

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

#### MEETING AGENDA October 15, 2020 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/82025317005?pwd=b1U3d3FYTDZFVm0vejRPTmFJdEVQdz09

Or Telephone: +1 669 900 6833

Meeting ID: 820 2531 7005

Secretary: Samuel Harvey, Deputy City Attorney

#### The Commission may act on any item on this agenda

- 1. Call to Order 7:00 p.m.
- 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 17, 2020 concurrent regular meeting.

#### Fair Campaign Practices Commission (FCPC) Agenda

- 5. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
- 6. Complaint alleging violation of BERA by Bahman Ahmadi, Soulmaz Panahi, Dan McDunn, Wendy Saenz Hood Neufeld, and Home Owners for Berkeley Rent Board; discussion and possible action.

- 7. Enforcement referrals from the office of the City Clerk:
  - a. Re Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502); discussion and possible action.
  - b. Re Maria Poblet for Rent Board 2022 (ID # 1407904); discussion and possible action.

#### **Open Government Commission (OGC) Agenda**

- 8. Reports.
  - a. Reports from Chair.
  - b. Reports from Staff.
- Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings; discussion and possible action.
- 10. Brown Act presentation for City officials and employees; discussion and possible action.
- 11. Conflict of Interest presentation for City officials and employees; discussion and possible action.

#### Joint FCPC-OGC Agenda

- 12. Amendments to the Berkeley Election Reform Act (BERA) to Regulate Officeholder Accounts and Proposed Changes to City Council Office Budget Expenditure and Reimbursement Policies (Resolution 67,992-N.S.); discussion and possible action.
- 13. 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.

FCPC / OGC Agenda October 15, 2020 Page 3

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., 4<sup>th</sup> Fl., Berkeley, CA.



#### **DRAFT MINUTES**

September 17, 2020

# 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), Jessica Blome,

Janis Ching, Mark McLean, Dean Metzger, Patrick O'Donnell,

Patrick Sheahan

Also Present: Samuel Harvey, Staff Secretary / Deputy City Attorney

#### 1. Call to Order

Chair Called the meeting to order at 7:03 p.m.

#### 2. Roll Call

Roll call taken.

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

No speakers.

#### 4. **Approval of minutes:**

#### 4a. Approval of minutes for July 16, 2020 concurrent regular meeting

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

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

# 4b. Approval of minutes for July 23, 2020 special meeting of the Fair Campaign Practices Commission

2180 Milvia Street, Berkeley, CA 94704 Tel: 510.981.6998 TDD: 510.981.6903 Fax: 510.981-6960 E-mail: FCPC@cityofberkeley.info

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

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

# 4c. Approval of minutes for August 13, 2020 special meeting of the Fair Campaign Practices Commission

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

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

#### Fair Campaign Practices Commission (FCPC) Agenda

#### 5. **FCPC Reports**

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

# 6. Regulations defining a "minor violation" for staff approval of public financing applications; discussion and possible action

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

Motion to make subsection numbering edit, add language clarifying factors to be used for determining minor violation, and approve (M/S/C: O'Donnell/Blome; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

# 7. <u>Amendments to the Berkeley Election Reform Act to regulate officeholder</u> accounts

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

Motion to carry item over to future agenda when it can be agendized to include OGC discussion of office budgets (D-13 accounts) (M/S/C: Blome/O'Donnell; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

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# 8. Revisions to Fair Campaign Practices Commission procedures for handling of enforcement matters and other minor changes

Motion to continue discussion at a future meeting (M/S/C: Sheahan/Blome; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith Noes: none; Abstain: none; Absent: none.)

#### **Open Government Commission (OGC) Agenda**

#### 9. **OGC Reports**

- a. Report from Chair.
- b. Report from Staff.
- 10. Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings
  - a. Public comment: No speakers.
  - b. Commission discussion and action.

Motion to direct staff to perform factual evaluation of claims and return with report to enable OGC to determine whether a proposal should be submitted to City Council regarding possible changes to board/commission procedures (M/S/C: Metzger/Ching; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith Noes: none; Abstain: non; Absent: none; Commissioner Sheahan recused due to conflict as member of Zoning Adjustments Board.)

#### 11. Amendments to the Berkeley Lobbyist Registration Act (BMC Chapter 2.09)

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

Motion to approve proposed amendments to Lobbyist Registration Act and send to City Council (M/S/C: Metzger/Sheahan; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith Noes: none; Abstain: none; Absent: none.)

#### **FCPC Enforcement Matters**

- 12. Complaint alleging violation of BERA by Bahman Ahmadi, Soulmaz Panahi, Dan McDunn, Wendy Saenz Hood Neufeld, and Home Owners for Berkeley Rent Board
  - a. Public comment: One speaker.
  - b. Commission discussion and action.

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Motion to adopt staff's recommendation to investigate complaint (M/S/C: Blome/McLean; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

#### 13. Complaint alleging violation of BERA by Wayne Hsiung for Mayor 2020

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

Motion to adopt staff's recommendation to dismiss complaint (M/S/C: O'Donnell/Blome; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

#### 14. Adjournment

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

The meeting adjourned at 9:54 p.m.



Fair Campaign Practices Commission

Date: October 9, 2020

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by Bahman Ahmadi, Soulmaz

Panahi, Dan McDunn, Wendy Saenz Hood Neufeld

On September 8, 2020, Commission staff received the attached complaint alleging that a website promoting the candidacies of four candidates for Berkeley Rent Stabilization Board has failed to include the required disclaimer identifying the funding source for the website. The four Rent Board candidates are Bahman Ahmadi, Dan McDunn, Soulmaz Panahi, and Wendy Saenz Hood Neufeld. Since the filing of this complaint, the website has been updated to promote a fifth Rent Board candidate, Pawel Moldenhawer.

The complaint includes screenshots from the website showing that a disclaimer does not appear at the bottom of various pages of the website. (Attachment 1) Additionally, the complaint notes a YouTube video connected with at least one of the four candidates. Information posted below the video provides a number of website links, including a link to the candidates' website. The video in question is an interview of one of the candidates with a local real estate professional, who hosts a YouTube channel consisting of discussions and interviews about real estate, home ownership and related topics.<sup>1</sup>

On September 8, 2020, after receipt of the complaint, staff verified that the website did not contain a disclaimer and that the screenshots provided in the complaint were accurate. The website was updated to include a disclaimer providing the names of the funding committees sometime before the Commission's meeting on September 17, 2020. (See Attachment 2.)

As of Tuesday, October 6, 2020, the website disclaimer reads:

COPYRIGHT 2020 PAID FOR BY BAHMAN AHMADI FOR RENT BOARD 2020 FPPC #1431231; MCDUNN FOR RENT BOARD 2020 FPPC # PENDING; SOULMAZ PANAHI FOR RENT BOARD 2020 FPPC #1431229; WENDY SAENZ HOOD NEUFELD FOR BERKELEY RENT STABILIZATION BOARD FOR 2020, FPPC # 1432145; MOLDENHAWER FOR RENT BOARD 2020 FPPC #1432468

<sup>&</sup>lt;sup>1</sup> Staff has determined that this YouTube interview does not constitute a "paid advertisement" and therefore does not trigger the disclaimer requirements of BMC § 2.12.335.

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According to the candidates' campaign statements (Form 460) for the period from July 1, 2020 to September 19, 2020, each of the five candidates has reported a payment of \$203 to a company called Saenz Global Virtual Assistant Services for web design and other services. It therefore appears that that the costs of the website (and other services) have been split evenly among the five candidates appearing on the website.

The campaign statement for Moldenhawer for Rent Board 2020 for the period July 1, 2020 to September 19, 2020 indicates that the committee received a loan of \$1,000 from the candidate, Pawel Moldenhawer. None of the other four candidates have received loans or other contributions of more than \$250.

#### Applicable law:

Section 2.12.335 of the Berkeley Election Reform Act ("BERA") (BMC Chapter 2.12), titled "Disclosure on campaign communications of certain contributions and loans," provides that:

Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase "Major Funding Provided By" immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. For purposes of this section, the term "contributor" shall include lender, and committees shall aggregate contributions and any loan balances from the same person when determining the total cumulative sum of contributions from a contributor. (BMC § 2.12.335.A.)

These requirements apply to, among other types of communications, "[p]aid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet." (2.12.335.B.)

BERA defines a "contribution" to include loans as well as "a candidate's own money or property used on behalf of his or her candidacy." (BMC § 2.12.200.)

#### <u>Analysis</u>

Staff has determined that the website failed to include a disclaimer identifying the names of the committees funding the website for a period of roughly one week, if not longer. As a result, the website violated BMC § 2.12.335 by failing to "include the name of the committee[s]" funding the website.

In addition to providing the name of the committee, BMC § 2.12.335 requires that the disclaimer list the top four contributors who have made contributions over \$250. The disclaimer must list the contributor's name, city of domicile and total cumulative contributions in the last six months. (BMC § 2.12.335.A.) A

October 9, 2020 Page 3 Re: Ahmadi et al.

"contributor" for the sake of this requirement includes a "lender." (Id.) Additionally, BERA's definition of "contribution" includes loans as well as "a candidate's own money or property used on behalf of his or her candidacy." (BMC § 2.12.200.) Therefore, the \$1,000 loan provided to the committee Moldenhawer for Rent Board 2020 by Pawel Moldenhawer should be included in the disclaimer following the name of the committee.

Specifically, the disclaimer should include the following language following the name of the committee Moldenhawer for Rent Board 2020: "Major Funding Provided By Pawel Moldenhawer, Berkeley, \$1,000."

BERA therefore requires that the website disclaimer contain the following language:

BAHMAN AHMADI FOR RENT BOARD 2020; MCDUNN FOR RENT BOARD 2020; SOULMAZ PANAHI FOR RENT BOARD 2020 FPPC; WENDY SAENZ HOOD NEUFELD FOR BERKELEY RENT STABILIZATION BOARD FOR 2020; MOLDENHAWER FOR RENT BOARD 2020 MAJOR FUNDING PROVIDED BY PAWEL MOLDENHAWER, BERKELEY, \$1,000

Although BERA does not require the words "Paid for by" to appear in the disclaimer, including the words "Paid for by" along with the required language is permissible and may provide the public with additional clarity regarding the sources of funding behind the website.

#### Severity of violation:

Staff believes that the deviations from the requirements of BMC § 2.12.335 constitute a minor to moderate violation of BERA.

Failure to include the names of the committees funding the website and the source of substantial funding over \$250 of one of the committees deprives the public of important information about the sources of money behind campaign communications. Indeed, one of the key intents behind BERA is that "[r]eceipts 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." (BMC § 2.12.015.)

This concern is exacerbated by the fact that the website supports five different Rent Stabilization Board candidates. First, the violation deprives the public of important information about not one, but five candidates. Second, communications supporting multiple candidates are more commonly made by independent expenditures, slate mailer organizations or political parties. Though joint candidate advertisements are not unheard of, the variety of entities which are generally responsible for such advertisements increases the importance of ensuring adequate disclosure of funding sources.

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There are also a significant number of mitigating factors. First, the website has been updated to include a disclaimer listing each of the funding committees. As a result, the website was without a disclaimer for a relatively brief period of time and was updated more than a month before the November election.

Second, it could be argued that the harm to the public where a candidate committee fails to provide a disclaimer is less compared to when an independent expenditure fails to provide a disclaimer because there is an assumption that an advertisement supporting a candidate is paid for by that candidate's committee. In fact, under State law (California Political Reform Act, Cal. Gov. Code § 81000 et seq.), the candidates' website would not require any disclaimer. However, this mitigating factor is undercut somewhat by the fact that the website supports five different candidate, presenting greater potential confusion for the public than a website supporting a single candidate.

Third, BMC § 2.12.335 is titled somewhat confusingly and so it is easy to understand how a committee unfamiliar with BERA would not recognize that section 2.12.335 requires a disclaimer on the website. Specifically, section 2.12.335 is titled "Disclosure on campaign communications of certain contributions and loans." This title does not suggest that, absent certain contributions or loans, a committee would be required to disclose the name of the committee on the website. However, given that one of the committees (Moldenhawer for Rent Board 2020) has received a loan requiring disclosure on the website, the importance of this section of BERA should have been recognized by the committees.

Fourth, each of these candidates is a first-time candidate for City office. As the Commission is well aware, navigating the requirements of BERA and overlapping State law requirements is a complicated task. First-time candidates often risk violating local and state campaign laws due to their lack of familiarity with the numerous, often-arcane requirements of these laws.

Fifth, staff have uncovered no evidence of any intent by the committees to conceal information or deceive or mislead the public. Rather, the violation appears inadvertent. In fact, at least one of the candidates has expressed their belief that the website was not required to contain any disclaimer. As noted above, a candidate unfamiliar with BERA who merely reviewed the state requirements could reasonably, but incorrectly, come to this conclusion.

#### Recommendation

Staff recommends that, based upon the evidence and analysis above, the Commission make a finding of probable cause that a violation of BERA has occurred.

Pursuant to the Commission's Procedures (FCPC Procedures § VI.C.2), following a finding of probable cause, the Commission may:

Dismiss the complaint, where appropriate, and take no further action;

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- Request the Secretary conduct further investigation;
- Invite the respondents to participate in settlement negotiations. (The Commission may request that the Secretary participate in negotiation, or the Chairperson may appoint a negotiating committee);
- Schedule and conduct a hearing;
- Ask the City Attorney or the District Attorney to seek legal remedies; or
- Seek any other remedy within its authority.

First, staff recommends the Commission direct the respondent committees to revise the disclaimer on the website to comply with BERA § 2.12.335 as soon as possible, to the extent not already done so by the time of the Commission's October 15, 2020 meeting. Second, if the Commission believes that a penalty is appropriate, staff recommends the Commission direct staff (or a negotiating subcommittee appointed by the Chair) to enter into negotiations with respondents to reach a stipulated agreement setting forth a penalty amount.

To inform the Commission's goals in seeking a penalty through a negotiated settlement, in the event of a violation, the Commission may order the respondents to do any of the following:

- 1. Cease and desist violation of this Chapter.
- 2. File any reports, statements, or other documents or information required by this Chapter.
- 3. Pay a monetary penalty of up to \$1,000.00 per violation, or up to the amount or value of the unlawful or undisclosed contribution or expenditure, whichever is greater, to the Fair Elections Fund of the City.

(BMC § 2.12.231.)

Staff has identified one prior enforcement matter in which the Commission addressed a violation of BMC § 2.12.335. In 2017, the Commission reached a stipulated agreement with a candidate for failure to include the "Major Funding Provided By" disclaimer on a mailer of which approximately 6,000 copies were sent to Berkeley voters. (See Attachment 4, FCPC Stipulation with Ben Bartlett for Berkeley City Council 2016.) In that instance, the mailers failed to disclose a \$10,000 loan from the candidate's spouse. In that case, the Commission and respondent reached a settlement for a penalty of \$50.)

