also included provisions very broadly defining "officeholder" and exempting officeholders from reporting expenditures of personal funds for their own officeholder accounts. In the FCPC version, these provisions have been deleted from section 2.12.600 and replaced by substantively different provisions elsewhere in BERA, as explained further below. (See sections 2.12.157, 2.12.601, 2.12.603.)</p>
<p>Section 2.12.601</p>	<p><i>[The Council proposal does not include a section 2.12.601. Some of the principal issues</i></p>	<p>A. The Mayor and City Council Members are "eligible officeholders"</p>	<p>Unlike the Council proposal, the FCPC proposal provides that the</p>

<p>Officeholders eligible to establish officeholder committees and accounts</p>	<p><i>in its proposed section 2.12.600 are addressed in this new section, but are treated differently.]</i></p>	<p>under this Article. They are permitted to establish an officeholder committee and an officeholder account, as defined in section 2.12.157A–B. The Mayor and Council Members are the only elected officeholders in the City of Berkeley authorized to establish, maintain, and use committees and officeholder accounts for the purposes of this Article.</p> <p>B. All elected city officials other than the Mayor and City Council Members are not eligible officeholders. They are prohibited from establishing an officeholder committee or an officeholder account or from receiving any contributions or making any expenditures associated with holding elective office in the City, except that non-eligible officeholders may personally contribute incidental expenses, in a value not to exceed two hundred fifty dollars (\$ 250), to the operation of their offices.</p> <p>C. Nothing in this section shall prohibit the City from providing financial support and assistance to those officeholders who are not eligible to establish officeholder committees or accounts to enable them to perform their duties of office.</p> <p>D. Nothing in this section shall require an eligible officeholder to open an officeholder committee or, if they have established an officeholder committee, to contribute to their officeholder</p>	<p>Mayor and City Council members are the “eligible officeholders” under Article 9. They are the <i>only</i> elected officials who may establish officeholder committees and accounts. (Section 2.12.601.A; see also section 2.12.157.A.) All other elected city officials would be prohibited from establishing an officeholder committee or account or from receiving any contributions or making any expenditures associated with holding office, except that these other non-eligible elected officials would be allowed to personally contribute incidental expenses not to exceed \$250 to the operation of their offices.</p> <p>The FCPC proposal differs significantly from the Council’s version in narrowing the number of elected officials eligible to receive private funding to the nine principal elected officials in the city: the mayor and the eight members of the City Council. The Commission does not support the extending the authorization to receive private funding for officeholder operations to include the members of the School Board (5 members) and the Rent Stabilization Board (9 members), and the city auditor (1 person). These 15 additional officials have historically never required such additional private funding and no need has been shown for authorizing it. Making these elected officials dependent on private funding is not good policy. If they</p>
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			<p>dependent on private funding or the personal financial contributions of officeholders. The Council version included a similar provision in section 2.12.600.B.</p>
<p>Section 2.12.602 Cumulative contribution limits</p>	<p>A. For each Elected Officer representing a district within the City of Berkeley, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed five thousand dollars (\$5,000) in the aggregate per calendar year.</p> <p>B. For citywide Elected Officers, total contributions to an officeholder committee from all contributors other than the officeholder shall not exceed in the aggregate per calendar year an amount equal to four times the maximum allowed for elected officers representing districts, as provided in Section 2.12.602.A</p>	<p>A. For the office of Mayor, total contributions to an officeholder account from all contributors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year.</p> <p>B. For each Member of the City Council, total contributions to an officeholder account from all contributors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.</p> <p>C. The dollar amounts of the cumulative campaign limits provided for in A. and B. shall be adjusted periodically as provided in section 2.12.545.</p>	<p>As a preliminary matter, with regard to the Council members' and mayor's offices, the FCPC notes that City provides public funding for those offices through the D-13 accounts. If additional private funding is needed for their support, the cumulative and individual amounts of the private contributions should be strictly limited.</p> <p>The FCPC proposal provides that, for the office of mayor, total contributions to an officeholder account from all contributors shall not exceed \$10,000 in the aggregate for a calendar year. (Section 12.2.602.A.) The proposal further provides that, for each member of the City Council, total contributions to an officeholder account from all contributors shall not exceed \$5,000 in the aggregate per calendar year. (Section 2.12.603.B.) The dollar amounts of these cumulative limits will be adjusted periodically as provided in section 2.12.545. (Section 2.12.602.C.)</p> <p>The establishment of cumulative limits is a reasonable means to regulate contributions. Similar cumulative limits for officeholder contributions have been enacted for all statewide elected offices, including</p>

			<p>the Governor, members of the Senate and Assembly, and other offices. (See Cal. Gov. Code, § 85316(b)(2).) The amounts proposed by the FCPC are reasonable and will ensure that the amounts contributed do not exceed what is necessary for conducting local Berkeley officeholder's official business.</p> <p>The FCPC's proposal on cumulative contributions for City Council members is similar to the Council's: it provides for a limit of up to \$5,000 annually (to be adjusted under section 2.12.545) for each officeholder account. However, it would allow only up to \$10,000 annually (to be adjusted) for the mayor's officeholder account, instead of the \$20,000 (to be adjusted) proposed by the Council, because there has not been a showing that the mayor's office requires the substantially higher cumulative amount.</p> <p>The FCPC proposal also does not authorize any cumulative amounts—or any contributions at all—for the for local elective officers other than the Mayor and Council members, for the reasons explained previously. (The Council proposal would have authorized those elected officials, as citywide elected officials, to receive up to four times the maximum amount allowed for council members representing districts—that is, up to \$20,000 (to be adjusted), a large</p>
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			amount for which there does not appear to be any justification.)
<p>Section 2.12.603 Individual contributions – Restrictions – Limits on contributions.</p>	<p><i>[The Council proposal does not include a section 2.12.603. Its proposals regarding individual limits on contributions and personal contributions by officeholders are located elsewhere (see 2.12.615.A.–C.) and differ significantly from the FCPC proposals in this section.]</i></p>	<p>A. Only a natural person who is a resident of the City shall make a contribution to an officeholder committee or account. The prohibition against contributions from organizations and entities to candidates and committees in section 2.12.440 applies to contributions to officeholder committees and accounts under this Article.</p> <p>B. No individual contributor shall make, and no eligible officeholder shall accept, a contribution per person for the calendar year whose value totals more than the maximum amount of a “qualifying contribution” permitted under section 2.12.167. A “contribution,” for the purposes of this section includes the payment of money or other contribution as defined in section 2.12.100 A–B.</p> <p>C. The dollar amounts of the individual contribution limits provided for in B. shall be adjusted periodically as provided in section 2.12.545.</p>	<p><i>Limits on individual contributors</i> The FCPC’s proposal provides that only a natural person who is a resident of Berkeley shall make a contribution to an officeholder committee or account. In addition, the proposal would make the prohibition against contributions by organizations and entities to candidates and committees in section 2.12.440 applicable to officeholder committees and accounts. (Section 2.12.603.A.)</p> <p>This proposal differs from the Council’s proposal insofar as that proposal contains the prohibition against contributions by organizations and entities but does not prohibit contributions by person who are not residents of Berkeley. (See Council proposal, section 2.12.615.) The FCPC considers the additional requirement of limiting contributions to natural persons residing in Berkeley to be valuable in that it would limit the influence of outsiders on Berkeley officeholders. It is important that Berkeley officeholders</p>

		<p>D. An eligible officeholder may personally contribute an amount to their officeholder account greater than provided in B. and C. provided:</p> <ol style="list-style-type: none"> 1. All contributions by the officeholder shall be made through an officeholder committee and shall be placed in an officeholder account, and reports of all contributions and expenditures shall be made as provided in this Article; and 2. The total amount contributed by the officeholder and all other contributors per calendar year combined shall not exceed the cumulative contribution limit in section 2.12,602. 	<p>be responsible first and foremost to their own citizens. Restricting private contributions from non-residents will help promote this goal and avoid undue outside influence.</p> <p><i>Limits on the amounts of contributions</i></p> <p>The FCPC’s proposal provides that no individual contributor shall make, and no eligible officeholder shall accept, a contribution per person for the calendar year whose value totals more than the maximum amount of a “qualifying contribution” permitted under section 2.12.167 (\$50), as adjusted periodically as provided in section 2.12.545. (Section 2.12.603.B.) This amount is currently set at \$60. This proposed limit on individual contributions is significantly less than that proposed by the Council. The Council would use the \$250 campaign contribution limit in section 2.12.415 as the limit on individual contributions to officeholder accounts. (See Council Proposal, section 2.12.615.A.)</p> <p>The FCPC’s proposed lower limit on individual contributions is based on sound public policy and should result in fairer results. The lower contribution limit will ensure that no single private individual can unduly influence—or appear to unduly influence—any principal elected official of the City. Also, this lower limit will help level the playing field; it will enable all eligible elected officials</p>
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			<p>alike to be able to collect small contributions from numerous constituents, rather than enabling a few members from wealthier districts to collect larger contributions from wealthier constituents and thereby reap the benefits of establishing officeholder committees and accounts. If a regulated approach to officeholder accounts is to be enacted, it must not create disparities in the resources available to different Council members based on the wealth of their districts or of their constituents.</p> <p><i>Restrictions on officeholders' personal contributions</i> The FCPC proposal would place limits on the amount that an officeholder can personally contribute to their own officeholder committee and expend on officeholding business; and it would require officeholders to report all their contributions and expenditures.</p> <p>Specifically, new section 2.12.603.D.1. provides that all contributions by an officeholder shall be made through an officeholder committee and placed in an officeholder account, and these contributions shall be reported like all other contributions.</p> <p>Furthermore, new section 2.12.603.D.2. provides that the total amount contributed by an eligible officeholder and all other contributors</p>
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			<p>per calendar year combined shall not exceed the cumulative contribution limit in section 2.12.602.</p> <p>The FCPC proposal to restrict the amount that an officeholder can contribute personally to their own account and require officeholders to report their contributions and expenditures differs significantly from the Council version. In the Council proposal, there would be no limits on the amount that an officeholder could contribute to their own officeholder committee or spend on officeholder expenses, either through or not through an officeholder committee. (Council proposal, section 2.12.615.C.) Also, the Council's proposal would exempt officeholders from reporting on their personal contributions and expenditures. (Council proposal, section 2.12.600.C.)</p> <p>The FCPC proposal is based on better public policy, will be much more transparent, and will produce fairer results. In previous discussions, members of the City Council have repeated stated that they believe that one important reason for authorizing officeholder accounts is to level the playing field among council members and districts. But the specific provisions in the Council's draft ordinance allowing officeholders to spend unlimited personal funds on their offices would have the opposite effect. These provisions would allow</p>
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			<p>more affluent council members to contribute unlimited amounts for the purpose of maintaining their offices, while less economically privileged members would not be able to afford such expenditures. Furthermore, by exempting members from reporting their own contributions and expenditures, the public would be deprived of the ability to know how the public's business is being financed and managed. Hence, the FCPC proposal establishing limits on personal contributions and expenditures and requiring reporting by all, including incumbent officeholders, is preferable.</p>
<p>New Section 2.12.604 Limits and requirements for contributions and expenditures</p>	<p><i>[The Council proposal does not include this version of section 2.12.604. However, the issues addressed in this section were addressed in the Council's proposal in section 2.12.615.D.]</i></p>	<p>All requirements and prohibitions applicable to campaign contributions and expenditures in the Berkeley Election Reform Act shall apply to contributions and expenditures relating to officeholder committees and accounts, including the requirements for a written instrument under section 2.12.300, the prohibitions on contributions from persons using other than their legal name under section 2.12.305, the prohibitions on contributions from persons on behalf of other persons under section 2.12.310, the prohibitions relating to contributions by agents or independent contractors on behalf of a committee under section 2.12.315, and the prohibitions on anonymous contributions under section 2.12.320.</p>	<p>Both the FCPC and City Council's proposals provide that various provisions in BERA—such as those prohibiting contributions from persons except in their legal name and prohibiting anonymous contributions—shall apply to officeholder committees and accounts under Article 9. The FCPC version has revised the section for clarity and relocated it from section 2.12.615.D. to section. 2.12.604.</p>

