



Fair Campaign Practices Commission
Open Government Commission

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

MEETING AGENDA

September 16, 2021

7:00 p.m.

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting will be held telephonically. 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/84423295185>

Or Telephone: +1 (669) 900-6833

Meeting ID: 844 2329 5185

Secretary: Samuel Harvey

The Commission may act on any item on this agenda

1. Call to Order 7:00 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 June 17, 2021 FCPC-OGC Concurrent Regular Meeting

Fair Campaign Practices Commission (FCPC) Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
6. Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle; discussion and possible action.
7. City Council action on prohibition or regulation of officeholder accounts; discussion and action.

Open Government Commission (OGC) Agenda

8. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
9. City Council consideration of OGC recommendation re public participation in meetings held via videoconference; discussion and possible action.

Joint FCPC-OGC Items

10. Election of FCPC and OGC Chair and Vice Chair; discussion and possible action.
11. 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

June 17, 2021

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

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting was held telephonically.

Secretary: Samuel Harvey, Deputy City Attorney

Members Present: Brad Smith (Chair), Jedidiah Tsang (Vice Chair), Janis Ching, Daniel Newman, Patrick O'Donnell, Patrick Sheahan, Jessica Blome, James Hynes, Mark Humbert

Also Present: Samuel Harvey, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 7:02 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment (items not on agenda)**

No speakers.

4. **Approval of minutes for May 20, 2021 FCPC-OGC Concurrent Regular Meeting**

- a. Public comment: No speakers.
- b. Commission discussion and action.

Motion to approve minutes (M/S/C: O'Donnell/Ching; Ayes: O'Donnell, Ching, Sheahan, Humbert, Tsang, Smith; Noes: none; Abstain: Newman; Absent: Blome, Hynes.)

Fair Campaign Practices Commission (FCPC) Agenda

5. **FCPC Reports**

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

6. **Staff update regarding City Clerk Department enforcement referrals to the California Fair Political Practices Commission (FPPC):**

- a. **Carole Marosovic for Berkeley Rent Board 2020**
- b. **Stephen Murphy for Berkeley City Council 2020**

- a. Public comment: Two speakers.
- b. Commission discussion and action.

Motion to adopt staff's recommendation that FCPC proceed with its own investigation independent of California Fair Political Practices Commission (FPPC) enforcement, and to adopt a policy of initiating independent FCPC enforcement when matters are simultaneously before the FPPC. (M/S/C: O'Donnell/Sheahan; Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Smith; Noes: Tsang; Abstain: none; Absent: none.)

7. **FCPC FY2021-2022 Work Plan:**

- a. Public comment: One speaker.
- b. Commission discussion and action.

Motion to adopt work plan removing completed items from FY2020-2021 Work Plan re public campaign financing program (M/S/C: Blome/Hynes; Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

Open Government Commission (OGC) Agenda

8. **OGC Reports**

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

9. **Recommendation to City Council re public participation in meetings held via videoconference**

- a. Public comment: One speaker.
- b. Commission discussion and action.

Motion to adopt recommendation as written and submit to City Council (M/S/C: Ching/Tsang; Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

10. **OGC FY2021-2022 Work Plan**

- a. Public comment: One speaker.
- b. Commission discussion and action.

Motion to adopt work plan with amendments re making Lobbyist Registration Ordinance more effective and clarification re annual report from City Manager (M/S/C: Hynes/Ching; Ayes: Newman, O'Donnell, Ching, Sheahan, Blome, Hynes, Humbert, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

13. **Adjournment**

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

The meeting adjourned at 8:18 p.m.



City Clerk Department

September 16, 2021

To: Members, Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

BMC 2.12.560 requires that after each of the first two election cycles that occur after implementation of the Fair Elections Act, the Fair Campaign Practices Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. Necessary amendments were identified and implemented following the 2018 election cycle, and additional issues were raised by staff and participating committees during and after the 2020 election cycle. In order to best assist candidates and committees with conforming to the requirements of BERA and the very specific restrictions and requirements of the Public Finance Program, additional amendments to BERA and to the FCPC Regulations are needed.

Additionally, representatives from MapLight, the original sponsors of the Fair Elections Act of 2016, have proposed the inclusion of the offices of Auditor, School Board Director, and Rent Stabilization Board Commissioner to the Public Finance Program, and have proposed amendments further clarifying the use of Fair Elections funds. These are discussed further in the accompanying memo.