Staff recommends the Commission seek a similar result in this matter. Although the 2017 Bartlett matter involved a larger undisclosed contribution (\$10,000 compared to \$1,000),

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the instant matter involves five candidates rather than one. Thus, the relative harm to the public is likely similar.

#### Attachments:

- 1. Complaint of Andrea Mullarky and attachments
- 2. Screenshot of transparentrentboard.com from Sep. 15, 2020, 4:45 p.m.
- 3. Campaign Statement excerpts for Bahman Ahmadi, Dan McDunn, Soulmaz Panahi, Wendy Saenz Hood Neufeld and Pawel Moldenhawer campaign committees
- 4. Ben Bartlett for Berkeley City Council 2016 stipulation

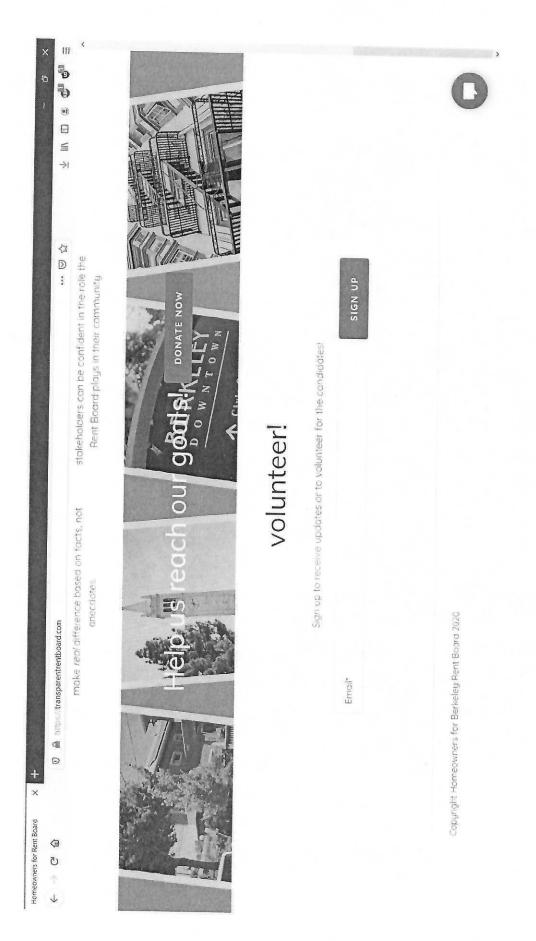


## Complaint of Noncompliance Berkeley Election Reform Act ("BERA")\*

Fair Campaign Practices Commission

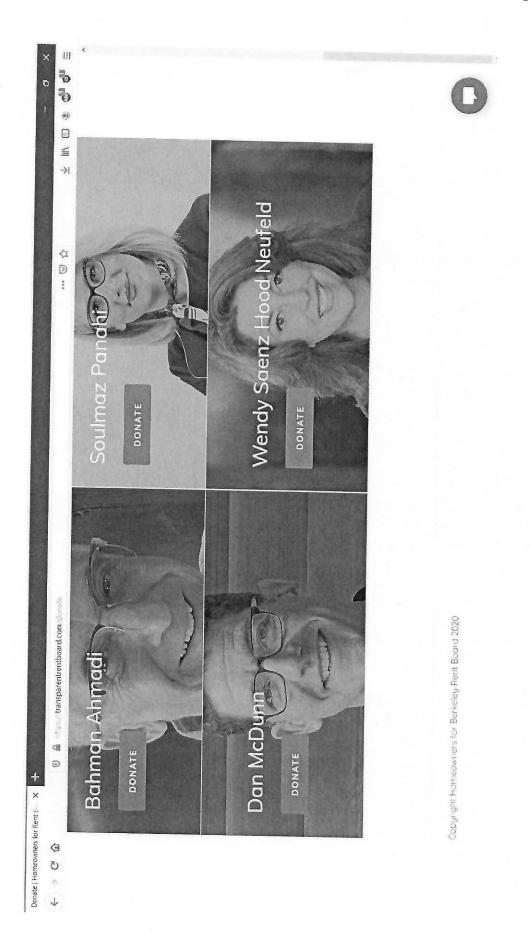
Full Name:	Andrea Mullarkey
Date:	9/5/2020
Address:	107 Commodore Drive, Richmond, CA, 94804
E-mail (option	onal but suggested): andrea.mullarkey@gmail.com
Phone (option	onal but suggested): (510) 260-9274
Party or part	ies alleged to have committed or are about to commit a violation of BERA: Soulmaz Panahi, Dan McDunn, Wendy Saenz Hood Neufeld, Homeowners for Berkeley Rent Board
As of 9/5/2020, a v	se and accurate statement of the facts that constitute the violation of BERA space is needed, you may attach additional pages:  vebsite promoting, raising money for, and urging people to vote for Bahman Ahmadi, Soulmaz Panahi, Dan
disclosures as regu	dy Saenz Hood Neufeld (collectively Home Owners for the Berkeley Rent Board) did not list any financial
is listed at transpar	uired under Berkeley and California law. Screenshots of multiple pages of the website are attached. The website
website in its descr	rentrentboard.com. Additionally, a Youtube video of an interview of one of the candidates included a link to the
L.	ip som
Documents: /	Attach any documentation supporting the facts alleged.
Statements the office of the order of the or	hat are not based upon personal knowledge should identify the source of nat gives rise to the complainant's belief in the truth of such statements.
declare und information	der penalty of perjury under the laws of the State of California that all submitted hereon and in the attachments is true and correct.
Signature	Date 9/5/2020
	Δ

<sup>\*</sup>Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the *Procedures of the Fair Campaign Practices Commission*.





ITEM 6 Attachment 1



9 • 0 U 🍎 ''' transparentrentboard.com what we prosent What We Believe in Homeowne X 

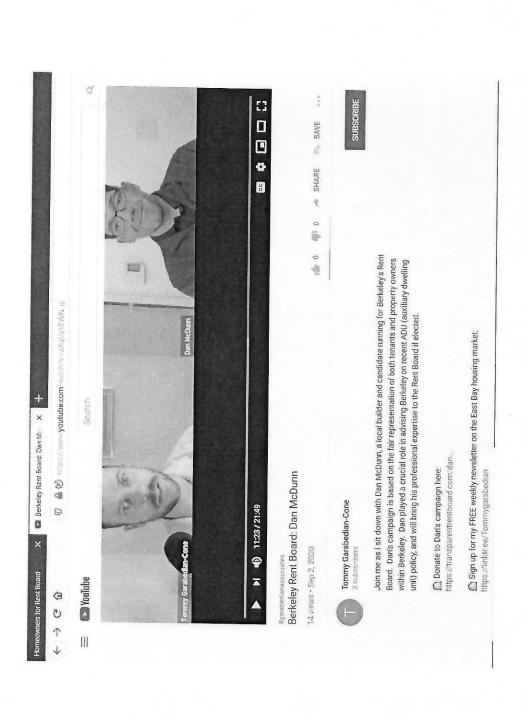
# Current Policy is Making the Housing Crisis Worse

When housing policy starts to constrict an owner's ability to choose how to use their investment, owners are less likely to affer their property for rent. Decades of increased regulation in Berkeley is starting to take its toll. Owners are concerned about the risk they take when renting to a tenant. Add to that the constant barrage of apposition to building additional housing - now you've got a real housing crisis on your hands. We want to create policy that areates a balance so owners are encouraged to put their units on the market, not take them off

# Bureaucracy & Increased Costs Keep Supply Low

Hameowners make up the bulk of the city's tax base Increased parcel taxes and other fees not only drive up the cost of living in Berkeley, but they keep some from being able to afford to buy property in Berkeley, Continually taxing homeowners and adding regulations isn't going to magically solve the crisis. Complicated and cumbersome building processes isn't making it any easier either. Whether it's the exorbitant fees tacked onto the cost to build, or increased regulation that causes owners to take their rental units off the market, lack of diversified supply is driving rents up, we need a variety of housing options that meet the needs of our community.

Copyr girt Harneamers for Berkeley Rent Board 2020



# Help us reach our goals!

DONATE NOW

# Homeowner for Berkeley Rent Board

Sign up to receive updates or to volunteer for the homeowner candidates!

Copyright 2020 Paid for by Bahman Ahmadi for Rent Board 2020; McDunn for Rent Board 2020; Soulmaz Panahi for Rent Board 2020; Wendy Saenz Hood Neufeld for Berkeley Rent Stabilization Board for 2020, FPPC #s Pending



### Attachment 3

Schedule E
<b>Payments Made</b>

#### Amounts may be rounded to whole dollars.

Statement covers period	CALIFORNIA 460
from08/07/2020	FORM TOO
through09/19/2020	Page8 of8
	I.D. NUMBER
	DENDING

NAME OF FILER

SEE INSTRUCTIONS ON REVERSE

Dan McDunn for Rent Board 2020

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Saenz Virtual Global Assistant Boynton Beach, FL 33426	WEB	Consultation mail piece	, design for web optimization, design for	203.00

<sup>\*</sup> Payments that are contributions or independent expenditures must also be summarized on Schedule D. SUBTOTAL\$ 203.00

#### **Schedule E Summary**

1. Itemized payments made this period. (Include all Schedule E subtotals.)\$ _	203.00
2. Unitemized payments made this period of under \$100\$ _	0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).)\$	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A. Line 6.)	203.00

FPPC Form 460 (Jan/2016)

#### Attachment 3

#### Schedule E Payments Made

NAME OF FILER

SEE INSTRUCTIONS ON REVERSE

Soulmaz Panahi for Berkeley Rent Board 2020

## Amounts may be rounded to whole dollars.

	SCHEDULE E			
Statement covers period	CALIFORNIA 160			
from08/24/2020	FORM <b>TOO</b>			
through09/19/2020	Page10 of10			
	I.D. NUMBER			
	1431229			

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

	,		, ,	,	1 2
CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events		polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Saenz Global Virtual Assistant Services West Palm Beach, FL 33405	CNS	Web op	timization, postcard mailer design	203.00
Secretary of State of California, Political Reform Division Sacramento, CA 95814	FIL	Form 4	10 (amended)	50.00

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.	SUBTOTAL\$	253.00
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#### **Schedule E Summary**

1. Itemized payments made this period. (Include all Schedule E subtotals.)\$ _	253.00
2. Unitemized payments made this period of under \$100\$_	5.92
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).)\$_	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.)	258.92

FPPC Form 460 (Jan/2016)

## Attachment 3 SCHEDITE E

Schedule E	
<b>Payments Made</b>	•

SEE INSTRUCTIONS ON REVERSE

#### Amounts may be rounded to whole dollars.

		001128022
Statem	ent covers period	CALIFORNIA 460
from	08/07/2020	FORM TOO
through .	09/19/2020	Page7 of8
		I.D. NUMBER
		DENDING

NAME OF FILER

Wendy Saenz Hood Neufeld for Berkeley Rent Stabilization Board 2020

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
Saenz Global Virtual Assistant Services Boynton Beach, FL 33426	WEB	WEB Consultation, design for web optimization, design for mail piece	203.00

<sup>\*</sup> Payments that are contributions or independent expenditures must also be summarized on Schedule D. SUBTOTAL\$

1. Itemized payments made this period. (Include all Schedule E subtotals.)\$_	203.00
2. Unitemized payments made this period of under \$100\$_	0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).)\$_	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.)	203.00

FPPC Form 460 (Jan/2016)

203.00

## Attachment 3<sub>SCHEDULE E</sub>

#### Schedule E Payments Made

NAME OF FILER

SEE INSTRUCTIONS ON REVERSE

Bahman Ahmadi for Berkeley Rent Board 2020

## Amounts may be rounded to whole dollars.

	OOI ILDOLL L
Statement covers period	CALIFORNIA 160
from08/24/2020	FORM <b>TOO</b>
through09/19/2020	Page9 of9
	I.D. NUMBER
	1431231

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

	g ,	•	, , , , , , , , , , , , , , , , , , ,	,	1 3
CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events		polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR DESCRIPTION OF PAYMENT	AMOUNT PAID
Berkeley Democratic Club Berkeley, CA 94703	LIT	Inclusion in City-wide campaign mailer	500.00
Saenz Global Virtual Assistant Services Boynton Beach, FL 33426	CNS	Campaign Mailer Design/Production	203.00
Secretary of State of California, Political Reform Division Sacramento, CA 95814	FIL	Form 410 Filing	50.00

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.	SUBTOTAL\$	753.00
Oak a dula F O		

#### Schedule E Summary

1. Itemized payments made this period. (Include all Schedule E subtotals.)\$	753.00
2. Unitemized payments made this period of under \$100\$	5.92
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).)\$	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.)	758.92

FPPC Form 460 (Jan/2016)

Attachment 3

Schedule B – Part 1	<b>A</b>				Statement cov		SCHE	
Loans Received	Amounts may be rounded to whole dollars.				1/2020	CALIFORNIA 460		
SEE INSTRUCTIONS ON REVERSE					through09/1	9/2020	Page4	of5
NAME OF FILER							I.D. NUMBER	
Moldenhawer for Rent Board 2020							Pending	
FULL NAME, STREET ADDRESS AND ZIP CODE OF LENDER (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAIL OR FORGIVE THIS PERIOL	N CLOSE OF THIS	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Pawel Moldenhawer Berkeley, CA 94708	Green builder contractor Self-Employed, Berkeley			PAID				CALENDAR YEAR
	CA			\$0.00	\$1,000.00	% RATE	\$ 1,000.00	\$1,000.00 PER ELECTION**
<sup>†</sup> ⊠ IND □ COM □ OTH □ PTY □ SCC		\$	\$_1,000.00	\$0.00	DATE DUE	\$0.00	_09/03/2020_ DATE INCURRED	\$ G2020 1,000.00
				PAID				CALENDAR YEAR
				\$ FORGIVEN	. \$	RATE	\$	\$ PER ELECTION **
<sup>†</sup> □ IND □ COM □ OTH □ PTY □ SCC		\$	\$	\$	DATE DUE	\$	 DATE INCURRED	\$
				PAID				CALENDAR YEAR
				\$ FORGIVEN	\$	RATE	\$	\$ PER ELECTION**
†□ IND □ COM □ OTH □ PTY □ SCC		\$	\$	\$	DATE DUE	\$	DATE INCURRED	\$
		SUBTOTALS \$	1,000.00	<b>5</b> 0.0	1,000.00	\$ 0.00		
Schedule B Summary						(Enter (e) on Schedule E, Line 3)		'
1. Loans received this period				\$	1,000.00			
(Total Column (b) plus unitemized loan	s of less than \$100.)					I	Contributor Codes	
Loans paid or forgiven this period     (Total Column (c) plus loans under \$100 (Include loans paid by a third party that	opaid or forgiven.)			\$	0.00	CO	D – Individual DM – Recipient Co (other than I FH – Other (e.g., FY – Political Party	PTY or SCC) business entity)
3. Net change this period. ( <b>Subtract</b> Line	e 2 from Line 1.)			NET \$	1,000.00 May be a negative number)	1	CC – Small Contrib	

\*\* If required.