<p>Section 2.12.604 Prohibited officeholder expenditures [Renumbered as section 2.12.611]</p>	<p>An officeholder committee shall not make expenditures for the following purposes:</p> <p>A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure.</p> <p>B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office.</p> <p>C. Membership in any athletic, social, fraternal, veterans or religious organization.</p> <p>D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.</p> <p>E. Any expenditure that would violate any provision of the Berkeley Election Reform Act (BMC Chapter 2.12.) or the California Political Reform Act (Cal. Gov. Code § 81000 et seq.), including but not limited to the gift laws pertaining to travel payments, advancements and reimbursements under Government Code section 89506 and provisions related to permissible expenditures which serve legislative or governmental purposes under Government Code sections 89512 through 89519.</p>	<p>An officeholder committee shall not make expenditures for the following purposes:</p> <p>A. Expenditures in connection with an election for any city, county, regional, state or federal elective office or in connection with a ballot measure,</p> <p>B. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office or for any other campaign expenditures of any kind.</p> <p>C. Membership in any athletic, social, fraternal, veterans or religious organization.</p> <p>D. Supplemental compensation for officeholder staff for performance of duties required or expected of the person in the regular course or hours of their employment as a City official or employee.</p> <p>E. Expenditures for attorney’s fees or for any other costs of litigation, administrative procedures, or other processes arising directly from the officeholder committee’s activities or the officeholder’s activities, duties, or status and an elected officer; this prohibition includes, but is not limited to, any expenditures for expenses incurred in defending against claims or potential claims of fraud, malfeasance, discrimination, harassment, or abuse.</p>	<p>This section contains a list of prohibited officeholder expenses. It is important that officeholders have this list so that they will know what kinds of expenditures they are prohibited from making from officeholder accounts.</p> <p>The FCPC version is section is similar to the Council’s. However, it has been renumbered and relocated (from section 2.12.604 to 2.12.611). Also, it contains two significant changes.</p> <p>First, in the FCPC proposal, subsection B. prohibiting expenditures for campaign consulting, research, etc. has the additional words “or for any other campaign expenditures of any kind” added at the end of the sentence. This clarifies that <u>no</u> officeholder funds may be used for <u>any kind of</u> campaign purposes. The basic premise of Article 9 is that officeholder accounts are not campaign accounts and can never be used for campaign purposes. Officeholder funds should be used solely for legitimate expenses for operating an office. The added words in subsection B. underscore that all campaign funds should be entirely separate and should be strictly regulated by other provisions in BERA and state law.</p> <p>Second, new subsection E. has been added that prohibits the use of</p>
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<p>Section 2.12.606 Permissible officeholder expenditures [Renumbered as section 2.12.610]</p>	<p>An officeholder committee may make expenditures only for the following purposes:</p> <p>A. Expenditures for fundraising for the officeholder committee.</p> <p>B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.</p> <p>C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time spent on officeholder activities, provided that such</p>	<p>An officeholder committee may make expenditures only for the following purposes:</p> <p>A. Expenditures for fundraising for the officeholder committee.</p> <p>B. Expenditures for office equipment, furnishings and office supplies used for governmental or legislative purposes.</p> <p>C. Expenditures for compensation of staff, consultants, or other persons employed by the officeholder for time</p>	<p>This section provides a list of permissible officeholder expenditures. This is important so that officeholders will know clearly what kinds of expenditures that they may lawfully make.</p> <p>The FCPC version is section is similar to the Council's. However, it has been renumbered and relocated (from section 2.12.606 to 2.12.610). Also, importantly, the FCPC has deleted the council's proposed subpart J, which would have</p>

	<p>expenditures are not prohibited by Section 2.12.604.D.</p> <p>D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.</p> <p>E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include but not be limited to:</p> <ol style="list-style-type: none"> 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including but not limited to registration or other attendance fees, travel, lodging, food, and incidentals; 2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and 3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose. <p>F. Expenditures for constituent and community communications, including but not limited to:</p> <ol style="list-style-type: none"> 1. Mailings, newsletters and other paper, electronic, or other communications which 	<p>spent on officeholder activities, provided that such expenditures are not prohibited by Section 2.12.611.D.</p> <p>D. Expenditures for research, surveys, photographic, or similar services, provided such services are only for officeholder purposes.</p> <p>E. Expenditures for attendance, travel, lodging, meals and other related expenses which serve a legislative or governmental purpose by the officeholder and members of the officeholder's City staff or others employed by the officeholder to perform duties related to officeholder activities. Such permissible expenditures shall include:</p> <ol style="list-style-type: none"> 1. Expenditures for attendance at conferences, meetings, receptions, and other events occurring within or outside of the United States, including registration or other attendance fees, travel, lodging, food, and incidentals; 2. Expenditures for membership and participation in programs for civic, service, or professional organizations, if such membership bears a reasonable relationship to a governmental or legislative purpose; and 3. Expenditures for educational courses or events reasonably related to a governmental or legislative purpose. <p>F. Expenditures for constituent and community communications, including:</p>	<p>permitted officeholders to expend officeholder funds for attorney's fees and other costs relating to litigation, administrative procedures, or other similar processes.</p> <p>Attorney's fees and costs are not appropriate expenditures to be made from officeholder accounts. Other state and local laws do not include these in this category for good reasons. The raising and expenditure of funds for legal defense purposes are not ordinary office expenses, raise many complex legal and ethical issues, and require careful, detailed provisions if they are to be lawful and appropriate. The use of officeholder funds for legal defense purposes may result in abuse. Hence, attorney's fees and costs should not be listed as permissible officeholder expenses in section 2.12.610.</p>
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	<p>provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;</p> <p>2. An officeholder's website and social media;</p> <p>3. Email and address list management.</p> <p>G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.</p> <p>H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.</p> <p>I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.</p> <p>J. Expenditures for attorneys' fees and other costs related to litigation, administrative procedures, or other processes arising directly from the officeholder committee's activities or the officeholder's activities, duties, or status as an elected officer.</p>	<p>1. Mailings, newsletters and other paper, electronic, or other communications which provide information related to community events, an officeholder's governmental duties, an officeholder's position on a particular matter, or any other matter of public concern or interest;</p> <p>2. An officeholder's website and social media;</p> <p>3. Email and address list management.</p> <p>G. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in their official capacity.</p> <p>H. Expenditures for payment of tax liabilities incurred as a result of permissible officeholder committee transactions.</p> <p>I. Expenditures for accounting, legal, professional, administrative, and similar services provided to the officeholder committee.</p>	
<p>Section 2.12.608 Prohibitions on transfer or reallocation of funds</p>	<p>The following restrictions apply to the transfer or reallocation of officeholder funds:</p> <p>A. No funds may be contributed, redesignated, or transferred to an officeholder committee from any campaign committee for any city,</p>	<p>The following restrictions apply to the transfer or reallocation of officeholder funds:</p> <p>A. No funds may be contributed, redesignated, or transferred to an</p>	<p>The FCPC version is the same as the Council's section 2.12.608, renumbered as section 2.12.620. The proposed restrictions keep campaign and officeholder contributions and</p>

<p>[Renumbered as 2.12.620]</p>	<p>county, regional, state, or federal elective office or ballot measure, or any other political committee.</p> <p>B. No funds may be contributed, redesignated, or transferred from an officeholder committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.</p> <p>C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.</p> <p>D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.</p>	<p>officeholder committee from any campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.</p> <p>B. No funds may be contributed, redesignated, or transferred from an officeholder committee to any candidate or campaign committee for any city, county, regional, state, or federal elective office or ballot measure, or any other political committee.</p> <p>C. No officeholder committee may be redesignated as a campaign committee for any city, county, regional, state, or federal elective office or ballot measure.</p> <p>D. No campaign committee for any city, county, regional, state, or federal elective office or ballot measure may be redesignated as an officeholder committee.</p>	<p>funds separate, and prevent the comingling of funds.</p>
<p>Section 2.12.610 Prohibition on simultaneously maintaining officeholder and campaign committees [Renumbered as section 2.12.621]</p>	<p>A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state or federal elective office.</p> <p>B. A candidate who is elected to any elective office in Berkeley must terminate their campaign committee before opening an officeholder committee.</p> <p>C. An officeholder must terminate any open officeholder committee prior to filing a</p>	<p>A. An officeholder may not simultaneously maintain an officeholder committee and a campaign committee for any city, county, regional, state, or federal elective office.</p> <p>B. A candidate who is elected to any elective office in the City must terminate their campaign committee before opening an officeholder committee.</p>	<p>The FCPC version is the same as the Council’s section 2.12.610, renumbered as section 2.12.621 and with a few minor stylistic changes. The proposed restrictions keep campaign and officeholder committees separate and prevent overlaps in activities and financing.</p>