Attachments:

1. MapLight - Summary of Proposed Changes
2. MapLight - City of Berkeley Campaign Expenditures 2014-2020
3. MapLight - Fair Elections Budget Projections
4. MapLight - Draft Ordinance Amendments
5. Staff - Summary of Proposed Changes
6. Staff - Draft Ordinance Amendments

MapLight

Summary of Proposed Changes

This proposed ordinance expands the Berkeley Fair Elections program to allow candidates for Auditor, School Director, and Rent Stabilization Board Commissioner to participate in the program. Under current law, only candidates for Mayor and City Council may participate in the Fair Elections program. The proposed ordinance specifies that a candidate for Auditor, School Director, or Rent Stabilization Board Commissioner is eligible to participate in the Fair Elections program if the candidate meets the requirements to hold the office sought as provided in the City of Berkeley Charter. The proposed ordinance also provides a maximum aggregate amount of Fair Elections funds per election of \$20,000 for candidates for Auditor; \$20,000 for candidates for School Director; and \$5,000 for candidates for Rent Stabilization Board Commissioner. Under the proposed ordinance, the maximum aggregate amounts of Fair Elections funds for candidates for Mayor and Councilmember are adjusted to the current amounts as provided by Fair Campaign Practices Commission (FCPC) regulation – this provision should be reviewed to ensure that if the ordinance is passed, the amounts for Mayor and Councilmember do not revert back to the original \$120,000 and \$40,000, respectively.

This proposed ordinance also specifies that a candidate participating in the Fair Elections program must use Fair Elections funds and contributions for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle. Current law requires only that a participating candidate use Fair Elections funds and contributions for direct campaign purposes. Under the proposed ordinance, a participating candidate is also prohibited from using Fair Elections funds and contributions to pay a business in which the candidate or candidate's immediate family member has a ten percent ownership interest. As amended by the proposed ordinance, this provision includes both the terms "family" and "immediate family" and leaves them undefined; this provision should be reviewed to ensure that it is clear which family members are included in the provision's restrictions and provide definitions if necessary. For consistency, both references could be changed to "immediate family" so that the restrictions of the provision apply to the same group of family members.

Finally, the proposed ordinance requires the FCPC to make a cost of living adjustment to the contribution limit to candidates every January of an odd-numbered year in the same manner as the Fair Elections funds and contribution limits are adjusted for participating candidates.

Section-by-Section

Section 1. This section requires the FCPC to make a cost of living adjustment to the contribution limit to candidates every January of an odd-numbered year in the same manner as the contribution limit and Fair Elections funds limits are adjusted for participating candidates.

Section 2. This section expands the Fair Elections program to allow candidates for Auditor, School Director, and Rent Stabilization Board Commissioner to participate in the program.

Section 3. This section specifies that candidates for Auditor, School Director, and Rent Stabilization Board Commissioner must meet the candidacy requirements for their respective offices as provided in the City of Berkeley Charter in order to be eligible to participate in the Fair Elections program.

Section 4. This section updates the maximum aggregate amounts of Fair Elections funds that a candidate for Mayor or City Council may receive and establishes maximum aggregate amounts of Fair Elections funds that a candidate for Auditor, School Director, and Rent Stabilization Board Commissioner may receive.

Section 5. Under this section, a participating candidate is required to use Fair Elections funding only for direct campaign purposes that further the participating candidate's own campaign for the relevant office and election cycle. In addition, this section prohibits a candidate from spending Fair Elections funding at a business in which the candidate or candidate's immediate family member has a 10 percent or greater ownership interest.

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

2018

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

Independent Expenditures

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

2020

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

Independent Expenditures

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

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.

ORDINANCE NO. _____

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

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

2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars. 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.

Section 2. That Berkeley Municipal Code Section 2.12.495 is amended to read as follows:

2.12.495 Offices covered.

Candidates for the offices of Mayor ~~and~~, City Council, Auditor, Board of Education, and Rent Stabilization Board shall be eligible to participate in the public campaign financing program established by this chapter.

Section 3. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

2.12.500 Eligibility for Fair Elections campaign funding.

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

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

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

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

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

2) Meet all requirements to be eligible to hold the office sought:

a) For the office of Mayor or Councilmember, Auditor, or School Director, the requirements as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley; or

b) For the office of Commissioner of the Rent Stabilization Board, the requirements as set forth in Section 121 of Article XVII of the Charter of the City of Berkeley.

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

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

4) Maintain such records of receipts and expenditures as required by the Commission;

5) Obtain and furnish to the Commission or City staff any information they may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission or City staff;

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.

7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);

8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

9) Not accept loans from any source.

10) The City has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

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

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

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

Section 4. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

2.12.505 Fair Elections fund payments.

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

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

- 1) \$129,000 for a candidate running for the office of Mayor;
- 2) \$43,000 for a candidate running for the office of City Council;
- 3) \$20,000 for a candidate running for the office of Auditor;

4) \$20,000 for a candidate running for the office of Board of Education;

5) \$5,000 for a candidate running for the office of Rent Stabilization Board.

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

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

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

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

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

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

G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon

receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election.

Section 5. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

2.12.530 Use of Fair Elections funds.

A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle.

B. A participating candidate shall not use Fair Elections funds or contributions for:

1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

2) The candidate's personal support or compensation to the candidate ~~or~~ the candidate's family, or a business in which the candidate or candidate's immediate family member has a ten (10) percent or greater ownership interest;

3) Indirect campaign purposes, including but not limited to:

a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;

b) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;

c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;

d) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;

e) Any payment or transfer for which compensating value is not received;

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

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.