Enter the net here and on the Summary Page, Column A, Line 2.

\*Amounts forgiven or paid by another party also must be reported on Schedule A.

## Attachment 3 SCHEDING E

#### Schedule E Payments Made

## Amounts may be rounded to whole dollars.

	OOIILDOLL L
Statement covers period	CALIFORNIA 460
from07/01/2020	FORM TOO
through09/19/2020	Page5 of5
	I.D. NUMBER
	Pending

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Moldenhawer for Rent Board 2020

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)
			·		,

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Saenz Global Virtual Assistant Services West Palm Beach, FL 33405	PRO	Consultation, Mail Piece	Design for Website & Design of desired	203.00
Secretary of State Sacramento, CA 95814	FIL	Check 0991 fi	ling fee Form 410	50.00
Vistaprint Waltham, MA 02451	PRT	18'x24' yard	signs	365.98

<sup>\*</sup> Payments that are contributions or independent expenditures must also be summarized on Schedule D. SUBTOTAL\$ 618.98

#### **Schedule E Summary**

1. Itemized payments made this period. (Include all Schedule E subtotals.)	618.98
2. Unitemized payments made this period of under \$100\$	13.90
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).)\$	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.)	632.88

1 2 3	FARIMAH BROWN, City Attorney 2180 Milvia Street, Fourth Floor Berkeley, CA 94704 TEL.: (510) 981-6998 FAX: (510) 981-6960	201227
4	Attorney for FAIR CAMPAIGN PRACTICES C	OMMISSION
5	BEFORE THE FAIR CAMPAIG	N PRACTICES COMMISSION
6	CITY OF BI	ERKELEY
7		
8	In the Matter of:	[DRAFT] STIPULATION,
9	Ben Bartlett for Berkeley City Council 2016,	DECISION AND ORDER
10	Respondent.	
11		
12	This stipulation is entered into by and between	ween the Fair Campaign Practices Commission
13	(the "Commission" or "FCPC") and Candidate-C	ontrolled Committee Ben Bartlett for Berkeley
14	City Council 2016 ("committee" or "Respondent"	), through its controlling candidate Ben
15	Bartlett. The following is a true and accurate sum	nmary of the facts in this matter:
16	The committee violated the Berkel	ey Election Reform Act (BERA), which is
17	codified in Chapter 2.12 of the Berkeley Municip	al Code (BMC).
18	2. Respondent accepted one contribute	tion in excess of Berkeley's contribution limit,
19	codified in Section 2.12.415 of the BMC. The co	ntribution was a loan from the candidate's
20	spouse Yelda Bartlett in the amount of \$10,000, in	ncurred on June 29, 2016. The contribution
21	was reported on the committee's Form 460 campa	ign statements, including statements filed
22	August 1, 2016 and January 31, 2017. The comm	ittee violated BMC Section 2.12.415 by
23	accepting a contribution in excess of \$250 from a	person other than the candidate, i.e., the
24	\$10,000 loan from the candidate's spouse.	
25	3. On November 2, 2016, the commit	tee mailed 6,021 pieces of campaign
26	literature, at a cost of \$4,195.40, which were subj	ect to the City's "major funding provided by"
27	disclosure requirement contained in BMC Section	2.12.335. The committee violated BMC
28	Section 2.12.335 by failing to disclose the \$10,00	0 contribution on campaign communications
	l STIPULATION, DECI:	SION AND ORDER

STIPULATION, DECISION AND ORDER Ben Bartlett for Berkeley City Council 2016

1	within 6 months of the contribution, i.e., 6,021 pieces of campaign literature mailed on
2	November 2, 2016.
3	\$10,000 LOAN FROM YELDA BARTLETT
4	4. BERA prohibits "contributions," including loans (BMC § 2.12.100), which
5	exceed \$250 to any candidate-controlled committee by any person other than the candidate
6	himself or herself. (BMC § 2.12.415.) Accordingly, only a "candidate himself or herself" may
7	contribute more than \$250 to his or her candidate-controlled committee.
8	5. FCPC Regulation R2.12.415.3 governs contributions from joint accounts.
9	Contributions from joint accounts are presumed to come from the person who signs the check.
10	In order for a contribution to be allocated between accountholders, both accountholders have to
11	sign the check or an accompanying written statement. The regulation, in full, is as follows:
12	A contribution drawn on a joint account is presumed to come from the person or
13	persons who signed the check or other instrument. When more than one party to the joint account intends to make a contribution using a single check or other
14	instrument, each party to the joint account intending to make the contribution must sign the check or other instrument, or sign a written statement
15	accompanying the check or other instrument indicating that all of the signatories
16	intend to make the contribution. The amount of the contribution shall be allocated equally between or among the signers, unless otherwise indicated by
17	the contributors.
18	(FCPC Reg. R2.12.415.3; see also BMC § 2.12.210 (authorizing the regulations).)
19	6. On June 29, 2016, Yelda Bartlett, the spouse of candidate Ben Bartlett, wrote
20	and signed a check in the amount of \$10,000, described as a loan, to the candidate-controlled
21	committee Ben Bartlett for Berkeley City Council 2016. Yelda Bartlett alone signed the check.
22	The funds came from a joint, personal bank account held by both Yelda Bartlett and Ben
23	Bartlett. Ben Bartlett explained to staff that Yelda Bartlett customarily signed their checks.
24	The committee reported the amount as a loan from Yelda Bartlett in its Form 460 campaign
25	statements for the periods covering January 1 through June 30, 2016, filed August 1, 2016, and
26	October 23 through December 31, 2016, filed January 31, 2017.
27	
28	

7. Under BERA, the loan from Yelda Bartlett to the committee constituted a "contribution" under BMC Section 2.12.100, and was subject to the contribution limit set forth in Section 2.12.415. The loan constituted a contribution from Yelda Bartlett alone under FCPC Regulation R2.12.415.3. While the contribution was drawn on a joint account held by Yelda Bartlett and Ben Bartlett, only Yelda Bartlett signed the check. Yelda Bartlett is not the "candidate himself or herself," and was therefore subject to the contribution limit of BMC Section 2.12.415. Accordingly, Yelda Bartlett's loan to the committee exceeded the \$250 contribution limit by \$9,750. The committee violated Section 2.12.415 by accepting this contribution.

#### "MAJOR FUNDING PROVIDED BY" DISCLOSURE REQUIREMENT

- 8. BERA's "major funding provided by" disclosure requirement is set forth in BMC Section 2.12.335, which provides disclosure requirements for certain "campaign communications," including "one thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers." BMC § 2.12.335.B.1 (emphasis added). These campaign communications must state the phrase "Major Funding Provided By" followed by "the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure." BMC § 2.12.335.A (emphasis added).
- 9. The committee received the \$10,000 loan from Yelda Bartlett on June 29, 2016. Within six months, on October 27, 2016, the committee (through Yelda Bartlett) ordered the printing and mailing of 6,021 postcards at a cost of \$4,195.40 from Pacific Printing. Pacific Printing's sales representative filed a mass mailing certification with the City Clerk's Office on behalf of the committee, as required by BMC Section 2.12.150, on November 2, 2016, certifying under penalty of perjury that the "political mailers" were or would be mailed on November 2, 2016. The mass mailing did not include any "Major Funding Provided By" disclosure information.

1	10. The committee's mass mailing on November 2, 2016 exceeded one thousand
2	pieces of campaign literature, and was a "campaign communication" subject to Section
3	2.12.335. The committee was required to disclose Yelda Bartlett's \$10,000 loan on the
4	campaign communication because the expenditure was made within six months of the loan, yet
5	the committee failed to include the required disclosure information.
6	FACTORS IN MITIGATION
7	11. Respondent, through the committee's treasurer, the candidate, and the
8	candidate's spouse cooperated with the Commission staff throughout this process and timely
9	provided requested information.
10	12. State law is consistent with BERA's handling of spousal contributions. <sup>1</sup>
11	However, the California Fair Political Practices Commission's Campaign Manual 2 included
12	incorrect guidance. The FPPC's Senior Commission Counsel confirmed that Campaign Manual
13	2 appeared to misinterpret controlling state law—i.e., Government Code Section 85308, FPPC
14	Regulation 18533, and FPPC Advice Letter I-97-442. FPPC's counsel stated that the FPPC
15	would remove the statement from the next version of the manual to be consistent with state law.
16	Further, Campaign Manual 2 states that "[i]f there are any discrepancies between the manual
17	and the [California Political Reform] Act or its corresponding regulations, the Act and its
18	regulations will control." See Campaign Manual 2 at Introduction – 1. However, the
19	Commission considered the existence of contradictory guidance as a mitigating factor in
20	determining the remedy for the committee's violation of BMC Section 2.12.415.
21	13. With regard to the committee's violation of BMC 2.12.415, the committee did
22	disclose the contribution prior to the election and reported the amount as a loan from Yelda
23	Bartlett in its Form 460 campaign statements for the periods covering January 1 through June
24	
25	
26	<sup>1</sup> Under state law, contributions from joint checking accounts are attributed to the individual
27	"who signs the check, unless an accompanying document directs otherwise." (FPPC Regs., Title 2, Div. 6, Cal. Code Regs. § 18533.) Further, California Government Code Section 85308
28	states that "[c]ontributions made by a husband and wife may not be aggregated."

1	30, 2016, filed August 1, 2016, and October 23 through December 31, 2016, filed January 31,
2	2017.
3	<u>FACTORS IN AGGRAVATION</u>
4	14. The committee's November 2, 2016 mass mailer included 6,021 identical
5	mailers, which is well above the one thousand pieces of campaign literature threshold, which
6	triggers the "Major Funding Provided By" disclosure under BMC Section 2.12.335.
7	15. The committee failed to provide the "Major Funding Provided By" disclosure for
8	the \$10,000 contribution on the face of the mailer, which is a sizeable contribution in a Berkeley
9	election, given the \$250 contribution limit in BMC Section 2.12.415 for all persons aside from
10	the candidate himself or herself.
11	PROCEDURAL POSTURE
12	16. At its July 20, 2017 meeting, the FCPC found probable cause that the committee
13	had violated both BERA's contribution limit in violation of Section 2.12.415 and the
14	requirement to provide a "Major Funding Provided By" disclosure on campaign
15	communications in violation of Section 2.12.335.
16	17. If the Commission held a hearing and concluded that the committee violated
17	Section 2.12.415, the Commission would have authority to issue a monetary penalty of up to
18	\$9,750, the amount by which the unlawful contribution exceeded the City's contribution limit.
19	Following a hearing and a finding that the committee violated Section 2.12.335, the
20	Commission would have authority to issue a separate monetary penalty of up to \$10,000, which
21	is the amount of the contribution that the committee failed to disclose on its campaign
22	communications within six months within the date of the \$10,000 contribution.
23	18. In lieu of setting this matter for a hearing after probable cause determination, the
24	FCPC delegated authority to the FCPC chair and staff to prepare a Stipulation resolving the two
25	BERA violations.
26	19. The FCPC moved to require a written statement signed under penalty of perjury
27	by Ben Bartlett stating that the \$10,000 loan from Yelda Bartlett to the committee was made
28	with his knowledge, consent, and at his direction, and that the \$10,000 loan, although signed by
	<b>c</b>

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Yelda, should be attributed as a contribution to his committee from him. The FCPC moved to impose no monetary penalty for this violation.

20. The FCPC recommended a monetary penalty of \$50.00 for the committee's violation of Section 2.12.335.

#### **ADMISSIONS AND STIPULATIONS**

THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties as follows:

- 1. Respondent violated BMC Section 2.12.297 as set forth in paragraphs 1 through 10, above, which are a true and accurate summary of the facts in this matter.
- 2. Based on the facts and law detailed above, factors in aggravation and mitigation, and BMC Section 2.12.231, Respondent agrees to pay the sum of fifty dollars (\$50.00) as a monetary penalty, payable to the City of Berkeley for deposit into the City's Fair Elections Fund, no later than October 12, 2017.
- 3. Respondent agrees to take necessary and prudent precautions to comply with all provisions of BERA and FCPC regulations in the future. Further, Respondent will seek advice, as needed, from the City Clerk and FCPC staff on compliance with BERA and FCPC regulations prior to filing deadlines to aid in future compliance.
- 4. The parties agree to this Stipulation to resolve all factual and legal issues raised in this matter and to reach a final disposition without having to hold an administrative hearing to determine the liability of Respondent. Respondent understands and hereby knowingly and voluntarily waives any and all procedural rights under BERA and the FCPC Procedures in regards to this matter.
- 5. The FCPC agrees that if Respondent executes this Stipulation, it will forego any further enforcement action against Respondent as to this matter, and if approved by the FCPC, this Stipulation will resolve all factual and legal issues raised in this matter and will be the final disposition of this matter for purposes of BMC Sections 2.12.450 and 2.12.455. Nothing in this section shall be read to preclude the Commission's consideration of any complaint or other

1	action for any false statements stemming	from any of Respondent's representations in this		
2	Stipulation.			
3	6. The parties agree that if the	e FCPC refuses to accept this Stipulation, it shall		
4	become null and void. Respondent stipul	ates and agrees that if a full evidentiary hearing before		
5	the Commission becomes necessary, no n	nember of the Commission or FCPC staff shall be		
6	disqualified because of their consideration	n of this Stipulation and Order.		
7	7. Respondent acknowledges	that the FCPC retains jurisdiction over this		
8	Stipulation and Order, and is acting under	Section VI.C.2.d of the FCPC Procedures, enacted		
9	pursuant to the Commission's authority to enact rules and procedures under BMC Section			
10	2.12.210.			
11	Detail General - 10" 2017	EARD ALL DROWN C'S AS		
12	Dated: September 15, 2017	FARIMAH BROWN, City Attorney Attorney for Fair Campaign Practices Commission		
13				
14	Dated: September 5, 2017			
15		BEN BARTLETT, Candidate		
16		Ben Bartlett for City Council 2016		
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2	The foregoing Stipulation of the parties In the Matter of Ben Bartlett for Berkeley City
3	Council 2016, is hereby accepted as the final decision and order of the Fair Campaign Practices
4	Commission effective upon execution below by the Chairperson. Further, it is hereby ordered
5	that this Stipulation, Decision and Order be appended to the committee's campaign statements
6	on file with the Office of the City Clerk, City of Berkeley.
7	
8	IT IS SO ORDERED.
9	
10	Dated: September 21, 2017
11	BRAD SMITH, Chairperson DEAN METZGER, Vice Chairperson
12	FAIR CAMPAIGN PRACTICES COMMISSION
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I, Ben Bartlett, attest under the penalty of perjury that I issued a check from my joint bank account for \$10,000 in the form of a loan to my campaign account for City Council.