	<p>Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.</p> <p>For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee prior to accepting the campaign committee Statement of Organization.</p>	<p>C. An officeholder must terminate any open officeholder committee before filing a Statement of Organization or equivalent initial filing for a campaign committee for any city, county, regional, state, or federal elective office.</p> <p>For officeholders filing a Statement of Organization with the City Clerk to form a campaign committee for a City of Berkeley office, the Clerk shall provide notice of the need to close any open officeholder committee before accepting the campaign committee Statement of Organization.</p>	
<p>[New] Section 2.12.612 Constituent and community communications</p>	<p><i>[No section on this subject exists in the Council proposal.]</i></p>	<p>A. Funds from an officeholder account shall be used for constituent and community communications only as permitted by this section.</p> <p>B. Funds from an officeholder account may be used for constituent and community communications only as follows:</p> <p>1. No funds from an officeholder account shall be used, directly or indirectly, for any campaign purposes. This means that these funds may not be used in support or opposition to any candidate or ballot measure in the City; and they may not be used to solicit campaign funds, to notify the public about campaign events, to provide information about a candidate, or for any other campaign-related purpose.</p>	<p>This new section will ensure that constituent communications funded by officeholder accounts are used exclusively for legitimate officeholder purposes, and never for campaign purposes.</p>

		<p>2. Communications paid from officeholder accounts should provide constituents and the community with information directly related to the officeholder’s governmental duties, the activities of city government, and to announcements of official agency events. These communications must be clearly identified as “Constituent and Community Communications,” and shall state that they are being funded by the elected official’s officeholder committee.</p> <p>3. Notwithstanding Government Code section 89002, officeholder communications with constituents may include mass mailings provided that they comply with 1-2 above or, alternatively, with section 89002(b). Copies of all mass mailings under this section shall promptly be sent to the Commission and shall be part of the public record.</p>	
<p>Section 2.12.612 Termination of officeholder committees upon leaving office [Renumbered as 2.12.660]</p>	<p>A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office.</p> <p>B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:</p> <p>1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.</p>	<p>A. An officeholder who does not file a Statement of Organization or equivalent initial filing to seek a subsequent city, county, regional, state, or federal elective office shall terminate their officeholder committee within 90 days of leaving office. The Commission may for good cause extend the termination date.</p> <p>B. Following the date of leaving office, an officeholder shall not make any new expenditures from their officeholder committee except for the following purposes:</p>	<p>Section 2.12.612 has been renumbered as section 2.12.660, which contains some additional new provisions.</p> <p>Under A., both the Council and the FCPC provide a similar 90-day time period time for terminating an officeholder committee after leaving office, but the FCPC allows for an extension of the deadline for good cause. This provides more flexibility.</p> <p>The FCPC proposal adds a requirement that an officeholder</p>

	<p>2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.</p> <p>3. Donating funds to the City's general fund.</p>	<p>1. Paying for legitimate, outstanding officeholder expenses accrued on or prior to the date of leaving office.</p> <p>2. Repaying contributions to contributors to the officeholder committee on a pro rata basis.</p> <p>3. Donating funds to the City's general fund.</p> <p>C. The officeholder terminating an officeholder account shall file a statement regarding the disposition of all funds from the account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, The officeholder closing the account must verify the statement and file it electronically no later the date prescribed for the termination of the officeholder account or the approved extension thereof. The Commission may require the statement to be provided on a form prescribed by the Commission.</p>	<p>terminating a committee and an account must file a statement regarding the disposition of all funds from the account. This will assist assuring that the funds were properly disposed of and that he public is aware of the disposition of the funds.</p>
<p>2.12.615 Limits and requirements for contributions and expenditures</p>	<p>A. The limit on cumulative contributions to an officeholder committee by a person other than the officeholder in a calendar year shall be the same as the limit on contributions to a candidate with respect to a single election under Section 2.12.415.</p> <p>Contributions to a candidate shall not be counted against the limit on contributions to an officeholder committee in the same calendar year.</p>	<p><i>[This section has been deleted and replaced by other new sections, which generally address the issues differently.]</i></p>	<p>A. The Council and FCPC proposals differ significantly with respect to the amount of annual contributions that private individuals can make to officeholders. The Council proposal in in this section would allow individuals to contribute as much as an individual can make to a privately funded campaign under section 2.12.415— \$250 annually (adjusted for cost of living). The FCPC proposal in section 2.12.603 would limit the amount of</p>

	<p>B. Officeholder committees shall be subject to the limits on contributions from organizations and entities to candidates and committees under Section 2.12.440.</p> <p>C. Nothing in this Article shall limit the amount an officeholder may contribute to their own officeholder committee or spend on officeholder expenses either through or not through an officeholder committee.</p> <p>D. All requirements and prohibitions for campaign contributions and expenditures under Sections 2.12.300, 2.12.305, 2.12.310, 2.12.315, and 2.12.320 shall apply to officeholder committees.</p>		<p>the contribution that individuals can make to the amount of a “qualifying contribution” under section 2.12.167—\$50 (adjusted). The FCPC thinks that limiting officeholder contributions to the lower amount is better public policy because it will ensure that no individual can unduly influence—or appear to influence—any principal elected official in the city. The lower limit will also level the playing field among Council members by enabling all eligible elected officials to be able to collect small contributions from numerous constituents rather than enabling a few members from wealthier districts to collect larger contributions from wealthier constituents. The current legislation should not create disparities in the resources available to different Council members based on the wealth of their districts or their constituents.</p> <p>B. Both the Council in B. of this section and the FCPC in section 2.12.603 would prohibit contributions to officeholders from corporations and other entities. But only the FCPC proposal would limit contributions to natural residents of Berkeley. This will limit outside influences on local government business and ensure that elected officials are primarily responsible to their own citizens.</p> <p>C. The Council proposal would permit officeholders to contribute unlimited amounts to their own officeholder</p>
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			<p>committee and to spend unlimited amounts for their own office. The FCPC proposal in section 2.12.603.D. would limit the amount an officeholder can contribute and spend; and it would require officeholders to regularly report all contributions and expenditures, including their own. The FCPC's approach would result in greater fairness and transparency.</p> <p>D. Both the Council and the FCPC versions would make various requirements of the BERA concerning contributions and expenditures applicable to officeholder committees and accounts. The content of 2.12.615.D. has been relocated to 2.12.604 of the FCPC proposal.</p>
2.12.625 Officeholder committees and public financing	<i>[No section on this subject exists in the Council proposal.]</i>	Individuals who have established, maintained, and used an officeholder committee may participate in the City's public campaign financing program under Article 8, the Fair Elections Act, provided that they comply with the requirements of this Article, including terminating any open officeholder committee before filing a Statement of Organization for a campaign committee for elective office.	This new section clarifies that a candidate participating in the City's public financing program may, if elected as an eligible officeholder, create an officeholder committee and account, provided that they comply with the requirements of Article 9.
2.12.645 Officeholder Committee Treasurer [Renumbered as section 2.12.640]	Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.	Each officeholder committee shall appoint a committee treasurer and shall comply with all requirements for campaign committee treasurers under section 2.12.245.	The FCPC version is the same as the Council's section 2.12.645, renumbered as section 2.12.640. This provision on treasurers is consistent with the BERA on other types of committees.

<p>2.12.650 Officeholder expenditure and contribution account – Establishment required – Procedure for use [Renumbered as section 2.12.641 and renamed Officeholder account – Establishment required – Procedure for use.]</p>	<p>An officeholder committee treasurer shall establish and manage a checking account. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article.</p>	<p>An officeholder committee treasurer shall establish and manage a separate checking account exclusively for the purposes of the committee. All provisions of Section 2.12.250 regarding the establishment and use of campaign accounts shall also apply to the establishment and use of officeholder committee checking accounts, unless otherwise provided in this Article. Consistent with this Article and notwithstanding 2.12.250.D., the treasurer of an officeholder committee shall not accept any monetary or non-monetary contribution with a value in excess of fifty dollars (\$50) and must retain itemized receipts or vouchers of all contributions.</p>	<p>Both the FCPC and Council proposals contain this section that requires the treasurer to establish and manage a checking account. The FCPC proposal has modified the provision to clarify that the checking account must be a <u>separate account</u> used <u>exclusively</u> for the purposes of the officeholder committee. The FCPC version also adds a clarification that the treasurer of an officeholder committee shall not accept any monetary or non-monetary contribution with a value in excess of fifty dollars (\$50) and must retain itemized receipts or vouchers of all contributions. The FCPC version section has also been renumbered.</p>
<p>2.12.655 Statement of organization – Committee required to file. [Renumbered as section 2.12.630]</p>	<p>A. Every officeholder committee shall file with the City Clerk a statement of organization before accepting contributions. B. The date on which an officeholder committee is formed by filing a statement of organization shall determine the officeholder committee’s obligation to file statements and reports required by this chapter.</p>	<p>A. Every eligible officeholder who directly or indirectly, from any authorized person or from themselves, receives contributions that cumulatively total more than two hundred fifty dollars (\$250) in a calendar year or makes expenditures exceeding two hundred fifty dollars (\$250) in a calendar year for expenses related to holding office shall establish an “officeholder committee” and shall open an “officeholder account” as defined in section 2.12.157. B. Every officeholder committee shall file with the City Clerk a Statement of Organization for the officeholder committee before accepting contributions.</p>	<p>The FCPC and Council’s proposals both contain the provisions that (1) every officeholder shall file a statement of organization with the City Clerk before accepting contributions, and (2) the date an officeholder committee is formed by filing the statement of organization shall determine the officeholder committee’s obligations to file statements and reports. (Section 2.12.630.B and C.) The FCPC proposal would also add two subsections. The first new subsection provides that every eligible officeholder who directly or indirectly, from any authorized person or from themselves, receives</p>