City Clerk Department

September 16, 2021

To: Members, Fair Campaign Practices Commission
From: Mark Numainville, City Clerk
Subject: Staff Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

1. Clarification of requirements for returning unspent funds after the election

In the 2020 election, several candidates did not follow the required timeline for submitting unspent funds as required by BMC 2.12.505.H. Participating candidates were sent a letter after the election reminding them of the deadline and requesting a draft Form 460 showing an ending cash balance that matched the amount on the check submitted for unspent funds. Of the ten participating candidates, one initially submitted a draft 460 with a closing balance that did not match the amount of the check, one candidate took three months to return their unspent funds, and one has yet to submit documentation verifying the correct amount to be returned. Neither BERA nor the Public Finance Program Supplemental Guide provided a clear process for returning unspent funds; additionally, there is no specific guidance regarding candidates who participate in the program but do not ultimately qualify for the ballot. The Supplemental Guide has been updated to clarify the administrative process; further amendments to BERA are needed to underscore the requirements and to confirm that non-compliance is a violation of BERA.

Proposed Remedy: Amend BERA 2.12.505.H as follows:

H. 1) Unspent ~~campaign~~ funds of any Participating Candidate who does not ~~remain~~ qualify a candidate for the until ballot at the election for which they the funds were distributed, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and expenditures, must be returned to the City within 30 (thirty) days of the determination on the qualification of the candidate. All funds returned under this paragraph must be accompanied by any required supporting documentation.

Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

2) Any campaign ~~or such~~ funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.

3) All unspent campaign funds returned to the City shall be deposited into the Fair Elections Fund pursuant to the City Charter.

4) The City Clerk shall immediately refer to the Commission for enforcement any participating candidate who does not return unspent funds as required by this subsection.

2. Add new process for requesting return of funds after unspent funds were repaid

Several months after returning their unspent funds, two committees notified the City Clerk Department that they had received invoices from a vendor who had not yet billed them. The committees requested return of a portion of unspent funds to pay the invoices. Absent specific guidance regarding this matter, the City Clerk Department consulted with the City Attorney's Office and agreed to accommodate the requests for the 2020 election. However, staff believe that going forward, such requests should be considered on a case-by-case basis by the Commission given the unique circumstances of each request and the possibility of campaign reporting violations.

Proposed Remedy: Amend BERA 2.12.505 as follows:

I. Any request by a Participating Candidate for a refund of unspent campaign funds previously repaid to the City shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.

Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

3. Require additional reporting for expenditures falling under more than one payment code as provided by the state disclosure form

Many types of purchases by campaign committees fall under more than one payment category as defined by the state, although the electronic filing system used by most candidates does not allow for the entry of more than one code. In order to provide voters a clear picture of what is actually being purchased, an entry in the description field of the transaction would be required.

Proposed Remedy: Amend BERA 2.12.280 as follows:

I. If a single entry for goods, services, facilities, or items of value reported as received or purchased in a campaign statement falls under more than one payment code provided by the state disclosure form, a description of the goods, services, facilities, or items of value must be provided.

ORDINANCE NO. #,###-N.S.

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

2.12.505 Fair Elections fund payments.

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

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

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

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

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

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

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

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

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

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

H. 1) Unspent ~~campaign~~ funds of any Participating Candidate who does not ~~remain qualify a candidate for the~~ until ballot at the election for which ~~they~~ the funds were distributed, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and expenditures, must be returned to the City within 30 (thirty) days of the determination on the qualification of the candidate. All funds returned under this paragraph must be accompanied by any required supporting documentation.

2) Any ~~campaign or such~~ funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.

3) All unspent campaign funds returned to the City shall be deposited in the Fair Elections Fund pursuant to the City Charter.

4) The City Clerk shall immediately refer to the Commission for enforcement any participating candidate who does not return unspent funds as required by this subsection.

I. Any request by a Participating Candidate for a refund of unspent campaign funds previously repaid to the City shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.

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

2.12.280 Campaign statement--Information required.

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 fifty dollars or more;

C. The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars;

D. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars or more;

E. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars;

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 fifty dollars 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 and street address of each person to whom an expenditure or expenditures totalling fifty dollars 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. If a single entry for goods, services, facilities, or items of value reported as received or purchased in a campaign statement falls under more than one payment code provided by the state disclosure form, a description of the goods, services, facilities, or items of value must be provided.

J. 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.K. 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.L. 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.



City Council action
on prohibition or regulation
of officeholder accounts

Additional documents related to the City Council's consideration of this topic at its September 14, 2021 meeting may be published as an addendum to this packet prior to the FCPC's September 16, 2021 regular meeting, should such documents become available.



City Council consideration
of OGC recommendation
re public participation
in meetings held
via videoconference

Additional documents related to the City Council's consideration of this topic at its September 14, 2021 meeting may be published as an addendum to this packet prior to the OGC's September 16, 2021 regular meeting, should such documents become available.

Accelerating Growth in Technology

(condensed)