My wife signed the check from our joint personal account bearing both of our names on my behalf and at my direction because she typically writes the checks for our family expenses.

In retrospect, I should have signed the check myself to make it clear that I was making a loan to the campaign.

Dated: September 17, 2017

BEN BARTLETT, Candidate Ben Bartlett for City Council 2016



Fair Campaign Practices Commission

Date: October 9, 2020

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Enforcement referrals from the office of the City Clerk

The office of the City Clerk has referred the following items to the Commission for review and potential enforcement action:

# Case No. 1: Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502)

As the attached report from the City Clerk indicates, the committee has failed to amend its terminating campaign statement (Form 460) filed on January 15, 2019. (See Attachments 1 and 2.)

#### Case No. 2: Maria Poblet for Rent Board 2022 (ID # 1407904)

As the attached report from the City Clerk indicates, the committee has failed to amend its semi-annual campaign report for the period 1/1/2019 - 6/30/2019 to correct for inconsistent cash balances between reports. The committee has also failed to amend its terminating campaign statement, which indicates a negative balance but does not indicate any outstanding debt. The California Secretary of State has rejected the committee's terminating Statement of Organization (Form 410) on account of this discrepancy. As a result, the committee remains active. (See Attachments 1 and 3.)

Staff recommends the Commission direct the Secretary to investigate both referrals further and return at a future meeting with a subsequent report.

#### Attachments:

- 1. City Clerk Staff Referral
- Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment second semi-annual and termination form 460 (8/1/2018 – 12/31/2018)
- 3. Maria Poblet for Rent Board 2022 semi-annual campaign statement (1/1/2019 6/30/2019) and terminating campaign statement (7/1/2019 8/23/2019)



City Clerk Department

September 14, 2020

To: Sam Harvey, Secretary, Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Campaign Committees – Staff Referral

City Clerk staff is referring the following two cases to the Fair Campaign Practices Commission for outstanding issues regarding Form 460 semi-annual and terminating statements that appear to be noncompliant with BERA or the PRA.

Case No. 1: Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502).

Campaign Filing(s) Subject to Referral: Second Semi-Annual and Termination statement Form 460 filed on January 15, 2019, covering the period from August 1, 2018, through December 31, 2018.

#### **Summary of Facts**

On January 14, 2019 a terminating Form 410 was submitted for the committee with a termination date of 12/31/2018. At that time, City Clerk staff informed Assistant Treasurer Elliot Halper that a terminating Form 460 was also required, covering the filing period through the termination date.

On January 15, 2019, the City Clerk Department received the electronic terminating Form 460 filing for the Berkeley Community for the campaign committee for the period of 8/1/2018 - 12/31/2018. While the terminating date matched the date on the terminating Form 460, the period covered was incorrect. The committee was attempting to file a terminating semi-annual statement (7/1 – 12/31). The campaign statement was signed by Assistant Treasurer Elliot Halpern.

According to the Secretary of State, the committee is terminated as of 12/31/2018. In order to terminate, a committee has to file all required campaign statements, disclosing all reportable transactions, including the disposition of left-over funds; and have no campaign funds remaining. The committee did file all required forms and presented a \$0.00 balance remaining.

September 14, 2020

However, as filing officer and after reviewing the filing, on January 22, 2019, City Clerk staff informed the committee that an amendment was required for several issues listed below. The notice was sent via U.S. Mail and email to committee Treasurer Forrest Liu. Except for amendments required to provide missing contributor information, there is no specified deadline for filing amendments to campaign statements. Amendments should be filed as soon as practicable in the same location(s) as the original.

The amendment request included three components:

(1). Contributions with negative values and unmatched refund amounts.

The statement lists a negative value for several contributors. According to FPPC Manual 2: "A contribution that is cashed, negotiated, or deposited, and is not returned prior to the closing date of the campaign statement, must be reported on Schedule A. If the contribution is returned within 30 days of receipt, and within the reporting period, the return may be shown as a negative figure on Schedule A. Otherwise, the return of the contribution must be reported on Schedule E."

We were unable to locate an original contribution amount for refunded contributions to Diana Bohn and the returned contribution to Elliot Halpern was refunded more than his original contribution amount.

(2). Missing occupation/employer information.

Under BMC Sections 2.12.280.G and H and state law, committees must list the occupations and employers of contributors and payees.

The committee failed to specify the occupation and employer for the contributors Russel Bates, Diana Bohn, JP Masser and Caroline Sanders.

(3). Missing contributor's principal place of business information.

Under BMC Sections 2.12.280.G and H and state law, committees must list the occupations and employers of contributors and payees. For self-employed contributors, committees must list the contributor's principal place of business.

The committee failed to specify the principal place of business for selfemployed contributor James Chanin.

On August 1, 2019, Assistant Treasurer Elliot Halpern contacted the City Clerk Department inquiring about his outstanding amendment. Staff followed-up with an email and resent the January 22, 2019 amendment letter request that outlined the issues.

On April 20, 2020, City Clerk staff received a phone call from Elliot Halpern to inquire about setting up a new ballot measure committee. On May 1, 2020, Assistant City

Campaign Committees – Staff Referral

September 14, 2020

Clerk Michael MacDonald spoke with Elliot Halpern regarding the amendment on the existing committee's filing and provided information on establishing a new committee.

On August 27, 2020, Elliot Halpern visited the City Clerk Department to establish a new campaign committee, designating him as the treasurer. He was again reminded of the outstanding amendment on the existing committee's filing.

#### Case No. 2: Maria Poblet for Rent Board 2022 (ID # 1407904)

Campaign Filing(s) Subject to Referral: Terminating campaign statement Form 460 filed on August 25, 2019, covering the period from July 1, 2019, through August 23, 2019.

#### **Summary of Facts**

On August 23, 2019 the committee filed their semi-annual Form 460, covering the period of 1/1/2019 – 6/30/2019, which was due on 7/31/2019. On August 25, 2019, the committee filed a terminating Form 460 covering the period of July 1, 2019 – August 23, 2019 On August 28, 2019 the committee filed a terminating Form 410 as well. However, there was no date of termination indicated on the Form 410.

After reviewing the two filings, City Clerk staff determined that an amendment was required to terminate the committee. On August 28, 2019, an amendment letter was sent to Treasurer Maria Poblet and Assistant Treasurer Noah Sochet. The letter that was sent to Noah was returned for the wrong address. Staff followed up with an email to Noah on September 25, 2019.

The amendment request contained two components:

(1). Beginning cash balance not equal to prior ending cash balance.

Semi-annual filing (1/1/2019 – 6/30/2019): The statement showed a beginning cash balance of \$2,966.84. That number is less than the ending cash balance of \$3,364.21 for the previous filing period. This statement also shows that committee made an expenditure of \$3,073.40, resulting in a negative ending cash balance.

The statement shows no accrued expenses or other issues that would result in a negative balance. Amendments are required to accurately reflect the transactions that resulted in the new beginning cash balance and the negative ending cash balance.

(2). Termination statement; ending cash balance is not \$0

# ITEM 7 Attachment 1

Campaign Committees – Staff Referral

September 14, 2020

Terminating Form 460 (7/1/2019 - 8/23/2019) shows a **negative balance of \$106.56**, with no indication of outstanding debt.

Additionally, the City Clerk Department issued a fine in the amount of \$230 for filing the semi-annual filing 23 days late. The amendment letter requested a response by September 7, 2019.

The negative balance with no indication of outstanding debt caused the state to reject the terminating Form 410. Therefore, the committee is still active.

On October 3, 2019, Maria came into the City Clerk Department to pay the committee's fine. At that time, staff discussed the details of the amendment request and steps needed to finalize the committee's termination. Maria indicated that it was a data entry error and that she would correct it and submit an amendment.

As of September 1, 2020, no amendment has been filed and the committee remains open. The City Clerk Department recommends that the Secretary refer this matter to the FCPC for immediate consideration and direction regarding enforcement.

Attachment 2 COVER PAGE **Recipient Committee** Date Stamp **CALIFORNIA Campaign Statement FORM Cover Page** (Government Code Sections 84200-84216.5) E-Filed 01/15/2019 Statement covers period Date of election if applicable: 15:48:26 \_\_ of \_\_\_<sup>5</sup> (Month, Day, Year) 08/01/2018 Filing ID: For Official Use Only 175733514 12/31/2018 SEE INSTRUCTIONS ON REVERSE through  $\frac{12}{31}/2018$ 1. Type of Recipient Committee: All Committees - Complete Parts 1, 2, 3, and 4. 2. Type of Statement: Officeholder, Candidate Controlled Committee X Primarily Formed Ballot Measure Preelection Statement Quarterly Statement Committee State Candidate Election Committee Semi-annual Statement Special Odd-Year Report Controlled ∩ Recall **Termination Statement** Supplemental Preelection (Also Complete Part 5) Sponsored (Also file a Form 410 Termination) Statement - Attach Form 495 (Also Complete Part 6) Amendment (Explain below) General Purpose Committee Primarily Formed Candidate/ Sponsored Officeholder Committee Small Contributor Committee (Also Complete Part 7) O Political Party/Central Committee I.D. NUMBER 3. Committee Information Treasurer(s) 1403502 COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE) NAME OF TREASURER Berkeley Community for Police Oversight Committee Supporting Police Forrest Liu Commission Oversight Charter Amendment MAILING ADDRESS STREET ADDRESS (NO P.O. BOX) CITY ZIP CODE STATE AREA CODE/PHONE 94702 Berkelev (510)924-6057 CITY ZIP CODE AREA CODE/PHONE NAME OF ASSISTANT TREASURER, IF ANY Berkeley 94709 (510)924-6057 Elliot Halpern MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX MAILING ADDRESS CITY STATE ZIP CODE AREA CODE/PHONE CITY STATE ZIP CODE AREA CODE/PHONE Berkeley 94709 (510)528-3946 OPTIONAL: FAX / E-MAIL ADDRESS OPTIONAL: FAX / E-MAIL ADDRESS forrest.liu@gmail.com forrest.liu@gmail.com Verification I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of periury under the laws of the State of California that the foregoing is true and correct. 01/15/2019 Elliot Halpern Executed on \_\_ Signature of Treasurer or Assistant Treasurer Executed on \_\_\_\_ Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent

FPPC Form 460 (Jan/2016)

# ITEM 7 Attachment 2

Recipient Committee Campaign Statement Cover Page — Part 2

	ORNIA ORM	_	<b>160</b>
Page _	2	of	5

Officeholder or Candidate Controlled Commi	ittee	6.	<b>Primarily Formed Ball</b>	ot Measure	Committee		
NAME OF OFFICEHOLDER OR CANDIDATE			NAME OF BALLOT MEASURE pending				
OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRIC	T NUMBER IF APPLICABLE)		BALLOT NO. OR LETTER	JURISDICTI	ON		<u></u> : :Т
RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CI	TY STATE ZIP		Identify the controlling of	ficeholder, ca	ndidate, or state mea	sure propone	nt, if any
			NAME OF OFFICEHOLDER, CA	NDIDATE, OR PF	ROPONENT		
Related Committees Not Included in this Sta not included in this statement that are controlled by you contributions or make expenditures on behalf of your can	or are primarily formed to receive		OFFICE SOUGHT OR HELD		DISTRIC	T NO. IF ANY	
COMMITTEE NAME	I.D. NUMBER						
NAME OF TREASURER	CONTROLLED COMMITTEE?	7.	Primarily Formed Can officeholder(s) or candidate(	s) for which thi	is committee is primari	ly formed.	of
COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BO	DX)		NAME OF OFFICEHOLDER OR	CANDIDATE	OFFICE SOUGHT OR		UPPORT PPOSE
CITY STATE ZIP C	ODE AREA CODE/PHONE		NAME OF OFFICEHOLDER OR	CANDIDATE	OFFICE SOUGHT OR		UPPORT PPOSE
COMMITTEE NAME	I.D. NUMBER		NAME OF OFFICEHOLDER OR	CANDIDATE	OFFICE SOUGHT OR	HELD D S	UPPORT
							PPOSE
	CONTROLLED COMMITTEE?		NAME OF OFFICEHOLDER OR	CANDIDATE	OFFICE SOUGHT OR	HELD S	
NAME OF TREASURER  COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BO	☐ YES ☐ NO		NAME OF OFFICEHOLDER OR	CANDIDATE	OFFICE SOUGHT OR	HELD S	UPPORT

## ITEM 7 **Attachment 2**

#### **Campaign Disclosure Statement Summary Page**

Amounts may be rounded

SUMMARY PAGE Statement covers period **CALIFORNIA FORM** 08/01/2018 from \_ Page \_\_\_\_3 \_\_\_ of \_\_\_\_5 12/31/2018 through . I.D. NUMBER

to whole dollars. SEE INSTRUCTIONS ON REVERSE NAME OF FILER Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment 1403502

Column A TOTAL THIS PERIOD ROMATTACHED SCHEDULES)  -2,764.00  0.00  -2,764.00  0.00  -2,764.00  0.00  0.00  0.00  0.00  0.00  0.00  0.00  0.00  0.00	\$ \$ \$ \$	Column B CALENDAR YEAR TOTAL TO DATE  501.00  0.00  501.00  501.00  501.00  0.00  501.00  0.00  0.00  0.00	Running in Bo General Election  20. Contributions Received  21. Expenditures Made  Expenditure Li Candidates  22. Cum	Summary for Candidate oth the State Primary and fons  1/1 through 6/30 7/1 to E  \$ \$  s s  Limit Summary for State  The state of
0.00 -2,764.00 0.00 -2,764.00 0.00 0.00 0.00 0.00	\$ \$ \$ \$	0.00 501.00 0.00 501.00 501.00 0.00 501.00	20. Contributions Received 21. Expenditures Made  Expenditure Li Candidates  22. Cum (If Su	\$
-2,764.00 0.00 -2,764.00 0.00 0.00 0.00 0.00 0.00	\$ \$ \$ \$	501.00 0.00 501.00 501.00 0.00 501.00 0.00	Received 21. Expenditures Made  Expenditure Li Candidates  22. Cum	\$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$ \$
0.00 -2,764.00 0.00 0.00 0.00 0.00	\$ \$ \$	0.00 501.00 501.00 0.00 501.00 0.00	Received 21. Expenditures Made  Expenditure Li Candidates  22. Cum	\$sssssssss
-2,764.00 0.00 0.00 0.00 0.00 0.00	\$ \$ \$	501.00 501.00 0.00 501.00 0.00	21. Expenditures Made  Expenditure Li Candidates  22. Cum	\$sssssssss
0.00 0.00 0.00 0.00	\$ _	501.00 0.00 501.00 0.00	Expenditure Li Candidates 22. Cum	imit Summary for State
0.00 0.00 0.00 0.00	\$ _	0.00 501.00 0.00	Candidates  22. Cum	nulative Expenditures Made
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0.00	\$ <u> </u>	501.00	(If Su	
0.00		0.00	(If Su	
0.00			Date of Election	
	_	0.00		
0.00			(mm/dd/yy)	)
	\$_	501.00		\$
				\$
2,764.00	To ca	alculate Column B, add		
-2,764.00				
0.00	from	Column B of your last	reported in Column	ection may be different from amo B.
0.00				
0.00	figure	es that should be		
	perio	d amounts. If this is		
0.00	for th	nis calendar year, only over the amounts		
		•		
0.00				
0.00				
	0.00	0.00 corre from report Column figure subtroperion the find for the carry from any).	corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).	corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