		<p>C. The date on which an officeholder committee is formed by filing a Statement of Organization shall determine the officeholder committee's obligation to file statements and reports required by this chapter.</p> <p>D. Every eligible officeholder who does not directly or indirectly, from any authorized person or from themselves, receive contributions that cumulatively total more than two hundred fifty dollars (\$ 250) in a calendar year or make expenditures exceeding two hundred fifty dollars (\$250) in a calendar year for expenses related to holding office shall file a verified certificate stating that they are not required to establish a committee or open an account because the amounts received or expended, if any, do not exceed the amounts specified in subsection A. above. Every eligible officeholder shall file the certificate required by this subsection on the dates prescribed under section 2.12.650, notwithstanding the fact they are not required to file a complete report under that section.</p>	<p>contributions that cumulatively total more than two hundred fifty dollars (\$ 250) in a calendar year or makes expenditures exceeding two hundred fifty dollars (\$250) in a calendar year for expenses related to holding office shall establish an "officeholder committee" and shall open an "officeholder account" as defined in section 2.12.157. (Section 2.12.630.A.) This new provision is consistent with the approach to establishing a committee for campaign purposes under BERA, section 2.12.095.</p> <p>The second new subsection provides that every eligible officeholder who does not directly or indirectly, from any authorized person or from themselves, receive contributions that cumulatively total more than two hundred fifty dollars (\$250) in a calendar year or make expenditures exceeding two hundred fifty dollars (\$250) in a calendar year for expenses related to holding office shall file a verified certificate stating that they are not required to establish a committee or open an account because the amounts received or expended, if any, do not exceed the amounts specified in subsection A. above. (Section 2.12.630.D.) The certificates required by that subsection shall be filed on the dates prescribed by section 2.12.650. This new provision is consistent with the reporting requirements for campaign candidates who raise or expend only</p>
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		<p>small amounts and are allowed to file a short form statement rather than a complete campaign statement, (See section 2.12.270.C.)</p> <p>These two new provisions should make it easier for officeholders who receive or expend only minimal amounts and do not intend to raise funds for officeholder purposes to comply with the law, while requiring them to publicly report those facts by regularly filing the appropriate certification.</p> <p>Two additional issues were raised at the FCPC's September 8, 2022 meeting, which require further committee discussion. First, should the proposed threshold amount at which the requirement for filing a Statement of Organization for officeholder committees be changed? The amount of \$250 is based on the amount that currently triggers a filing requirement for campaign committees. (See BERA, sections 2.12.095 and 2.12.255.) If the amount for officeholder committees is to be different (e.g., larger or smaller), what is the rationale? And if the amount to be set for officeholder committees is to be different from \$250, what amount would be appropriate?</p> <p>Second, the proposal currently bases the threshold amount for filing a Statement of Organization on the total amount of the contributions from authorized persons and the</p>
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			<p>officeholder. This—and the related reporting requirements--would insure that the public knows how much the officeholder as well as others are contributing to officeholder accounts. This information is necessary to determine whether the cap on total contributions under section 2.12.602 and individual contributions under section 2.12.603 are reached. The FCPC should discuss the implications of limiting the threshold requirement for filing to contributions by persons other than the officeholder. If the Commission ultimately decides that there should not be any limitations on the amount of the contributions by officeholders themselves, that would be a significant change, probably requiring modifications to a number of other sections of the proposed ordinance besides section 2.12.630.</p>
<p>2.12.660 Statement of organization – information required [Renumbered as section 2.12.631]</p>	<p>The statement of organization required by Section 2.12.655 shall include:</p> <ul style="list-style-type: none"> A. The name, street address and telephone number of the officeholder committee; B. The name of the officeholder; C. The full name, street address and telephone number of the treasurer and other principal officers; D. The elected office held by the officeholder; E. The account number and name of the bank at which the checking account, required by Section 2.12.650, is maintained; if the information required by this section is 	<p>The statement of organization for an officeholder committee required by Section 2.12.630 shall include:</p> <ul style="list-style-type: none"> A. The name, street address and telephone number of the officeholder committee; B. The name of the officeholder; C. The full name, street address and telephone number of the treasurer and other principal officers; D. The elected office held by the officeholder; 	<p>The Council and the FCPC proposals on this section are the same, except for the renumbering and changes in the cross-references.</p>

	<p>unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;</p> <p>F. The cash on hand at the time of filing the statement of organization;</p> <p>G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter.</p>	<p>E. The account number and name of the bank at which the checking account, required by Section 2.12.641, is maintained; if the information required by this section is unavailable at the time of filing the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;</p> <p>F. The cash on hand at the time of filing the statement of organization;</p> <p>G. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this Chapter.</p>	
<p>Section 2.12.665 Statement of organization-- Change of information-- Amendment Required. [Renumbered as section 2.12.632]</p>	<p>Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.</p>	<p>Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change.</p>	<p>The Council and the FCPC proposals on this section are the same, except for the renumbering.</p>
<p>Section 2.12.670 Officeholder statements – Filing requirements [Renumbered as 2.12.650 and renamed as</p>	<p>Each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for campaign committee statements. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.</p>	<p>A. All contributions received for, and all expenditures made from, each officeholder account during a calendar year shall be reported as prescribed in B. and C. below.</p> <p>B. Officeholder committee statements required by this Article shall include all applicable information required for</p>	<p>Under the FCPC proposal, this section requires that all contributions received and expenditures made from an officeholder account must be reported and the committee statements must provide all the information required by section 2.12.280 for campaign statements. While the Council proposal may have</p>

<p>Reporting - Officeholder statements – Content – Filing dates.]</p>		<p>campaign committee statements by Section 2.12.280.</p> <p>C. Each eligible officeholder who maintains an officeholder committee and account shall file a statement containing all the required information one or more times each calendar year, as prescribed by the Commission. Unless the Commission prescribes otherwise, each officeholder committee statement shall be filed in accordance with the filing dates prescribed by state law for semi-annual campaign committee statements. If the Commission determines that other dates are more appropriate for the filing of officeholder committee statements, the Commission shall set the necessary filing dates.</p>	<p>assumed these requirements, the FCPC proposal makes them explicit, which will improve the clarity, implementation, and enforcement of the ordinance.</p> <p>The FCPC proposal also modifies the Council proposal regarding the time of filing officeholder committee statements, to provide that each statement shall be filed in accordance with the filing dates prescribed by state law for <u>semi-annual</u> campaign statements, <u>unless the Commission determines that other dates are more appropriate</u>. (The underlined provisions are new.) The FCPC’s proposed changes to this section improve it by (1) making the timing of filing of officeholder statements clearer because there are many different possible dates for filing campaign statements, many of which would seem to be inapplicable, and (2) giving the Commission the discretion to adjust the filing dates if another date or dates prove to be more appropriate for officeholder statements than the semi-annual campaign filing dates.</p>
<p>Section 2.12.675 Officeholder statements – Verification [Renumbered as 2.12.655 and renamed Filing requirements.]</p>	<p>A. Reports and statements required by this Article shall be subject to the filing requirement of Sections 2.12.025, 2.12.030, 2.12.032, 2.12.033, 2.12.035, 2.12.040, 2.12.045 and 2.12.050.</p> <p>B. An officeholder shall verify his or her officeholder statement. The verification shall be in accordance with the provisions of Section 2.12.025 except that it shall state that</p>	<p>All reports and statements required to be filed by this Article shall be subject to the filing requirements and other provisions of the Berkeley Election Reform Act relating to the filing of campaign reports and statements, including the signature and verification requirements in section 2.12.025, the provisions on where to file in section 2.12.030, the requirement to file</p>	<p>The FCPC proposal retains the same filing requirements as the Council proposal in subsection A. but explains them in a little more detail. This should be helpful to persons reading the ordinance.</p> <p>The specific verification requirements proposed in 2.12.675.B. have been omitted because verification is</p>

	they have made reasonable inquiry into the truthfulness and completeness of such officeholder statement and that to the best of their knowledge, the treasurer of the officeholder committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any officeholder committee from the obligation to verify each officeholder statement filed pursuant to Section 2.12.025.	electronically in section 2.12.032, the filing procedures in section 2.12.033, and the provision that no fee or charge shall be collected by the City Clerk for the filing of the statement or report under section 2.12.035.	already required under revised section 2.12.655. The version there is simpler and consistent with section 2.12.025, which prescribes the verification requirements for all statements and reports filed under BERA. There is no reason for creating different verification requirements for officeholder committee statements and reports.
Section 2.12.680 Officeholder Statement – Information required	Officeholder committee statements required by this article shall include all applicable information required for campaign committee statements by Section 2.12.280.	<i>[Section 2.12.680 has been deleted and its contents have been relocated to new section 2.12.650.B.]</i>	The Council and the FCPC proposals both contain the same provisions regarding the required contents of officeholder statements, though located in different sections. This requirement is consistent with the requirements for the content of campaign committee statements under BERA.
Section 2.12.658 Requirements for public inspection, preservation, and City Clerk's responsibilities.	<i>[No section on this subject exists in the Council proposal.]</i>	All reports and statements required by this Article shall be subject to the same provisions for public inspection, preservation, and City Clerk's responsibilities as provided for campaign reports and statements in sections 2.12.040, 2.12.045, and 2.12.050.	The FCPC proposal adds this section to ensure that officeholder statements and reports are subject to the same provisions for public inspection, preservation, and City Clerk's responsibilities as statements and reports under the rest of BERA.
Section 2.12.670 Records of officeholder accounts.	<i>[No section on this subject exists in the Council proposal.]</i>	A. The officeholder and treasurer of an officeholder committee are subject to record keeping requirements. B. It is the duty of each officeholder and each treasurer for an officeholder committee to maintain detailed accounts, records, bills, and receipts necessary to prepare officeholder statements, to establish that the	The FCPC proposal adds a new section on record-keeping requirements. First, these provisions provide, among other things, that it is the duty of officeholders and treasurers to maintain detailed accounts, records, bills, and receipts necessary to prepare officeholder statements and to establish that the statements are accurate and properly