16) FPPC Advice: advice@fppc.ca.gov (866/275-3772) www.fppc.ca.gov

### **Attachment 2**

Schedule A

SCHEDULE A

Monetary (	Contributions Received	to whole dollars.			ment cov	ers period	CALI	FORNIA	16	n
-				from	08/01/2	018	F	ORM	40	y
SEE INSTRUCTION	NS ON REVERSE			through	12/31/2	018	Page	4 <b>c</b>	of <u>5</u>	_
NAME OF FILER							I.D. NU	MBER		
Berkeley Com	munity for Police Oversight Committee Supporting	Police Commi	ssion Oversight Charter Am	endment			14035	502		
DATE	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER	RECEIV	OUNT ED THIS	CUMULATIVE TO CALENDAR Y	-	TO	LECTION DATE	

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
	Max Anderson Berkeley, CA 94703	IND  COM  OTH  PTY  SCC	Retired N/A	-864.00	136.00	
	Russel Bates Berkeley, CA 94704	⊠IND □COM □OTH □PTY □SCC	Unknown Unknown	-86.40	-86.40	
	Diana Bohn Berkeley, CA 94707	⊠IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	unknown unknown	-167.68	-167.68	
	Mary Carl Richmond, CA 94801	IND  COM  OTH  PTY  SCC	Social Worker Healthnet	-172.80	27.20	
	James Chanin PIedmont, CA 94610	⊠IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	Attorney Self-Employed	-216.00	34.00	
			CURTOTAL A	1 506 00		

#### SUBTOTAL\$ -1,506.88

-2,764.00

#### **Schedule A Summary**

1. Amount received this period – itemized monetary contributions. (Include all Schedule A subtotals.) ......\$ -2,634.40 2. Amount received this period – unitemized monetary contributions of less than \$100 ......\$ 3. Total monetary contributions received this period.

OTH - Other (e.g., business entity) PTY - Political Party

COM - Recipient Committee

\*Contributor Codes IND - Individual

SCC - Small Contributor Committee

(other than PTY or SCC)

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## ITEM 7 **Attachment 2**

# **Schedule A (Continuation Sheet) Monetary Contributions Received**

Amounts may be rounded to whole dollars.

SCHEDULE A (CONT.)

Statement covers period

Monetary Contributions Received		Amounts may to whole o		Statement cove		CALIFORNIA 460		
				through12/31/	2018 P	age <u>5</u> of <u>5</u>	-	
IAME OF FILER					1.	D. NUMBER		
Berkeley Com	munity for Police Oversight Committee Supporting	Police Commi	ssion Oversight Charter Ame	endment	1	403502		
DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DA CALENDAR YEAR (JAN. 1 - DEC. 31	R TO DATE		
12/31/2018	Boona Cheema Berkeley, CA 94706		Retiree Retired	-216.00	34	.00		
12/31/2018	Elliot Halpern Berkeley, CA 94709	IND  COM  OTH  PTY  SCC	Retiree Retired	-90.72	-90	.72		
12/31/2018	J P Masser Berkeley, CA 94703		unknown unknown	-172.80	-172	.80		
12/31/2018	James McFadden Berkeley, CA 94704	☑IND □COM □OTH □PTY □SCC	UC Berkeley Physicist	-432.00	68	.00		
12/31/2018	Caroline Sanders Berkeley, CA 94704	☑IND □COM □OTH □PTY □SCC	unknown unknown	-216.00	-216	.00		
			SUBTOTAL\$	-1,127.52				
					·			

\*Contributor Codes

IND - Individual

COM - Recipient Committee

(other than PTY or SCC)

OTH – Other (e.g., business entity)

PTY – Political Party SCC – Small Contributor Committee

Attachment 3 COVER PAGE **Recipient Committee** Date Stamp **CALIFORNIA Campaign Statement FORM Cover Page** (Government Code Sections 84200-84216.5) E-Filed 08/23/2019 Statement covers period Date of election if applicable: 23:23:22  $\_$  of  $\_4$ (Month, Day, Year) 01/01/2019 Filing ID: For Official Use Only 182534712 11/06/2018 SEE INSTRUCTIONS ON REVERSE 06/30/2019 through \_ 1. Type of Recipient Committee: All Committees - Complete Parts 1, 2, 3, and 4. 2. Type of Statement: X Officeholder, Candidate Controlled Committee Primarily Formed Ballot Measure Preelection Statement **Quarterly Statement** O State Candidate Election Committee Committee Semi-annual Statement Special Odd-Year Report Controlled ∩ Recall ☐ Termination Statement Supplemental Preelection (Also Complete Part 5) Sponsored (Also file a Form 410 Termination) Statement - Attach Form 495 (Also Complete Part 6) Amendment (Explain below) General Purpose Committee Primarily Formed Candidate/ Sponsored Officeholder Committee Small Contributor Committee (Also Complete Part 7) O Political Party/Central Committee I.D. NUMBER 3. Committee Information Treasurer(s) Pending COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE) NAME OF TREASURER Maria Poblet for Rent Board Noah Sochet MAILING ADDRESS STREET ADDRESS (NO P.O. BOX) CITY ZIP CODE AREA CODE/PHONE STATE Oakland 94607 CITY ZIP CODE AREA CODE/PHONE NAME OF ASSISTANT TREASURER, IF ANY Berkeley 94710 (510)982-6244 Maria Poblet MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX MAILING ADDRESS CITY STATE ZIP CODE AREA CODE/PHONE CITY STATE ZIP CODE AREA CODE/PHONE Berkeley 94710 OPTIONAL: FAX / E-MAIL ADDRESS OPTIONAL: FAX / E-MAIL ADDRESS mariapoblet4rentboard@gmail.com nsochet@gmail.com Verification I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of periury under the laws of the State of California that the foregoing is true and correct. 08/23/2019 Noah Sochet Executed on \_ Signature of Treasurer or Assistant Treasurer Date 08/23/2019 Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent

FPPC Form 460 (Jan/2016)

# ITEM 7 Attachment 3

Recipient Committee Campaign Statement Cover Page — Part 2

	COVER CORNIA DRM		16	
Page _	2	of _	4	

NAME OF OFFICEHOLDER OR CANDIDATE				NAME OF BALLOT MEASURE				
Maria Poblet								
OFFICE SOUGHT OR HELD (INCLUDE LOCATION A	AND DISTRICT NUMB	ER IF APPLICABLE)		BALLOT NO. OR LETTER	JURISDICTIO	DN	Тп	SUPPORT
Rent Board: City of Berkeley								OPPOSE
RESIDENTIAL/BUSINESS ADDRESS (NO. AND ST		STATE	ZIP	Identify the controlling offi	iceholder, car	ndidate, or sta	ate measure p	roponent, if
	Berkeley	CA	94710	NAME OF OFFICEHOLDER, CAN	IDIDATE, OR PR	OPONENT		
Related Committees Not Included in not included in this statement that are controll contributions or make expenditures on behalf	led by you or are pr	•		OFFICE SOUGHT OR HELD			DISTRICT NO. IF	F ANY
COMMITTEE NAME	I.D. NU	IMPED	-					
		JIVIDER						
NAME OF TREASURER		ROLLED COMMITTEE	<del></del>	Primarily Formed Cano officeholder(s) or candidate(s				
	CONTE	ROLLED COMMITTEE	<del></del> 7.		s) for which this	s committee is		ed.
NAME OF TREASURER  COMMITTEE ADDRESS STREET ADDRESS  CITY STATE	CONTR	ROLLED COMMITTEE	=? 	officeholder(s) or candidate(s	candidate	OFFICE SOUG	primarily forme	SUPPO
COMMITTEE ADDRESS STREET ADDRESS	CONTR	ROLLED COMMITTEE YES NO AREA CODE/F	=? 	officeholder(s) or candidate(s) NAME OF OFFICEHOLDER OR C	CANDIDATE	OFFICE SOUG	primarily forme	SUPPO OPPOS SUPPO OPPOS SUPPO SUPPO SUPPO
COMMITTEE ADDRESS STREET ADDRESS  DITY STATE	CONTE S (NO P.O. BOX)  E ZIP CODE	ROLLED COMMITTEE YES NO  AREA CODE/F	PHONE	NAME OF OFFICEHOLDER OR C	CANDIDATE  CANDIDATE  CANDIDATE	OFFICE SOUR  OFFICE SOUR  OFFICE SOUR	primarily forme	SUPPO

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## **Attachment 3**

# Campaign Disclosure Statement Summary Page

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Amounts may be rounded to whole dollars.

		SUMMARY PAGE
Stater	ment covers period	CALIFORNIA 160
from	01/01/2019	FORM 400
through .	06/30/2019	Page3 of4
		I.D. NUMBER

Maria Poblet for Rent Board Pending Column A Calendar Year Summary for Candidates Column B Contributions Received TOTAL THIS PERIOD CALENDAR YEAR Running in Both the State Primary and (FROMATTACHED SCHEDULES) TOTAL TO DATE **General Elections** 0.00 1/1 through 6/30 7/1 to Date 0.00 20. Contributions 0.00 3. SUBTOTAL CASH CONTRIBUTIONS ...... Add Lines 1 + 2 \$ \_\_\_\_\_ \$ \$ Received 0.00 Nonmonetary Contributions ...... Schedule C, Line 3 21. Expenditures Made 0.00 0.00 **Expenditures Made Expenditure Limit Summary for State** Candidates \$ 3,073.40 0.00 22. Cumulative Expenditures Made\* \$ 3,073.40 (If Subject to Voluntary Expenditure Limit) Date of Election Total to Date (mm/dd/yy) 0.00 10. Nonmonetary Adjustment ...... Schedule C, Line 3 0.00 \$ 3,073.40 **Current Cash Statement** To calculate Column B, add 0.00 amounts in Column A to the 13. Cash Receipts ...... Column A, Line 3 above corresponding amounts \*Amounts in this section may be different from amounts 14. Miscellaneous Increases to Cash ...... Schedule I, Line 4 0.00 from Column B of your last reported in Column B. report. Some amounts in 3,073.40 Column A may be negative figures that should be subtracted from previous If this is a termination statement, Line 16 must be zero. period amounts. If this is the first report being filed for this calendar year, only 0.00 17. LOAN GUARANTEES RECEIVED ...... Schedule B, Part 2 \$ \_\_\_\_\_ carry over the amounts from Lines 2. 7. and 9 (if **Cash Equivalents and Outstanding Debts** any). 19. Outstanding Debts ...... Add Line 2 + Line 9 in Column B above \$ 0.00

FPPC Form 460 (Jan/2016) FPPC Advice: advice@fppc.ca.gov (866/275-3772) www.fppc.ca.gov

## **Attachment 3**

Schedule E **Payments Made** 

Amounts may be rounded to whole dollars.

Statement covers period	CALIFORNIA 460
from01/01/2019	FORM 400
through06/30/2019	Page4 of4
	I.D. NUMBER

SEE INSTRUCTIONS ON REVERSE NAME OF FILER Maria Poblet for Rent Board Pending

CODES: If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

	•				· ·
CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Causa Justa Oakland, CA 94601	CVC	Donation of	excess campaign funds	3,072.90

Schedule E Summary	
1. Itemized payments made this period. (Include all Schedule E subtotals.)\$	3,072.90
2. Unitemized payments made this period of under \$100\$	0.50
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).)\$	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.)	3,073.40

FPPC Form 460 (Jan/2016)

3,072.90

SUBTOTAL\$

Attachment 3 COVER PAGE **Recipient Committee** Date Stamp **CALIFORNIA Campaign Statement FORM Cover Page** (Government Code Sections 84200-84216.5) E-Filed 08/25/2019 Statement covers period Date of election if applicable: 11:19:54 \_\_ of \_\_\_3 (Month, Day, Year) 07/01/2019 Filing ID: For Official Use Only 182537911 11/06/2018 SEE INSTRUCTIONS ON REVERSE 08/23/2019 through \_ 1. Type of Recipient Committee: All Committees - Complete Parts 1, 2, 3, and 4. 2. Type of Statement: X Officeholder, Candidate Controlled Committee Primarily Formed Ballot Measure Preelection Statement **Quarterly Statement** O State Candidate Election Committee Committee Semi-annual Statement Special Odd-Year Report Controlled ∩ Recall **Termination Statement** Supplemental Preelection (Also Complete Part 5) Sponsored (Also file a Form 410 Termination) Statement - Attach Form 495 (Also Complete Part 6) Amendment (Explain below) General Purpose Committee Primarily Formed Candidate/ Sponsored Officeholder Committee Small Contributor Committee (Also Complete Part 7) O Political Party/Central Committee I.D. NUMBER 3. Committee Information Treasurer(s) Pending COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE) NAME OF TREASURER Maria Poblet for Rent Board Noah Sochet MAILING ADDRESS STREET ADDRESS (NO P.O. BOX) CITY ZIP CODE AREA CODE/PHONE STATE Oakland 94607 CITY ZIP CODE AREA CODE/PHONE NAME OF ASSISTANT TREASURER, IF ANY Berkeley 94710 (510)982-6244 Maria Poblet MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX MAILING ADDRESS CITY STATE ZIP CODE AREA CODE/PHONE CITY STATE ZIP CODE AREA CODE/PHONE Berkeley 94710 OPTIONAL: FAX / E-MAIL ADDRESS OPTIONAL: FAX / E-MAIL ADDRESS mariapoblet4rentboard@gmail.com nsochet@gmail.com Verification I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of periury under the laws of the State of California that the foregoing is true and correct. 08/24/2019 Noah Sochet Executed on \_ Signature of Treasurer or Assistant Treasurer Date 08/24/2019 Executed on \_\_ Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent Executed on \_ Signature of Controlling Officeholder, Candidate, State Measure Proponent

FPPC Form 460 (Jan/2016)

# ITEM 7 Attachment 3

Recipient Committee Campaign Statement Cover Page — Part 2

CALIF FC		16(		
Page _	2	of _	3	

NAME OF OFFICEHOLDER OR CANDIDATE		i	NAME OF BALLOT MEASURE					
Maria Poblet								
OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)			BALLOT NO. OR LETTER	JURISDICTION			SUPPORT	
Rent Board: City of Berkeley								OPPOSE
RESIDENTIAL/BUSINESS ADDRESS (NO. AND ST	•	STATE ZIP		Identify the controlling offi	iceholder, car	ndidate, or st	ate measure p	roponent, if
Berkeley CA 94710				NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT				
Related Committees Not Included in not included in this statement that are controll contributions or make expenditures on behalf	led by you or are prima	•		OFFICE SOUGHT OR HELD			DISTRICT NO. IF	F ANY
COMMITTEE NAME	I.D. NUMB							
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#### **Attachment 3**

# Campaign Disclosure Statement Summary Page

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Amounts may be rounded to whole dollars.

		SUMMARY PAGE				
Statement covers period		CALIFORNIA 160				
from	07/01/2019	FORM +OU				
through .	08/23/2019	Page3 of3				
		I.D. NUMBER				

Maria Poblet for Rent Board Pending Column A Calendar Year Summary for Candidates Column B Contributions Received TOTAL THIS PERIOD CALENDAR YEAR Running in Both the State Primary and (FROMATTACHED SCHEDULES) TOTAL TO DATE **General Elections** 0.00 1/1 through 6/30 7/1 to Date 0.00 0.00 20. Contributions 0.00 3. SUBTOTAL CASH CONTRIBUTIONS ...... Add Lines 1 + 2 \$ \_\_\_\_\_ \$ \$ Received 0.00 Nonmonetary Contributions ...... Schedule C, Line 3 21. Expenditures Made 0.00 **Expenditures Made Expenditure Limit Summary for State** Candidates \$ 3,073.40 7. Loans Made ...... Schedule H. Line 3 0.00 0.00 22. Cumulative Expenditures Made\* \$ 3,073.40 8. SUBTOTAL CASH PAYMENTS ...... Add Lines 6 + 7 \$ (If Subject to Voluntary Expenditure Limit) 0.00 0.00 Date of Election Total to Date (mm/dd/yy) 0.00 0.00 0.00 \$ 3,073.40 **Current Cash Statement** To calculate Column B, add 0.00 amounts in Column A to the 13. Cash Receipts ...... Column A, Line 3 above corresponding amounts \*Amounts in this section may be different from amounts 0.00 from Column B of your last reported in Column B. report. Some amounts in 0.00 Column A may be negative -106.56 figures that should be subtracted from previous If this is a termination statement, Line 16 must be zero. period amounts. If this is the first report being filed for this calendar year, only 0.00 17. LOAN GUARANTEES RECEIVED ...... Schedule B, Part 2 \$ \_\_\_\_\_ carry over the amounts from Lines 2. 7. and 9 (if **Cash Equivalents and Outstanding Debts** any). 0.00 

FPPC Form 460 (Jan/2016) FPPC Advice: advice@fppc.ca.gov (866/275-3772) www.fppc.ca.gov

# THE BROWN ACT

CITY COUNCIL STANDBY OFFICER TRAINING - BROWN ACT

MARCH 5, 2020

BERKELEY, CA

#### HISTORY OF THE BROWN ACT



- ► In 1952 SF Chronicle exposed secret meetings conducted by local governments.
- ► Example: San Jose City Council left chambers to settle a matter "in private" "just being practical."
- ► League of California Cities drafted a new open meeting law which was sponsored by Assemblymember Ralph M. Brown and signed by Gov. Earl Warren in 1953.

#### THE BROWN ACT - OPEN AND PUBLIC



Ralph M. Brown

Photo courtesy The Modesto Bee

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know." California Government Code §54950.

## **BASICS OF THE ACT**

- ► Purpose: To ensure the Public's business is done in public.
- ► All Meetings of legislative bodies:
  - ▶ Open to the public
  - ► Adequately noticed
  - ► Stick to agenda
  - ► Allow the public to speak on agenda items (before action is taken) and on any non-agenda item within the jurisdiction of the legislative body.

#### WHO IS COVERED BY THE BROWN ACT?

- ➤ All "legislative bodies" of the City are covered by the Brown Act:
  - ► City Council
  - ► Council Committees
  - ► Commissions and boards
  - "Includes just about every type of decision-making body"

# KEY QUESTION: WHAT IS A MEETING?

- A meeting occurs whenever a quorum of members of a legislative body gather to discuss business within their jurisdiction.
- ► Quorum = a majority of the members of the legislative body
- Any gathering of a majority of the legislative body can become a "meeting"
  - ► Social gatherings
  - ► Meetings of other legislative bodies
  - ► Retreats, forums, workshops
- ► Serial meetings . . .

#### **SERIAL MEETINGS**

- ► One of the most challenging aspects of the Brown Act
- ▶ Serial meeting: when the majority of a legislative body uses a series of communications, either directly or through intermediaries, to "discuss, deliberate, or take action on any item within the subject matter jurisdiction of the legislative body."
- ▶ Serial meetings deprive the public of the right to observe and participate in legislative decision-making.

#### TYPES OF SERIAL MEETINGS

Daisy chain meeting



▶ Example: Councilmember A calls Councilmember B to talk about a City issue. Councilmember B then calls Councilmember C who calls Councilmember D etc., until a quorum of Council has discussed, deliberated or taken action on the issue.

#### TYPES OF SERIAL MEETINGS

Hub and spoke meeting



- ➤ Example 1: Councilmember A calls B and discusses a City issue to get his or her opinion. Councilmember A then separately calls Councilmembers B, then C, etc., telling each what the other has said. Eventually a quorum of the Council has discussed, deliberated or taken action on the issue.
- Example 2: A city employee or officer (e.g., commission secretary or department head) who is not a member of the legislative body serves as the "hub." When briefing legislative body members, shaff should take care not to disclose other members' views or positions.

# **SERIAL MEETINGS (CONT.)**

- ► Technology:
  - ► Emails, texts, and various forms of online communication can turn into a "meeting" under the Brown Act.
  - "Reply All" button should be used thoughtfully. Staff should use Bcc when emailing members of a legislative body.
  - ▶ Social Media:
    - Serial meetings can occur through tweeting, liking, and commenting on blogs, posts and forums.
    - AB 992 (2020): Officials can communicate with the public through social media but cannot engage with content of their fellow members (e.g., commenting, sharing, "liking")
  - Ex 1: A board or commission whose members make up a quorum of another board or commission.
  - Ex 2: Councilmember invited to speak at Council committee meeting of which they are not member, thereby creating a quorum of the Council.
- ► Contact the City Attorney's office with questions or concerns

#### **MEETINGS EXCEPTIONS**

- ► Several exceptions to the definition of "meeting":
  - ▶ Individual contacts A member of a legislative body can meet with any other person, including another member of the legislative body.
    - ▶ But be careful of serial meetings
  - ► Attending a conference or "open and public" meeting hosted by a private person or organization, but must not talk about City business outside of the scheduled program.
  - ► Social or ceremonial gathering provided a majority does not discuss matters within their jurisdiction.
  - Open meeting of another body provided a majority does not discuss among themselves, other than as part of the scheduled meeting, matters within their jurisdiction.

#### **CLOSED SESSION**

- ► Legislative bodies can meet in closed session for certain matters:
  - ▶ Existing or anticipated litigation
  - Personnel matters or negotiations with bargaining units
  - ► Real property negotiations
- ► Closed session items still must be briefly described on the posted agenda, which must identify the exemption for each item

# **ENFORCEMENT**

- ▶ Demand to cure or correct
- ► Complaints to OGC
- ► Lawsuits
- ► Criminal

# CONFLICTS OF INTEREST Standby Officer Training – Conflicts of Interest March 5, 2020

# **CONFLICTS OF INTEREST**

- ▶ The core principles of conflict of interest law:
  - ► Public officials may not use their offices for personal financial gain
  - ► Holding public office does not entitle one to personal "advantages or perks"
  - ▶ Transparency promotes public trust and confidence
  - ► Merit-based decision-making based on fair processes produce the best results for the public.

## SOURCES OF CONFLICT OF INTEREST LAW

- ▶ California Political Reform Act
- ► California Government Code Section 1090 (conflicts in government contracts)
- ► Local conflict provisions
- ▶ Common law conflicts

## POLITICAL REFORM ACT

- ► The California Political Reform Act prohibits conflicts of interest for state and local officials and employees:
  - ▶ "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest." (Cal. Gov. Code sec. 87100.)
  - ► An official is barred from participating in a governmental decision which will have a "reasonably foreseeable material financial effect" on the official's financial interests. (2 Cal. Code. Regs. Sec. 18700.)
- ► In other words:
  - You are barred from participating in a governmental decision if it is foreseeable that the decision will have a financial impact on your personal finances or other financial interests.

#### POLITICAL REFORM ACT

- ▶ What types of interests can create a conflict?
  - ▶ Business entities
    - ► In which you have an investment of \$2,000 or more or for which you are a director, officer, partner, trustee, employee or manager
  - ▶ Real property
    - ► Real property in which you have an interest of \$2,000 or more
  - ▶ Sources of income
    - ▶ Individual or entity from whom you have received \$500 in the past 12 months.
    - ▶ Includes community property interest in a spouse's income
  - ► Sources of gifts
    - ▶ Sources of gifts aggregating \$500 or more in the past 12 months
  - ► Personal finances
    - ▶ Expenses, income, assets and liabilities, including those of immediate family members

## POLITICAL REFORM ACT

"Foreseeable material financial effect"

- ➤ You are disqualified from a governmental decision if the effect on your financial interest is foreseeable and significant enough to be "material."
- ► Generally, if the financial interest (e.g., the business entity) is explicitly involved in the governmental decision, the effect is foreseeable and material.
  - Example: you own a plot of land for which the City is considering approval of a development.
- Where the interest is not "explicitly involved," a complex set of statues and regulations govern whether a financial effect is "foreseeable and material."
  - ► Example: You own a plot of land two blocks down the street from where the City is considering approval of a development.
- "Public Generally" analysis The official may participate in the decision if the effect on their financial interest is <u>indistinguishable from the effect on the public</u> generally
  - ► Example: a new law applying to all residential properties in the City

# CONFLICTS IN PUBLIC CONTRACTS (SECTION 1090)

- ▶ California Government Code section 1090 prohibits City officers and employees from having a financial interest in any contract made by them in their official capacity.
  - Example: Standby Officer holds stock in a medical supply company the City is considering contracting with to address its emergency preparedness needs.
- ▶ If an official has a conflict, their agency cannot enter into the contract even if the official recuses themselves. If the Council has a conflict, every person or agency under its jurisdiction does as well.
  - ▶ If a staff member has a conflict, they must recuse themselves

#### **SECTION 1090**

- "Making a contract" includes more than just voting or approving. Can include discussions and planning etc.
- ▶ Any contract made in violation of section 1090 is voidable
- ► Can carry harsh penalties, including criminal prosecution
- ► A 1090 conflict can exist in addition to a Political Reform Act conflict.

#### LOCAL CONFLICT OF INTEREST LAWS

- ► The City of Berkeley has specific conflict of interest laws which apply to certain officers or employees.
  - ► E.g. Some commissioners and board members have specific conflict rules prohibiting certain activities or requiring recusal in specific instances. (e.g., Rent Stabilization Board, Fair Campaign Practices Commission)
- ▶ Berkeley's Conflict of Interest Code outlines the types of financial disclosures required of each City officer and employee.
- ► Under Berkeley's Conflict of Interest Code, interests in non-profit entities can trigger a conflict.

## COMMON LAW CONFLICTS OF INTEREST

- ▶ Even where an official or employee does not have a conflict of interest under the Political Reform Act, Section 1090, or City law, a court may find that a conflict exists.
- ➤ The "common law" conflicts may be based purely on non-financial (i.e., "personal") interests and can even be based on the mere "appearance of impropriety."
- ► "A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal and diligence and primarily for the benefit of the public." (Noble v. City of Palo Alto (1928) 89 Cal. App. 47, 51.)

#### THE RIGHT TO AN UNBIASED DECISIONMAKER

- ► A person or entity appearing before a City body has a due process right to a fair and unbiased decisionmaker.
  - ► Applies when the City body is acting in a quasi-judicial or adjudicatory capacity (e.g., approval of a development application)
- ▶ An official is barred from participating if they are biased in favor or against the party, has a personal interest in the decision, or has prejudged the matter.

## **RECUSAL**

- ► Generally, officials who determine that they have a conflict of interest must recuse themselves from the governmental decision.
  - ▶ This usually entails leaving the room and refraining from any discussion of the matter with other members of the governmental body.
- ► Certain disclosure and public notification procedures may apply as well.
- ► For 1090 conflicts, recusal may be insufficient and the agency may be barred with contracting with the party posing the conflict.

#### **ENFORCEMENT AND PENALTIES**

- ► Enforcement actions against violators of the conflict rules can take several forms depending on the type and severity of the violation.
- ► The California Fair Political Practices Commission (FPPC) can initiate investigations and levy fines for violations.
- ► Civil actions can be brought by the local District Attorney, City Attorney or by City residents.
- ▶ The City can take disciplinary measures against City employees.
- ▶ Government decisions made in violation of the conflict rules can be voided.
- ▶ A knowing or willful violation can result in criminal prosecution.

# DISCLOSURE OF FINANCIAL INTERESTS (FORM 700)

- ► Every City official or employee who makes or influences governmental decisions is required to file a "Statement of Economic Interests" (Form 700) with the City Clerk
- ▶ Provides information to the public about the official's financial interests
- ▶ Serves to remind officials of their potential conflicts of interest
- ► Generally, Form 700s are filed when the official takes office, annually thereafter, and upon leaving office
- ► The information required for each official's Form 700 can vary based on the official's position
- ► Filed by Standby Officer when nomination form submitted.

# WHO FILES A FORM 700?

- ► California Government Code Section 87200 filers:
  - ▶ Mayor
  - ► City Councilmembers
  - ▶ City Manager
  - ▶ City Attorney
  - ► City Treasurer
  - ► CAOs
  - ▶ Planning Commissioners
  - ► Officials who manage investment
- ► City Conflict of Interest Code filers
  - ► For employees not listed in Section 87200.
  - ► The amount of information required is tailored to reflect the specific types of governmental decisions in which each employee is involved.
- ► Standby Officers pursuant to Council Resolution No. 68, 830-N.S.



Date: September 17, 2020

To: Fair Campaign Practices Commission and Open Government Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act (BERA) to Regulate

Officeholder Accounts and Proposed Changes to City Council Expenditure

and Reimbursement Policies (Resolution 67,992-N.S.)