		<p>statements were accurate and properly filed, and to otherwise comply with the provisions of this Article. Officeholders and treasurers must also maintain records of the cumulative amount of all contributions and expenditures.</p> <p>C. The detailed accounts, records, bills, and receipts shall be retained by the officeholder and treasurer for a period specified by the Commission. The records shall be retained for a period of at least four years after the adoption of a final audit report or five years from the date of any alleged violation, whichever is less, unless the Commission provides otherwise.</p> <p>D. In the event that a person alleged to have violated this Article fails to produce documents in response to a court order to produce the records sought by subpoena, the five-year period in C. above shall be tolled for the period of delay from the date of filing of the motion to compel until the date the documents are produced.</p> <p>E. Officeholders and treasurers shall make available to the Commission and other authorities or their designees specified in section 2.12.250.F, on demand, the details of any account requested and the records supporting it, and shall sign a waiver permitting those authorities or their designees to inspect officeholder account records maintained by the bank in which the officeholder account is opened.</p>	<p>filed. These provisions are consistent with state and local law relating to recordkeeping. (See Gov't Code § 84104; 2 Cal. Code Reg. § 18401; BERA, section 2.12.250.D.–E.)</p> <p>Second, the section provides that records relating to officeholder accounts shall be retained for a period of at least four years after the adoption of a final audit report or five years from the date of any violation. This is consistent with state and local law. (See 2 Cal. Code Reg. §§ 18401 and 18531.62; BERA, section 2.12.250.D.–F.)</p> <p>Finally, the section provides that officeholders and treasurers shall make available to the Commission and other authorities or their designees specified in section 2.12.250, on demand, the details of any officeholder account requested and the records supporting it. This is consistent with state and local law. (See Gov't Code § 90001(i); 2 Cal. Regs. § 18401; BERA, section 2.12.250.F.)</p>
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<p>Section 2.12.675 Audits of officeholder committees and accounts.</p>	<p><i>[No section on this subject exists in the Council proposal.]</i></p>	<p>A. Officeholder committees and officeholder accounts are subject to audits.</p> <p>B. The City Auditor shall audit all officeholder committees and officeholder accounts every two years beginning in 2024. The audits shall cover the preceding two-year period ending July 1 of every even-numbered year. The final audits shall be publicly filed with the City Clerk and copies shall be sent to the Commission for review no later than October 1 of the even-numbered year when the audits are scheduled to be prepared and filed.</p> <p>C. In the event that any audit or audits are not completed, finalized, and filed by October 1, the Clerk shall promptly notify the Commission and the affected officeholder and treasurer responsible for the officeholder committee. Upon receipt of this notice, the officeholder committee shall immediately cease operations, including collecting contributions and making expenditures, until the final audit or audits have been filed, copies have been sent to the Commission, and the Commission has approved the audit.</p>	<p>The FCPC proposal provides for regular audits of officeholder committees and accounts. It provides that the City Auditor shall audit all officeholder committees and accounts every two years beginning in 2024. The audits shall cover the preceding two-year period ending July of every even numbered year. The final audits shall be publicly filed with the Clerk and copies shall be sent to the FCPC for review not later than October 1 of the even year when the audits were scheduled to be prepared and filed. (Section 2.12.685.A.)</p> <p>The FCPC proposal further provides that, if any audit or audits are not completed, finalized, and filed by October 1, the Clerk shall promptly notify the Commission and the affected officeholder and treasurer. Upon receipt of this notice, the officeholder committee shall immediately cease operations, including collecting contributions and making expenditures, until the final audit or audits have been filed, copies sent to the Commission, and the Commission has approved the audits. (section 2.12.685.B.)</p> <p>Unlike the FCPC proposal, the Council proposal does not include any provision regarding audits.</p>

			<p>Providing for regular audits of officeholder committees and accounts is good practice, ensures compliance with the law, and is consistent with state law relating to the regulation of officeholder committees and accounts. (See Gov't Code § 90001; 2 Cal. Code Reg. § 18531.62(c)(4).) The state's requirement for regular audits of officeholder accounts is superior to the current provision in BERA for auditing campaign accounts (see BERA, section 2.12.250.G), which has proven ineffective. In most instances, BERA is more rigorous than state law; with regard to the auditing of officeholder committees and accounts, it should also be at least as rigorous.</p> <p>Finally, with respect to the cost of audits, these should be minimal. At least until recently, only one Member of the Council has maintained an officeholder account. Even if other members and the mayor establish such accounts in the future, the burden of auditing these few additional accounts every two years should not be substantial and would be outweighed by the benefits of creating greater public confidence in the city's principal officeholders by assuring that all private contributions to them are being properly regulated. Naturally, if the authorization to establish officeholder committees were to be expanded to all elected city officials, as proposed by the Council, that would greatly increase</p>
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			the costs of auditing; but that is not proposed by the Commission.
Section 2.12.685 Enforcement	Violations of this article involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of this chapter.	<p>A. Violations of this article involving the unlawful use of officeholder committees and accounts are subject to the limitations on contributions in Article 6 and the enforcement procedures and penalties in Article 7 of this Chapter. For the purposes of Article 9, section 2.12.435 is modified to provide that, if any person is found guilty of violating the terms of this Article, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available funds in the officeholder account, if any, the amount received in excess of the amount permitted by this Article to the City for deposit in the City's general fund.</p> <p>B. In addition to the limitations, enforcement procedures, and penalties in Articles 6 and 7, if the Commission determines, after notice and a hearing, that an officeholder has committed a substantial violation of the regulations relating to officeholder accounts, it may suspend or terminate the officeholder's committee and account and may prohibit the officeholder from establishing, maintaining, or operating such a committee or account in the future.</p>	<p>Both the FCPC and the Council proposals provide that the violations of Article 9 involving the unlawful use of officeholder committees are subject to the enforcement procedures and penalties in Article 7 of BERA. (Section 2.12.685.A.) The FCPC proposal also makes the limitations on contributions in Article 6 explicitly applicable to Article 9. This means that, if any person is found guilty of violating the terms of the chapter, the treasurer who received part or all of the contributions which constitute the violation shall pay promptly, from available officeholder account funds, if any, the amount received by such persons in excess of the amount permitted by the chapter for deposit in the general fund,</p> <p>In addition, the FCPC proposal adds a provision that, if the Commission determines, after notice and a hearing, that an officeholder has committed a substantial violation of the regulations relating to officeholder accounts, it may suspend or terminate the officeholder's committee and account and may prohibit the officeholder from establishing, maintaining, or operating such a committee or account in the future. This provision</p>

			<p>ensures that, in addition to monetary penalties, the Commission—acting in accord with due process—may take action to stop misconduct, and to prevent further abuses, if an officeholder commits serious violations of Article 9.</p>
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Fair Campaign Practices Commission

October 13, 2022

To: Fair Campaign Practices Commission

From: Sam Harvey, Secretary, Fair Campaign Practices Commission

Re: City Council Referral – Candidate Contribution Limits Under BMC § 2.12.415

At its meeting on September 8, 2022, the Commission discussed a referral from the City Council to review the contribution limits under Berkeley Municipal Code section 2.12.415, which limits campaign contributions to candidates to \$250 per contributor.

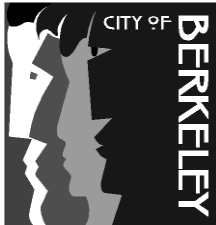
At that meeting, the Commission discussed possible next steps, including whether to form a subcommittee to review the referral. The Commission decided to continue the item to its October 20, 2022 meeting in order to have further discussion by the entire Commission.

The staff report from the September 8, 2022 meeting is included here as Attachment 1.

To inform its discussion, the Commission requested that staff provide background data from the Commission's 2021 consideration of amendments to the City's public financing program. This data is included as Attachment 2.

Attachments:

1. Staff Report and attachments – Sep. 8, 2022 FCPC meeting
2. Maplight data re campaign costs



Fair Campaign Practices Commission

September 1, 2022

To: Fair Campaign Practices Commission

From: Sam Harvey, Secretary, Fair Campaign Practices Commission

Re: City Council Referral – Candidate Contribution Limits Under BMC § 2.12.415

Background

At its meeting on September 16, 2021, the Commission approved a number of amendments to BERA, primarily related to the City's public campaign financing program. These amendments were approved by the City Council on November 30, 2021. Included in these amendments was a provision providing that the \$250 per-contributor contribution limit for City candidates shall be adjusted every two years based on cost of living. (See BMC § 2.12.415.)

During its review and approval of these amendments, the City Council requested that the Commission also review whether the \$250 limit should be increased.

Current Situation and its Effects

The Berkeley Election Reform Act ("BERA") (BMC Ch. 2.12.) limits campaign contributions to candidates to \$250 per contributor. Berkeley Municipal Code section 2.12.415 (Attachment 1) provides in relevant part:

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.

Candidates may only accept contributions from natural persons. (BMC § 2.12.440.) Specifically, BERA provides that no "proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union" may make a contribution to a candidate and no candidate may solicit or accept such a contribution. (Id.)

The \$250 contribution limit applies only to candidates and their campaign committees. The limit does not apply to independent expenditure committees, which may raise unlimited amounts to support or oppose a candidate, from nearly any source, provided they do not coordinate with a candidate's campaign. Additionally, the limit does not apply to ballot measure committees.

The \$250 limit in BMC section 2.12.415 was adopted in 1974 and has remained unchanged. (See Attachment 2 - Berkeley Election Reform Act, Sec. 600, p.16 (as adopted by the voters in 1974).) Adjusted for inflation, \$250 in 1974 is the equivalent of roughly \$1,500 in 2022. Put another way, \$250 in 2022 has the same spending power as roughly \$40 in 1974.¹ As a result, the contribution limit has functionally decreased since its adoption in 1974.

Possible Next Steps

Staff recommends that the Commission first develop a plan for the consideration of this referred item. The Commission may wish to form a subcommittee to review this item. Additionally, the Commission may wish to request certain information from staff. Possible information the Commission may wish to request includes:

- Campaign contribution and expenditure data for City races
- Contribution limits from other jurisdictions
- Legislative history information for BERA
- Copies of policy papers and analyses from academic and other sources on the topic of contribution limits

While staff remains neutral as to whether the \$250 limit should be amended, staff recommends that the Commission consider the interplay between the City's ordinary \$250 candidate campaign contribution limit and the City's public financing program to ensure cohesion among the many parts of BERA.

BERA may be amended via the "double greenlight process." First, an amendment must be adopted by the Commission by a two-thirds vote. Next, after thirty days, the City Council may hold a public hearing and adopt the amendment by a two-thirds vote. (BMC § 2.12.051.A.)

¹ Based on calculations using U.S. Bureau of Labor Statistics Consumer Price Index Inflation Calculator: https://www.bls.gov/data/inflation_calculator.htm.

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. The Commission shall adjust the dollar amount in this Section for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year. For purposes of this section single election is a primary, general, special, runoff or recall election. (Ord. 7793-NS § 1, 2021: Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 600, 1974)

The Berkeley Municipal Code is current through Ordinance 7812-NS, passed May 24, 2022.

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.

City Website: www.berkeleyca.gov

Code Publishing Company

ORDINANCE NO. 4700-N.S.

BERKELEY ELECTION REFORM ACT OF 1974.

BE IT ORDAINED by the People of the City of Berkeley:

CHAPTER 1. GENERAL

Sec. 100. This ordinance shall be known and may be cited as the Berkeley Election Reform Act of 1974.

Sec. 101. The people find and declare as follows:

(a) Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth;

(b) Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them;

(c) Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions;

(d) The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate;

(e) Previous laws regulating campaign practices have suffered from inadequate enforcement.

Sec. 102. The people enact this ordinance to accomplish the following purposes:

(a) Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited;

(b) The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced;

(c) Adequate enforcement mechanisms should be pro-

vided to public officials and private citizens in order that this ordinance will be vigorously enforced.

Sec. 103. This ordinance should be liberally construed to accomplish its purposes.

Sec. 104. Reports and statements filed under this ordinance shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this ordinance which contains material which he or she knows to be false is guilty of perjury.

Sec. 105. Reports or statements filed under this ordinance shall be filed with the City Clerk.

Sec. 106. No fee or charge shall be collected by the City Clerk for the filing of any report or statement or for the forms upon which the reports or statements are to be prepared.

Sec. 107. Campaign statements are to be open for public inspection and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents (\$0.10) per page copied.

Sec. 108. Every campaign statement shall be preserved by the City Clerk for at least six (6) years from the date upon which it was required to be filed under the terms of this ordinance.

Sec. 109. With respect to reports or statements filed with him or her pursuant to this ordinance, the City Clerk shall:

(a) Supply the necessary forms and manuals prescribed by the Commission;

(b) Notify in advance all candidates and known committees of the dates campaign statements are required;

(c) Report apparent violations of this ordinance to the appropriate agencies; and

(d) Complete and maintain a current list of all reports and statements filed with his or her office.

Sec. 110. Whenever in this ordinance the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services or facilities shall be appended to the report or statement.

Sec. 111. If any provision of this ordinance, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this ordinance are severable.

Sec. 112. The City of Berkeley shall publish, in all newspapers whose editorial offices are in Berkeley, which during at least six (6) months of the year generally publish a newspaper at least five days a week and at least two-thirds of whose newspapers are delivered in Berkeley, a list of all contributors of over \$50 to any candidate or committee, under the heading of Public Notice, seven (7) days before the election and on the day preceding the election. In addition, the City of Berkeley shall publish a list of all contributors of over \$50 to any candidate or committee, under the heading Public Notice, at such time or times and in such newspaper or newspapers as the Commission shall find is appropriate to inform minority group members of such contributions.

CHAPTER 2. DEFINITIONS

Sec. 200. Unless the contrary is stated or clearly appears from the context, the definitions set forth in this chapter shall govern the interpretation of this ordinance.

Sec. 201. "Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index for the United States, published by the United States Bureau of Labor Statistics using October 1974 as the base month. The Commission shall calculate the adjusted amounts based on the index level of the month six months prior to an election and shall inform all candidates and committees of said figure on the filing date for that election.

Sec. 202. "Campaign statement" means an itemized report which is prepared on a form prescribed by the Commission and which provides the information required by Chapter 4 of this ordinance.

Sec. 203. "Candidate" for the purposes of this ordinance means a candidate for a Berkeley municipal elective office. "Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution or makes an expenditure or gives his or

her consent for any other person to receive a contribution or makes an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this ordinance the proponents or opponents of a measure.

Sec. 204. "Commission" means the Berkeley Fair Campaign Practices Commission.

Sec. 205. "Committee" means any person or combination of persons that directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party.

Sec. 206. "Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this ordinance. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor when volunteered by the person performing the service or labor, but shall include service or labor for which a payment is made.

Sec. 207. "Controlled committee" means a committee which is controlled, directly or indirectly, by a candidate or which acts

jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A candidate controls a committee if he or she, his or her agent or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

Sec. 208. "Cumulative amount" in a campaign statement means the amount contributed or expended since the closing date of the most recent post-election statement which has been filed by the filer. If the filer has not previously filed a campaign statement pursuant to any of these sections, the cumulative amount is the amount contributed or expended since the effective date of this ordinance.

Sec. 209. "Elected officer" means any person who holds an elective office or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer.

Sec. 210. "Election" shall mean any primary, general or special municipal election held in the City of Berkeley, including an initiative, referendum or recall election.

Sec. 211. "Elective office" means any elective office as defined in the Berkeley City Charter.

Sec. 212. "Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation, whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party.

Sec. 213. "Filer" means any person filing or required to file any statement or report under this ordinance.

Sec. 214. "Independent committee" means a committee which is not controlled either directly or indirectly by a candidate or controlled committee, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates.

Sec. 215. "Late contribution" means any contribution of \$100 or more received after the closing date of the last campaign statement

required to be filed prior to an election.

Sec. 216. "Mass mailing" means two hundred (200) or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry.

Sec. 217. "Measure" means any City Charter amendment, ordinance or other proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot.

Sec. 218. "Period covered" by a statement or report required to be filed by this ordinance means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report in question. If the person filing the statement or report has not previously filed a report or statement of the same type, the period covered begins on the effective date of this ordinance. Nothing herein shall exempt any person from disclosing transactions which occurred prior to the effective date of this ordinance according to the law then in effect.

Sec. 219. "Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.

CHAPTER 3. BERKELEY FAIR CAMPAIGN PRACTICES COMMISSION

Sec. 300. There is hereby established in Berkeley municipal government the Berkeley Fair Campaign Practices Commission. The Commission shall have nine (9) members, including the chairperson.

Sec. 301. Each member of the Commission shall serve for the same term as the Councilmember appointing them. Members of the Commission may not be reappointed by the same Councilmember. All initial appointments shall be made by September 1, 1974. A member whose term has expired shall serve until his or her successor is appointed.

Sec. 302. A majority of the appointed members shall constitute a quorum.

Sec. 303. The Commission shall elect its own chairperson.

Sec. 304. Vacancies on the Commission shall be filled, within

thirty (30) days, by appointment of the same official, or his or her successor, who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to execute all of the powers of the board.

Sec. 305. Each member of the Commission shall be a resident of Berkeley and registered to vote in Berkeley elections. No member of the Commission, during his or her tenure, shall hold or seek election to any other public office, serve as an officer of any political party or partisan organization or participate in or contribute to a Berkeley municipal election campaign. No member of the Commission shall endorse, support, oppose or work on behalf of or against any candidate or measure in a Berkeley election. Each member of the Commission shall use his or her best efforts to remain independent of candidates and measures in Berkeley elections.

Sec. 306. The Commission shall have a staff which shall act in accordance with Commission policies and regulations and with applicable law to investigate violations and bring proper court action and to assist the Commission in the performance of its duties.

Sec. 307. The Commission has the primary responsibility for the impartial, effective administration of this ordinance.

Sec. 308. The Commission may adopt, amend, and rescind rules and regulations to carry out the purposes of this ordinance, and to govern the procedures of the Commission.

Sec. 309. The Commission shall, in addition to its other duties:

(a) Prescribe forms for reports, statements, notices and other documents required by this ordinance;

(b) Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this ordinance, and explaining the duties of persons and committees under this ordinance;

(c) Provide assistance to agencies and public officials in administering the provisions of this ordinance;

(d) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this ordinance.

Sec. 310. Any person may request the Commission to issue an opinion with respect to his or her duties under this ordinance. The Commission shall issue the opinion with fourteen (14) days. No person who acts in good faith of an opinion issued to him or her by the Commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the

opinion request. The Commission's opinions shall be public records and may from time to time be published. The Commission may request the City Attorney to issue an opinion, in which case the City Attorney shall issue the opinion within fourteen (14) days.

Sec. 311. Upon the sworn complaint of any person or on its own initiative, the Commission shall investigate possible violations of this ordinance. Within seven (7) days after the receipt of a complaint under this section, the Commission shall notify in writing the person who made the complaint of the action, if any, which the Commission has taken or plans to take on the complaint, together with the reasons for such action or non-action.

Sec. 312. When the Commission determines there is probable cause for believing this ordinance has been violated, after making a good faith effort to give at least twenty-four (24) hours notice to the person or persons it has probable cause to believe violated this ordinance, it may hold a hearing to determine if such a violation has occurred. All interested persons may participate in the hearing pursuant to procedures established by the Commission.

Sec. 313. Any person may seek judicial review of any action of the Commission.

Sec. 314. All meetings of the Commission shall be open to the public.

CHAPTER 4. CAMPAIGN DISCLOSURE

ARTICLE 1. ORGANIZATION OF COMMITTEES

Sec. 400. (a) Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.

(b) No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designed agent.

(c) All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly" as used in this section means not later than five (5) days before the closing date of any campaign statement required to be filed

by the treasurer, and immediately if the contribution was received less than five (5) days before the closing date. All contributions shall be separated from and may not be comingled with any personal funds of the recipient or any other person.