This memorandum to the Fair Campaign Practices Commission (FCPC) and the Open Government Commission (OGC) substitutes for the one previously posted, mailed to members of the FCPC, and appearing as Item 7 on the agenda of the FCPC. The key difference is that this memorandum addresses not only officeholder accounts, but also proposed changes to City Council Expenditure and Reimbursement Policies (so-called D-13 Accounts). These two proposals are closely linked and should be considered together. Because the proposal relating to officeholder accounts falls under the jurisdiction of the FCPC and that relating to D-13 accounts falls under the jurisdiction of the OGC, the FCPC and OGC should act jointly in considering the proposed changes to BERA and the Reimbursement Policies.

The memorandum also makes the following recommendation:

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

The preceding recommendations are consistent with previous discussions and the annual workplans of the FCPC and the OGC.

To implement the recommendations in this memorandum, a revised report to the Council is attached.

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. It agreed that the Council Committee would work collaboratively with the FCPC and OGC on matters relating to officeholder accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, I propose that the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

PUBLIC HEARING XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Fair Campaign Practices and Open

**Government Commissions** 

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices

and Open Government Commissions

Subject: Amendments to the Berkeley Election Reform Act (BERA) and

Change to City Council Expenditure and Reimbursement

Policies (Resolution 67,992-N.S.)

#### RECOMMENDATION

Form a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts and (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

#### FISCAL IMPACTS OF RECOMMENDATION

None.

#### **CURRENT SITUATION AND ITS EFFECTS**

Officeholder accounts are not expressly regulated by BERA. However, under existing law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements.

Donations to nonprofit organizations from Councilmember's discretionary council budgets (D-13 accounts) are allowed by the authority of City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.).

dugets (b. 13 accounts) are anowed by the authority of city council Expenditur	C
and Reimbursement policies (Resolution 67,992-N.S.).	
Action:	
ICHOIII	

Vote:

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

Changes to the City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) can be made by a majority vote of the Council.

#### BACKGROUND

#### Officeholder Accounts

During 2019, the Fair Campaign Practices Commission (FCPC) discussed whether there is a need to amend the law relating to these accounts. These accounts are not expressly regulated by BERA, but under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws."

In the course of its review of the issue of officeholder accounts, the FPPC considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met several times in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) 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." (Report, page 1.)

At the February 4, 2020 meeting, the Council had a lengthy discussion about their D-13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder accounts. The City Council referred the issues relating to officeholder and D-13 accounts to its Agenda and Rules Committee for further consideration.

**Proposed Changes to City Council Expenditure and Reimbursement Policies** At the April 23, 2020 meeting of the Open Government Committee (OGC), a motion to direct staff to develop a proposal recommending Council change City policy to remove councilmember names from donations to nonprofit organizations from D-13 accounts was approved unanimously.

Donations to nonprofit organizations from the Councilmember's discretionary council budget (D-13 accounts) puts that elected official in a favorable light with Berkeley citizens at no cost to the Councilmember, an option not available to a challenger for that office. A look at the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to a nonprofit organization "from the discretionary council budget" of the Councilmember. This line item ("Services and Materials") from the General Fund was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 (approximately \$40,000 for the Mayor, the balance evenly divided among the Councilmembers; see Attachment 1 - Council Office Budget Summaries). While not technically a "campaign contribution," those individuals in the organization as well as individuals favorably disposed to the nonprofit organization receiving the funds would certainly see it favorably. A person running against this incumbent would have to draw on their own resources to match a Councilmember's contribution from public funds and without the public notice of the contribution the Councilmember receives.

In addition to favoring incumbents, the use of public moneys for contributions to nonprofit organizations from the discretionary council budgets of individual Council members is arguably improper and certainly bad optics. The commissioners of the OGC have no argument with contributions being made to nonprofit organizations from the City of Berkeley, but believe they should be made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley, not from individual Council members. Perhaps a nonprofit fund could be set up from which the donations could be made from recommendations made to one of the Council's Policy Commissions. This would free funds for other purposes now being directed to nonprofit organizations from individual Councilmember's D-13 accounts.

#### Proposed Action:

At this stage, the Council has referred both the issues relating to officeholder accounts and those relating to D-13 accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee agreed to work collaboratively with the FCPC and OGC on matters relating to officeholder

## ITEM 12 Attachment 1

accounts and D-13 accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Consistent with the prior actions of the Council and the FCPC/OGC, the Commissions recommend the establishment of a subcommittee of members of the City Council and members of the Fair Campaign Practices and Open Government Commissions to:

- (1) prepare an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to prohibit or regulate officeholder accounts, and
- (2) prepare a change in City Council Expenditure and Reimbursement policies (Resolution 67,992-N.S.) to have donations to nonprofit organizations made in the name of the entire Berkeley City Council on behalf of the citizens of Berkeley rather than from individual Council members.

## **ENVIRONMENTAL SUSTAINABILITY**

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

## RATIONALE FOR RECOMMENDATION

The "double green light" process requires that the FCPC adopt an amendment by a two-thirds vote, and that the City Council hold a public hearing and also adopt an amendment by a two-thirds vote. Evidence to date suggests there are differences of perspective regarding this matter between the City Council and the FCPC regarding the D-13 accounts. It would seem to be a rational step to discuss and come to agreement and possibly compromise prior to the "double green light" process.

## ALTERNATIVE ACTIONS CONSIDERED

None.

## **CITY MANAGER**

## **CONTACT PERSON**

Brad Smith, Chair, Fair Campaign Practices and Open Government Commissions, (510) 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices and Open Government Commissions, (510) 981-6998



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

Subject: Amendments to the Berkeley Election Reform Act to regulate officeholder

accounts

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act ("BERA") prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts. At its July 16, 2020 meeting, the Commission voted to direct Commissioner O'Donnell to return at the Commission's September 17, 2020 meeting with a version of the proposal drafted as an amendment to BERA that can be voted on and presented to Council.

## **Background**

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws." (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or

(3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) 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." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, 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, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

## Alternative Proposal for Legislation on Officeholder Accounts

Given the Council's opposition to accepting an outright prohibition of officeholder accounts, the FCPC should at least explore some alternatives, including the option of amending the BERA to allow for officeholder accounts that would be subject to limitations, as the City of Oakland has done. The subcommittee which examined officeholder accounts briefly discussed this option but, given that there was unanimous support for prohibiting officeholder accounts entirely, it never developed a detailed proposal for this kind of alternative. However, now that the FCPC/OGC will be in conversation with the council about the options going forward, it seems to make good sense to examine in more detail what the alternative might look like.

For discussion purposes, a draft proposal to amend the BERA is attached (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are

used *strictly* for officeholder purposes and may not be used for political campaigns or other non-officeholder purposes. The proposal would also include limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures. And they would specify how officeholder accounts are to be terminated.

Although not as fully effective as the complete prohibition of officeholder accounts previously recommended by the FCPC, this approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

In the end, it may well be that the alternative presented here—or any other—may be unable to carry the day. Because of the double-green light requirements of BERA, no proposal may be able to garner the 2/3 votes of both the Council and Commission required to change the law. But for the purposes of collaborating with the Council on ways of improving the officeholder account process, the Commission should review the attached proposal which offers at least one possible scenario for addressing the problems and pitfalls involved with officeholder accounts.

Prior to approving this item, the Commission will need to make a determination regarding the dollar amounts for limits on donations to officeholder accounts. These amounts are highlighted in the attached Proposal in Section 2.12.600.E & F.

## Attachments:

- New draft proposed amendments to BERA to allow for officeholder accounts, to limit such accounts to being used strictly for officeholder purposes, and to subject these accounts to various other limitations and disclosure requirements ("Proposal")
- 2. Report to the City Council from the Fair Campaign Practices Commission entitled "Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12" (for Public Hearing on February 4, 2020) (with Attachments) ("Report")
- 3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) ("Memorandum")



Fair Campagn Practices Commission

PUBLIC HEARING XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council

From: Brad Smith, Chair, Open Government Commission

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

Subject: Amendments to the Berkeley Election Reform Act

## RECOMMENDATION

Adopt an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to regulate officeholder accounts.

## FISCAL IMPACTS OF RECOMMENDATION

None.

## **CURRENT SITUATION AND ITS EFFECTS**

These recommended amendments to the Berkeley Lobbyist Registration Act were approved by the Open Government Commission at its regular meeting of XXXXX XX, XXXX.

#### Action:

## Vote:

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

## **BACKGROUND**

In 2019, the FCPC approved an amendment to the Berkeley Election Reform Act ("BERA") prohibiting officeholder accounts. That proposal was submitted to Council. However, some councilmembers have expressed opposition to an outright ban on officeholder accounts and a preference for developing regulations for those accounts. This report contains a new alternative proposal to regulate – rather than prohibit – officeholder accounts.

During 2019, the Commission discussed whether there is a need to amend the law relating to the use of officeholder accounts. These accounts are not expressly regulated

## ITEM 12 Attachment 3

by BERA. But under current law, if funds for officeholder accounts are used for campaign purposes, this may implicate campaign financing law and may trigger various local and state legal requirements. A 1999 legal opinion from the City Attorney stated: "[t]he mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable laws." (Report, page 14.)

In the course of its review of the issue of officeholder accounts, the Commission considered three options: (1) leaving the law on officeholder accounts unchanged; (2) prohibiting officeholder accounts entirely (an approach used by the City of San Jose), or (3) authorizing officeholder accounts but limiting their use and imposing various restrictions and requirements on them (an approach used by the City of Oakland).

The Commission referred the issue of officeholder accounts to a subcommittee, which met in the fall of 2019 and considered the options. The subcommittee unanimously recommended prohibiting officeholder accounts entirely. At its regular meeting on November 21, 2019 the Commission voted without opposition to recommend amendments to the BERA that would prohibit officeholder accounts.

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) 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." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, 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, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

## **Alternative Proposal for Legislation on Officeholder Accounts**

At its September 17, 2020 meeting, the FCPC passed the attached proposal to amend the BERA (Attachment 1). It is based generally on the Oakland ordinance but differs in important ways from that statute. The basic concept behind this alternative is to allow officeholders to have *true* officeholder accounts, but to insure that the funds in these accounts are used *strictly* for officeholder purposes and may not be used for political

# ITEM 12 Attachment 3

campaigns or other non-officeholder purposes. The proposal also includes limitations on the amount each donor may contribute and the total amount of donations to each officeholder account permitted annually. The amendments would require disclosures of the sources and amounts of all donations and expenditures, and specify how officeholder accounts are to be terminated.

This approach would allow officeholders to create regulated accounts for proper officeholder purposes. At the same time, these true officeholder accounts would be subject to public scrutiny and express limitations that would prevent serious abuses. Finally, the strict prohibitions in the proposed legislation against using any funds from officeholder accounts for campaign purposes would greatly simplify the management and oversight of these accounts. Current state law, which permits certain officeholder funds to be redesignated for campaign purposes under certain circumstances and subject to various disclosure and notice requirements, creates a nightmare of administrative and reporting requirements. It has made it difficult for officeholders to comply with the law and has established traps for the unwary. Thus, it is hardly surprising that most candidates elected to public office do not even attempt to set up officeholder accounts.

## **ENVIRONMENTAL SUSTAINABILITY**

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

## RATIONALE FOR RECOMMENDATION

This proposal is offered as an alternative to the proposed ban on officeholder accounts previously submitted to Council by the FCPC. This proposal would regulate – rather than prohibit – officeholder accounts.

## ALTERNATIVE ACTIONS CONSIDERED

None.

## **CITY MANAGER**

## CONTACT PERSON

Brad Smith, Chair, Open Government Commission, (510) 981-6998 Samuel Harvey, Commission Secretary, Open Government Commission (510) 981-6998

## Attachments:

- 1. Proposed ordinance amending BERA to allow and regulate officeholder accounts
- 2. Report to the City Council from the Fair Campaign Practices Commission entitled "Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts: Amending BMC Chapter 2.12" (for Public Hearing on February 4, 2020) (with Attachments) ("Report")
- 3. Memorandum from Dean Metzger, Chair, to FCPC dated February 12, 2020 (with Attachments) ("Memorandum")

## ORDINANCE NO. -N.S.

## AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE OFFICEHOLDER ACCOUNTS

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

<u>Section 1.</u> That the Berkeley Municipal Code section 2.12.157 is added to read as follows:

## Section 2.12.157 Officeholder account.

"Officeholder account" means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

<u>Section 2.</u> That Article 9 of Chapter 2.12 of the Berkeley Municipal Code is added to read as follows

Article 9. Officeholder Accounts

## Section. 2.12.600 Regulation of officeholder accounts.

- A. The mayor and council members (the "officeholder" or "office holders") shall each be permitted to establish one officeholder account, as defined in section 2.12.157.
- B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, "donation" 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, in support of the office currently held by an elected official.
- C. Only a natural person who is a resident of the City may make a donation to an officeholder account.
- <u>D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.</u>
- E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. "Donor" means a natural person who is a resident of the City who makes a donation as defined in paragraph B.
- F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

- G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:
  - 1. The name of the officeholder and the office held;
  - 2. The reporting period covered by the report;
  - 3. A description of all receipts and expenditures.
  - 4. The full name of each donor from whom a donation or donations 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 donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
  - 5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
  - 6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
  - 7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.
- H. Expenditures from an officeholder account may be made only for-lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.
- I. Allowable expenditures from an officeholder account include the following:
  - 1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
  - 2. Expenditures for office equipment, furnishings and office supplies;

- 3. Expenditures for office rent;
- 4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;
- 5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;
- 6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;
- 7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;
- 8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;
- 9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;
- 10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;
- 11. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;
- 12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and
- 13. Expenditures for accounting, professional and administrative services provided to the officeholder account.
- J. Officeholder expense funds shall not be used for the following:
  - 1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office or in connection with a ballot measure;

- 2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;
- 3. Membership in any athletic, social, fraternal, veteran or religious organization;
- 4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;
- 5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

## K. Prohibitions:

- 1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.
- 2. No funds may be used from an officeholder account to pay any campaign expenses.
- 3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.
- L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:
  - 1. Paying for legitimate, outstanding officeholder expenses.
  - 2. Repaying contributions to contributors to the officeholder accounts.
  - 3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.
- M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

## ITEM 12 Attachment 3

- N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.
- O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

## AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on, [date of hearing] at [6:00 p.m.] in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of [date of agenda posting].

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

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

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

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PUBLIC HEARING February 4, 2020

To:

Honorable Mayor and Members of the City Council

From:

Fair Campaign Practices Commission

Submitted by:

Dean Metzger, Chairperson, Fair Campaign Practices Commission

Subject:

Amendments to the Berkeley Election Reform Act to prohibit

Officeholder Accounts; Amending BMC Chapter 2.12

## RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to prohibit Officeholder Accounts (See <u>Section 18531.62</u>. <u>Elected State Officeholder Bank Accounts</u>, Regulations of the Fair Political Practices Commission).