Sec. 401 (a) A campaign treasurer for each candidate and for each and every committee shall establish a campaign contribution trust account for the candidate or committee to be administered by a trust officer of a bank at an office of the bank located in Alameda County. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's trust account promptly. Where a candidate or a committee are permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish under the terms of this section one joint trust account for the candidate and the committee;

(b) Amounts shall be paid from the campaign contribution trust account only upon receipt, by the trust officer administering the trust account, of a bill or voucher, certified by the campaign treasurer, from a person furnishing goods or services to the candidate or committee which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of twenty-five dollars (\$25) or more shall be made by a check payable to the person furnishing the goods or services to a candidate or committee;

(c) In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the trust account of the candidate or committee, upon certification by the campaign treasurer that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, the trust officer shall liquidate the trust account by paying the remaining balance in the trust account to the candidate or committee for his or her or its use in any lawful manner;

(d) The trust officer shall make available to the Commission, the City Attorney, the District Attorney, the California Attorney General and the California Secretary of State, on demand, the details of any trust account requested and the records supporting it. The trust officer shall maintain a record of every contribution received and disbursement made from the trust account which record shall include copies of checks, cancelled checks, bank records, bills and vouchers.

Sec. 402. Every committee shall file with the City Clerk a statement of organization within ten (10) days after it is formed as a committee. Each such committee in existence at the date of enactment of this ordinance shall file a statement with the City Clerk within thirty (30) days after the effective date of this ordinance.

Sec. 403. The statement of organization required by Section 402 shall include:

(a) The name, street address and telephone number, if any, of the committee;

(b) The name, street address and telephone number of each candidate, if any, with which the committee is affiliated or connected;

(c) The full name, street address and telephone number, if any, of the treasurer and other principal officer;

(d) The full name and office sought by each candidate and the title and ballot number if any, of each measure, which the committee supports or opposes;

(e) A statement of whether the committee is independent or controlled, and if it is controlled, the name of each candidate or committee by which it is controlled or with which it acts jointly;

(f) The disposition of surplus funds which will be made in the event of dissolution;

(g) Such other information as shall be required by the rules or regulations of the Commission consistent with the purposes and provisions of this ordinance.

Sec. 404. Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten (10) days to reflect the change.

ARTICLE 2. FILING OF CAMPAIGN STATEMENTS.

Sec. 410. Each candidate and each committee shall file no fewer than two campaign statements prior to an election and one campaign statement following the election. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law is amended to establish fewer than two filing dates prior to an election and one filing date following the election, the Commission shall set the necessary filing dates.

Sec. 411. A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. The verification shall be in accordance with the provisions of Section 104 except that it shall state that he or she has made reasonable inquiry into the truthfulness and completeness of such campaign statements and that to the best of his or her knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any committee from the obligation to verify each campaign statement filed pursuant to Section 104.

Sec. 412. Each campaign statement required by this article shall contain the following information:

(a) Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals.

(b) The total amount of contributions received during the period covered by the campaign statement from persons who have given twenty-five dollars (\$25) or more;

(c) The total amount of contributions received during the period covered by the campaign statement from persons who have given less than twenty-five dollars (\$25);

(d) The total amount of expenditures made during the period covered by the campaign statement to persons who have received twenty-five dollars (\$25) or more;

(e) The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than twenty-five dollars (\$25);

(f) The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;

(g) The full name of each person from whom a contribution or contributions totalling twenty-five dollars (\$25) or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;

(h) The full name, street address of each person to whom an expenditure or expenditures totalling twenty-five dollars (\$25) or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;

(i) In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;

(j) The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;

(k) In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treasurer of such committee.

Sec. 413. Whenever any provision of this chapter requires the filing of a campaign statement by a candidate, the candidate may in lieu thereof file a statement signed under penalty of perjury that to the best of his or her knowledge not more than two hundred dollars (\$200) has been received or expended on behalf of or in support of his or her candidacy.

Sec. 414. Two or more committees which act jointly in support of or in opposition to any candidate or measure may file consolidated campaign statements under this ordinance.

Sec. 415. Each late contribution shall be reported by the filing with the City Clerk within forty-eight (48) hours of its receipt the full name, street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of the contributor. Filing of a report of late contributions may be by any written means of communication, including but not limited to, telegram or letter, and need not contain an original signature. Late contributions shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

ARTICLE 3. PROHIBITIONS.

Sec. 420. All monetary contributions of twenty-five dollars (\$25) or more shall be made by written instrument containing the name of the donor and the name of the payee.

Sec. 421. No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.

Sec. 422. No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person.

Sec. 423. No expenditure shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section. This section is intended as a limitation and does not authorize any expenditures which are otherwise prohibited by this ordinance.

Sec. 424. No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totalling more than twenty-five dollars (\$25) in a calendar year. An anonymous contribution of more than twenty-five dollars (\$25) shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the General Fund of the City.

Sec. 425. No person shall make an expenditure for the purpose of sending a mass mailing unless the postage is paid by postage meter or the mail is sent by first class or third class bulk rate mail. The bulk rate number or meter number shall be stated in a campaign statement, and a copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the Commission. Such copies sent to the Commission shall be public record.

CHAPTER 5. LIMITATIONS ON EXPENDITURES

ARTICLE 1. CANDIDATES

Sec. 500. Aggregate expenditures by a candidate for any city-wide elective office, his or her agents and controlled committees during the six (6) months prior to an election shall not exceed ten thousand dollars (\$10,000) or fourteen cents (\$0.14) per registered voter, whichever is less, and adjusted in all years after October 1974 for cost of living changes as defined in Section 201.

Sec. 501. The amount set forth in Section 500 shall be reduced by ten percent (10%) for an incumbent who is seeking reelection to the same office.

Sec. 502. Except as provided in Section 503, no independent committee shall make expenditures aggregating more than one hundred dollars (\$100) during the six months preceeding an election in support of or in opposition to the candidate seeking election to a single elective office. Two or more independent committees which act jointly in receiving or soliciting contributions or in making expenditures shall be considered a single independent committee for the purposes of this chapter.

Sec. 503. Not less than forty (40) days prior to an election an independent committee may file with the Commission a statement of intent to make expenditures exceeding one hundred dollars (\$100) in support of a candidate. The Commission shall immediately notify all candidates for the office in question of the statement of intent and shall require the candidate being supported to file a verified statement of whether or not the committee is independent of him or her. The Commission shall approve the statement of intent not less than twenty-five days prior to the election if it finds that the filer is a bona fide independent committee, that it is acting in good faith in supporting the candidate, and that it has the intention and ability to incur the expenditures. If the statement of intent is approved, the Commission shall notify each candidate for the office in question other than the candidate supported by the independent committee that the limits contained in Section 500 may be increased by the amount in the statement of intent filed by the independent committee, except to the extent that statements of intent to make expenditures in support of such other candidates are also approved. The Commission shall not approve statements of intent for the support of a candidate aggregating more than twenty percent (20%) of the amount a candidate can spend under Section 500. If statements of intent exceeding this amount are submitted, the Commission shall apportion the expenditures on the basis of a strictly arithmetic formula which shall be prescribed by regulation, unless all the independent committees agree among themselves to a different allocation, in which case the Commission may apportion pursuant to the agreed-to allocation.

Sec. 504. Expenditures incurred by an ongoing organization, not formed specifically for the purpose of influencing voters, for communication strictly limited to its own members and not to the general public, shall not be included within the limitations contained in Sections 502 and 503.

Sec. 505. (a) If an expenditure is incurred in support of two candidates, eighty percent (80%) or the entire amount is charged to each candidate for the purposes of Sections 500, 502 and 503;

(b) If an expenditure is incurred in support of three candidates, seventy-five percent (75%) of the entire amount is charged to each candidate for the purposes of Sections 500, 502, 503;

(c) If an expenditure is incurred in support of four candidates, seventy percent (70%) of the entire amount is charged to each candidate for the purposes of Sections 500, 502 and 503;

(d) If an expenditure is incurred in support of five or more candidates, sixty-five percent (65%) of the entire amount is charged to each candidate for the purposes of Sections 500, 502 and 503.

Sec. 506. Payment made for the purposes of registering voters are not expenditures within the meaning of this chapter. This section does not affect the duty to disclose such payments under Chapter 4 of this ordinance.

Sec. 507. Independent committees shall indicate clearly on any material published, displayed, or broadcast that it was not authorized by a candidate, when such expenditures in whole or in part would have been covered by the provisions of this ordinance if they were subject to the control of a candidate.

ARTICLE 2. MEASURES.

Sec. 510. "Expenditures" as used in this article mean expenditures to influence the "action" of voters for or against the placing of a measure on the ballot or for or against the adoption of any measure which has qualified to be placed on the ballot.

Sec. 511. No committee shall make expenditures with respect to any measure in excess of one hundred dollars (\$100) without complying with the requirements of this article. For purposes of this article, two or more committees which act jointly in the receipt or solicitation of contributions or the making of expenditures shall be deemed a single committee.

Sec. 512. Any committee which intends to make expenditures in excess of one hundred dollars (\$100) with respect to any measure, shall, not later than twenty-eight (28) days prior to an election, file a statement of intent with the Commission, which shall identify the measure and state whether the committee intends to support or oppose the measure and the amount the committee intends to spend. The Commission shall approve the statement of intent, subject to the limitations set forth in this article, if it finds that the committee has the intention and ability to incur the expenditures. Not less than twenty-one (21) days prior to the election, the Commission shall notify each committee whose statement has been approved of the limitation on expenditures that is applicable to the committee.

Sec. 513. Aggregate expenditures in support of or in opposition to a measure shall not exceed seventy-five hundred dollars (\$7500) or ten cents (\$0.10) multiplied by the number of registered voters, whichever is less, and adjusted in all years after October 1974 for cost of living changes as defined in Section 201.

Sec. 514. (a) Except as provided in Section 514(b), if the aggregate amount set forth in the approved statements of intent filed in support of or in opposition to a measure exceeds the limitations contained in Section 513, the Commission shall apportion the permissible expenditures among the committees which have filed statements of intent on the basis of a strictly arithmetic formula which shall be prescribed by regulation, unless all the committees agree among themselves to a different allocation, in which case the

Commission may apportion pursuant to the agreed-to allocation.