## SUMMARY

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 a goal of the Fair Elections Act of 2016.

## FISCAL IMPACTS OF RECOMMENDATION None.

## **CURRENT SITUATION AND ITS EFFECTS**

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of November 21, 2019.

**Action**: M/S/C (Smith/Saver) to adopt the proposed amendments to BERA related to Officeholder Accounts.

Vote: Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none;

Abstain: none; Absent: O'Donnell (excused).

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

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Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts

PUBLIC HEARING February 4, 2020

## **BACKGROUND**

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

## **Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's <a href="Public Access Portal">Public Access</a> <a href="Portal">Portal</a>.) If, however, a complaint is filed that an Officeholder Account is used for

## Page 3 of 16

Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts

PUBLIC HEARING February 4, 2020

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

## **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

## **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

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Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts

PUBLIC HEARING February 4, 2020

Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties. Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

## Recommendation

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

Part 8 - OFFICEHOLDER ACCOUNTS 12.06.810 - Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

### 2.12.157 Officeholder Account

"Officeholder Account" means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

## 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

<sup>&</sup>lt;sup>1</sup>Under state law applicable to state elected officials, officeholders may use campaign contributions for "expenses that are associated with holding office." (Govt. Code, § 89510.) To qualify, expenditures must be "reasonably related to a legislative or governmental purpose." (*Id.*, § 89512.) "Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose." (*Ibid.*)

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Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts

PUBLIC HEARING January 21, 2020

C. Anyone holding an active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account, in accordance with FPPC guidelines.

## **ENVIRONMENTAL SUSTAINABILITY**

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

## RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

## ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

## **CITY MANAGER**

The City Manager takes no position on the content and recommendations of this report.

## **CONTACT PERSON**

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

## Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

# OFFICEHOLDER ACCOUNT PROHIBITED; 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 2.12.157 is added to read as follows:

## BMC 2.12.157 Officeholder account

"Officeholder Account" means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

## BMC 2.12.441 Officeholder account prohibited

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate's ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation



Other Resources My Subscriptions My Favorites **Bill Information Publications** Home California Law **(i)** Search Code: Select Code ▼ Section:

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#### **GOVERNMENT CODE - GOV**

TITLE 9. POLITICAL REFORM [81000 - 91014] (Title 9 added June 4, 1974, by initiative Proposition 9.) CHAPTER 5. Limitations on Contributions [85100 - 85802] (Chapter 5 added June 7, 1988, by initiative Proposition 73.)

ARTICLE 3. Contribution Limitations [85300 - 85321] (Article 3 added June 7, 1988, by initiative Proposition 73.)

- 85316. (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.
- (b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.
- (1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:
- (A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.
- (B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.
- (C) Twenty thousand dollars (\$20,000) in the case of the Governor.
- (2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:
- (A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.
- (B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.
- (C) Two hundred thousand dollars (\$200,000) in the case of the Governor.
- (3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.
- (4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

## Page 8 of 16

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

## § 18531.62. Elected State Officeholder Bank Accounts.

- (a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:
  - (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
  - (4) "Officeholder funds" means money in the officeholder account accou
- (b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.
- (c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:
- (1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.
- (2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

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## Page 9 of 16

- (3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.
- (4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).
  - (d) Prohibitions: he come in the long the salt at the some attended black to like the life of the list of the line.
- (1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).
- in Regulation 18525(a), we provide the state of the state
- (3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).
- (e) Contributions to the Officeholder Account: Souther and Southern State of the St

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

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## Page 10 of 16

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

- (B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.
- (2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:
- (A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;
- (B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).
- (3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.
- (4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

## Page 11 of 16

- (A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).
- (B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).
  - (f) Contributions Over the Limits retrained the gradient and the retrained in the contributions of the contribution of the
- (1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.
- (2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.
  - at al (g) Terminating Officeholder Accounts and Committees, to the mode with an account standard
- (1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.
- (2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

## Page 12 of 16

organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

- account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).
- (4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:
  - s (A) Paying outstanding officeholder expenses. It was a second of the s
  - (B) Repaying contributions to contributors to the officeholder account.
- (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.
- (D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.
- (5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

## and the regarded of the compact of the later of the HISTORY's and the compact of the compact of

- 1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
- 2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to Fair Political Practices Commission v. Office of Administrative Law, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).
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Office of the City Attorney

DATE:

December 28, 1999

TO:

BARBARA GILBERT, Aide to Mayor Shirley Dean

FROM:

MANUELA ALBUQUERQUE, City Attorney

By: CAMILLE COUREY, Deputy City Attorney

SUBJECT:

APPLICATION OF BERKELEY ELECTION REFORM ACT TO

OFFICEHOLDER ACCOUNTS

ISSUE:

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

#### CONCLUSION:

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BRRA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

#### ANALYSIS:

Sarah Reynoso, former secretary and staff councel to the Pair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts. For similar reasons, the BERA does not

<sup>&</sup>lt;sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

#### Page 15 of 16

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28,1999

Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aide of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office. Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aide of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

## Attachment

cc: Fair Campaign Practices Commission Sherry Kelly, City Clerk

City Attorney Opinion Index: ILB.1. and IILG.

CC:bl

PAUSERS/IDEL2/offhidr.mem.doc

Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

## CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES

## BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

#### CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

#### **MALYSIS**

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"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

FCPC COMMISSIONERS December 9, 1991 Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms. (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPPC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPPC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

<sup>1/</sup>I spoke with the FPPC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

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# NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

## AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the prohibition of officeholder accounts.

The hearing will be held on, February 4, 2020, at 4:00 p.m. in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of January 30, 2020.

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

Written comments should be mailed or delivered directly to the <u>City Clerk, 2180 Milvia Street, Berkeley, CA 94704</u>, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

**Published:** January 24, 2020 – The Berkeley Voice Pursuant to Berkeley Municipal Code Section 2.12.051

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council wa posted at the display case located near the walkway in front of the Maudelle Shirek	S
Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on	
January 30, 2020.	

Mark Numainville, City Clerk



## SUPPLEMENTAL REVISED **AGENDA MATERIAL** for Supplemental Packet 2

**Meeting Date:** 

**February 4, 2020** 

**Item Number:** 

2

Item Description: Statement on Item 2 - Amendments to the Berkeley Election

Reform Act to prohibit Officeholder Accounts; Amending BMC

Chapter 2.12

Submitted by:

**Councilmember Hahn** 

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.



#### SOPHIE HAHN

Berkeley City Council, District S 2180 Milvia Street, 5th Floor Berkeley, CA 94704 (510) 981-7150 shahn@cityofberkeley.info

> ACTION CALENDAR February 4, 2020

To:

Honorable Mayor and Members of the City Council

From:

Vice Mayor Sophie Hahn

Subject:

Statement on Item 2 - Amendments to the Berkeley Election Reform Act to

prohibit Officeholder Accounts; Amending BMC Chapter 2.12

### RECOMMENDATION

This item seeks to outlaw Officeholder Accounts in Berkeley. I would like to offer an alternative: to allow Officeholder Accounts but establish regulations to limit them in ways that reflect Berkeley's limitations on campaign donations and consider narrowing the uses for which Officeholder Account funds can be used.

The action I advocate for Council to take is to refer a discussion of Officeholder accounts to the Agenda and Rules Committee, to consider a reasonable set of limitations and rules for such accounts and bring back recommendations to the full Council, for the Council to consider referring to the Fair Campaign Practices Committee.

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold. They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done. Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

The FCPC bases its recommendation to prohibit Officeholder Accounts on arguments about "equity" and potential "corruption" in elections. The report refers repeatedly to "challengers" and "incumbents," suggesting that Officeholder Accounts are vehicles for unfairness in the election context.

I believe that the FCPC's recommendations reflect a misunderstanding of the purpose and uses of Officeholder Accounts, equating them with campaign accounts and suggesting that they create an imbalance between community members who apparently have already decided to run against an incumbent (so-called "challengers") and elected officials who are presumed to be

http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf

<sup>&</sup>lt;sup>2</sup> http://www2.oaklandnet.com/w/OAK052051

always running for office. The recommendations do not take into account some important framing: the question of what funds are otherwise available to pay for Officeholder-type expenses for Officeholders or members of the public. Contrary to the conclusions of the FCPC, I believe Officeholder accounts are an important vehicle to redress a significant disadvantage for elected officials, whose ability to exercise free speech in the community and participate in conferences and events related to their profession is constrained by virtue of holding public office, as compared to community members, whose speech rights are unrestricted in any manner whatsoever, and who can raise money to use for whatever purposes they desire.

Outlawing Officeholder Accounts is also posited as a means to create equity between more and less wealthy Officeholders, on the theory that less affluent Officeholders will have less access to fundraising for Officeholder Accounts than more affluent Officeholders. Because there are no prohibition on using personal funds for many of the purposes for which Officeholder Account funds can be used, prohibiting Officeholder Accounts I believe has the opposite effect; it leaves more affluent Officeholders with the ability to pay for Officeholder expenses from personal funds, without providing an avenue for less affluent Officeholders, who may not have available personal funds, to raise money from their supporters to pay for such Officeholder expenses.

The question of whether Officeholder Accounts should be allowed in Berkeley plays out in the context of a number of rules and realities that are important to framing any analysis.

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [ ] delivered, by any means [ ] to a person's residence, place of employment or business, or post office box." Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position. Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

Without the ability to raise funds for an Officeholder Account, for an elected official to send a paper newsletter to constituents or to use an email newsletter service that is not paid for with public funds, they must use personal funds. A printed newsletter mailed to 5-6,000 households (a typical number of households in a Berkeley City Council District) can easily cost \$5,000+, and an electronic mail service subscription typically costs \$10 (for the most basic service) to \$45 per month, a cost of \$120.00 to over \$500 per year - in personal funds.

<sup>&</sup>lt;sup>3</sup> <a href="http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html">http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html</a>

<sup>&</sup>lt;sup>4</sup> http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html

Second, Berkeley City Councilmembers and the Mayor of Berkeley are not paid enough for there to be any reasonable expectation that personal funds should be used for these types of expenses.<sup>5</sup> For many Councilmembers and/or the Mayor, work hours are full time - or more - and there is no other source of income.

Finally, and most importantly, local elected officials are restricted from accepting money or gifts. An elected official cannot under any circumstances raise money to pay for Officeholder expenses such as printed communications, email newsletter services, travel and admission to industry conferences for which the elected official is not an official delegate (e.g., conferences on City Planning, Green Cities, Municipal Finance, etc.), and other expenses related to holding office that are not covered by public funds. Again, without the possibility of an Officeholder Account, an elected official generally must use personal funds for these expenses, allowing more affluent elected officials to participate while placing a hardship or in some cases a prohibition on the ability of less affluent elected officials to undertake these Officeholder-type activities - which support expected communications with constituents and participation in industry activities that improve the elected official's effectiveness.

The elected official's inability to raise funds from others must be contrasted with the ability of a community member - a potential "challenger" who has not yet declared themselves to be an actual candidate - or perhaps a neighborhood association, business or corporation (Chevron, for example) - to engage in similar activities. Nothing restricts any community member or organization from using their own funds - or funds obtained from anyone - a wealthy friend, a corporation, a local business, a community organization or their neighbors - for any purpose whatsoever.

Someone who doesn't like the job an elected official is doing could raise money from family or connections anywhere in the community - or the world - and mail a letter to every person in the District or City criticizing the elected official, or buy up every billboard or banner ad on Facebook or Berkeleyside to broadcast their point of view. By contrast, the elected official, without access to an Officeholder Account, could only use personal funds to "speak" with their own printed letter, billboard or advertisement. Community members (including future "challengers") can also attend any and all conferences they want, engage in travel to visit interesting cities and projects that might inform their thoughts on how a city should be run, and pay for those things with money raised from friends, colleagues, businesses, corporations, foreign governments - anyone. They are private citizens with full first amendment rights and have no limitations, no reporting requirements, no requirements of transparency or accountability whatsoever.

The imbalance is significant. Outside of the campaign setting, where all declared candidates can raise funds and must abide by the same rules of spending and communications, elected officials cannot raise money for any expenses whatsoever, from any source, while community

<sup>&</sup>lt;sup>5</sup> Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.<sup>5</sup>

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members, including organizations and private companies, can raise as much money as they want from any sources, and use that money for anything they choose.

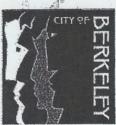
Without the ability to establish and fund an Officeholder Account, the only option an elected official has is to use personal funds, which exacerbates the potential imbalance between elected officials with more and less personal funds to spend. Elected officials work within a highly regulated system, which can limit their ability to "speak" and engage in other activities members of the public are able to undertake without restriction. Officeholder Accounts restore some flexibility by allowing elected officials to raise money for expenses related to holding office, so long as the sources and uses of those funds is made transparent.

By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of funds beyond the State's restrictions, to ensure funds are not used for things like family members' travel, as is currently allowed by the State. Oakland has taken this approach, and has a set of Officeholder Account regulations that provide a good starting point for Berkeley to consider.<sup>6</sup>

I respectfully ask for a vote to send the question of potential allowance for, and regulation of, Officeholder Accounts to the Agenda and Rules Committee for further consideration.

CONTACT: Sophie Hahn, District 5: (510) 981-7150

<sup>6</sup> http://www2.oaklandnet.com/w/OAK052051



**Fair Campaign Practices Commission** 

Date:

February 12, 2020

To:

FAIR CAMPAIGN PRACTICES COMMISSIOM

From:

Dean Metzger, Commission Chair

Subject:

Council discussion and action with regards to the Officeholder Accounts FCPC

proposal.

At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

## **Attachments:**

- 1. Mayor and City Council Financial Summary
- Draft request to City Manager for budget details of the Mayor and each individual Council Member

## MAYOR AND CITY COUNCIL FINA

	FY 2015 Actual	FY 2016 Actual	Adopted	Proposed	Proposed
EXPENDITURES					
By Type: Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials Capital Outlay Internal Services	36,942 1,953 89,100	43,407 7,674 81,181	113,526	113,526 81,181	113,526 81,181
Indirect Cost Transfer	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
By Division:				FF4 500	500 047
Mayor's Office Council Offices Exiting Officials	515,095 1,273,561	558,137 1,334,744	584,877 1,333,447	554,389 1,474,052	566,917 1,507,821
Exturity Officials	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
By Fund: General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
General Fund FTE	12.00	12.00	12,00	12.00	12.00
Total FTE	12.00	12.00	12.00	12.00	12.00

DRAFT

DRAFT

DRAFT

Date:

February 20, 2020

To:

Dee Williams-Riley

City Manager

From:

Fair Campaign Practices Commission

Subject:

Request for budget details of the Mayor and each individual Council

Member.

At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.

Thank you,

Fair Campaign Practices Commission