(b) If the measure is placed on the ballot by the circulation of petitions, the electors who signed the notice of intent to circulate the petitions or their delegated representatives shall constitute the official committee and shall be allotted as much as they request, up to eighty percent (80%) of the allowed expenditures in Section 513.

Sec. 515. Expenditures incurred by an ongoing organization, not formed specifically for the purpose of influencing voters, for communication strictly limited to its own members, and not to the general public, shall not be included within the limitations contained in Sections 511, 512 and 513.

Sec. 516. If an expenditure is incurred in support of or in opposition to more than one measure, the entire amount is charged to each measure for the purposes of Section 513.

Sec. 517. No person shall receive any compensation for the circulation of petitions to place a measure on the ballot.

Sec. 518. Positions taken by a candidate on a measure shall not be charged to the committee supporting or opposing the measure if the expenditure is paid for by the candidate or committee supporting the candidate. Such expenditures shall be charged against the candidate's expenditure limit.

CHAPTER 6. LIMITATIONS ON CONTRIBUTIONS

Sec. 600. 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 and fifty dollars (\$250).

Sec. 601. No candidate shall make any contribution which will cause the total amount contributed by him or her to his or her campaign treasurer and all political committees supporting him or her to exceed, with respect to a single election, five times the limit specified in Section 600. "Candidate" for the purposes of this section shall include and mean the immediate family of the candidate, i.e. the candidate's spouse, and any child, parent, grandparent, brother or sister of the candidate, and the spouse of any such person.

Sec. 602. No person 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 a measure to exceed two hundred and fifty dollars (\$250).

Sec. 603. (a) In addition to any other limitations, no candidate together with his or her controlled committees can keep or expend on behalf of a candidate in the aggregate more than eight hundred dollars (\$800) in monetary contributions and no independent committee can keep or expend on behalf of a candidate more than two hundred dollars (\$200) in monetary contributions, except for contributions of \$25.00 or more and contributions as to which disclosures are made in campaign statements as if such contributions were \$25.00 or more. Any excess shall be paid promptly to the City Auditor for deposit in the General Fund of the City.

(b) In addition to any other limitations, all the committees spending more than \$100 in support or opposition to a measure cannot respectively keep or expend for or against in the aggregate more than one thousand dollars (\$1,000) (\$1,000 for all those supporting and \$1,000 for all those opposing the measure) in contributions, except for contributions of \$25.00 or more and contributions as to which disclosures are made in campaign statements as if such contributions were \$25.00 or more. If there is more than one such committee opposing or supporting a measure, the Commission shall determine pursuant to its rules what part of said \$1,000 each committee can keep and expend and shall inform the committee of the amount at least twenty-one (21) days before the election. Any excess shall be paid promptly to the City Auditor for deposit in the General Fund of the City.

Sec. 604. If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City Auditor for deposit in the General Fund of the City.

CHAPTER 7. ENFORCEMENT

ARTICLE 1. PENALTIES.

Sec. 700. Any person who knowingly or willfully violates any provision of this ordinance is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received.

Sec. 701. If a judgment is entered against the defendant or defendants in an action brought under Section 711, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the General Fund of the City. In an action brought by the Commission on the City Attorney, the entire amount recovered shall be paid to the General Fund of the City.

Sec. 702. If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this ordinance, the office of such candidate shall be forfeited and such office shall become vacant immediately, thereupon or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office.

Sec. 703. If a candidate receives a final judgment of conviction of a violation of this ordinance at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election.

Sec. 704. No person convicted of a violation of this ordinance shall be a candidate for City elective office for a period of five (5) years from and after the date of his or her conviction. A plea of nolo contendere shall be deemed a conviction for purposes of this section.

ARTICLE 2. ENFORCEMENT.

Sec. 710. Any person who believes that a violation of any portion of this ordinance has occurred may file a complaint with the Commission. If the Commission determines that there is reason to believe a violation of this ordinance has occurred, it shall make an investigation. If the Commission has reason to believe that a violation of this ordinance has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provisions of this ordinance.

Sec. 711. Any resident of the City of Berkeley who believes that a violation of this ordinance has occurred or is about to occur, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this ordinance.

Sec. 712. Before instituting an action pursuant to Section 711, a person must file a written request with the Commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The Commission shall respond within seven (7) days after receipt of the request stating whether or not it intends to file the action. If the Commission states that it intends to file the action and files the action within ten (10) days thereafter, no other action may be brought by any person unless the action brought by the Commission is dismissed without prejudice. If the Commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this ordinance.

This ordinance was approved by the electors of the City of Berkeley at the Special Municipal Election consolidated with the Consolidated Primary Election held in the City of Berkeley on June 4, 1974.

In effect: June 4, 1974

ORDINANCE NO. 4700 —N.S.

Passed to Print:.....

Finally Adopted:.....

In Effect: June 4, 1974.....

Passed by the Electors June 4, 1974 at the Special Municipal Election.

At a regular meeting of the Council of the City of Berkeley, held on the.....day of
....., this Bill was passed to print and ordered published by posting by the
following vote:

Ayes:

Noes:

Absent:

Attest:

.....
City Clerk and ex-officio Clerk of the Council

At a regular meeting of the Council of the City of Berkeley, held on the.....day of
....., this Ordinance was finally adopted by the following vote:

Ayes:

Noes:

Absent:

Attest:

.....
City Clerk and ex-officio Clerk of the Council
of the City of Berkeley, California

Approved this.....day of.....

.....
Mayor and President of the Council
of the City of Berkeley, California



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

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 Oppo	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

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

ITEM 7
Attachment 2



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

Budget Projections - Fair Elections Program Proposed Expansion

prepared by Maplight

Current balance in Fair Elections Fund: about \$1,400,000
 Most recent annual allocation to Fair Elections Fund: \$505,000
 Total allocated to Fair Elections Fund each 4-year election cycle: about \$2,020,000
 Total disbursed from Fair Elections Fund for 2018: \$295,288
 Total disbursed from Fair Elections Fund for 2020: \$299,454

Source for above figures: City Clerk's office

Office	Maximum public funding per candidate (proposed)	2013-2020 average # of candidates per 4-year election cycle		Moderate estimate	High estimate
Auditor	\$	20,000	2	\$ 40,000	\$ 60,000
School Board Trustee	\$	20,000	8	\$ 160,000	\$ 240,000
Rent Stabilization Bd.	\$	5,000	14	\$ 70,000	\$ 105,000
Total per 4-year election cycle				\$ 270,000	\$ 405,000

Moderate estimate: Same number of candidates as historical average, all candidates receive maximum public funding.

High estimate: 1.5X as many candidates as historical average, all candidates receive maximum public funding.

Budget projection with proposed expansion--every 4 years:

Allocation to Fair Elections fund	\$	2,020,000	
Disbursed from Fund: Administrative costs	\$	(290,000)	set by statute
Disbursed from Fund: Mayor and Council	\$	(594,742)	based on disbursements 2017-2020
Disbursed from Fund: Auditor, School Bd, Rent Bd	\$	(270,000)	based on moderate estimate
Remaining in Fund after disbursement	\$	865,258	

Conclusion: The Fair Elections program is already funded at a sufficient level to support expansion.
 No new funding allocation is needed to implement the proposed expansion.

Source for historical number of candidates: Maplight analysis of candidate filings
Candidates with less than \$500 in total expenditures were excluded from this data.



PUBLIC FINANCE MATCHING FUNDS NOVEMBER 8, 2022 GENERAL ELECTION

Committee	Office	Amount Disbursed	Date Certified
Kate Harrison for City Council 2022	District 4	\$ 47,000.00	1/19/2022
Kesarwani for Berkeley City Council 2022	District 1	\$ 47,000.00	3/24/2022
Mara Kolesas for School Board 2022	School Board	\$ 10,606.50	7/14/2022
Mary-Lee Smith for Berkeley City Council 2022	District 8	\$ 10,500.00	7/21/2022
Shanoski for Berkeley School Board 2022	School Board	\$ 20,000.00	7/27/2022
Re-Elect Jenny Wong for City Auditor 2022	City Auditor	\$ 11,880.00	8/5/2022
Rigel Robinson for Berkeley City Council 2022	District 7	\$ 12,385.38	8/11/2022
Mark Humbert for City Council 2022	District 8	\$ 17,040.00	8/15/2022
Ida Martinac for Rent Board 2022	Rent Board	\$ 7,602.00	8/24/2022
Mike Chang for Berkeley School Board 2022	School Board	\$ 12,780.00	8/23/2022
Carole Marasovic for Berkeley Rent Board 2022	Rent Board	\$ 8,000.00	8/29/2022
Negeene Mosaed for Rent Board 2022	Rent Board	\$ 8,000.00	9/1/2022
Soli Alpert for Rent Board 2022	Rent Board	\$ 8,000.00	9/15/2022
Elisa Mikiten for Berkeley City Council 2022	District 1	\$ 47,000.00	9/21/2022
Vanessa Danielle Marrero 4 Rent Board 2022	Rent Board	\$ 6,540.00	9/22/2022
Mari Mendonca for City Council 2022	District 8	\$ 18,912.00	9/22/2022
Tamar Michai Freeman for Berkeley City Council 2022	District 1	\$ 7,920.00	9/27/2022
Wendy Saenz Hood for Berkeley Rent Board 2022	Rent Board	\$ 8,000.00	9/30/2022
Nathan Mizell Berkeley Rent Board 2022	Rent Board	\$ 6,420.00	9/30/2022

Berkeley's voter-approved Public Financing Program allows certified candidates for Mayor, City Council, School Board, Rent Stabilization Board, and City Auditor seats to receive a 6-to-1 match on qualifying contributions of up to \$60 from Berkeley residents (e.g. for a \$50 qualifying contribution, a participating candidate receives \$300 in public matching funds), to a maximum of \$47,000 for City Council candidates \$140,000 for mayoral candidates, \$8,000 for Rent Stabilization Board candidates, and \$20,000 for School Board and City Auditor candidates

This document shows the cumulative amounts received by certified Public Finance candidates in the November 8, 2022 general election. It is updated weekly. For more information, visit the [Public Financing](https://www.cityofberkeley.info/publicfinancing) page or contact the City Clerk department at elections@cityofberkeley.info.