Fair Campaign Practices Commission

AGENDA FOR THE FAIR CAMPAIGN PRACTICES COMMISSION

SPECIAL MEETING
February 18, 2021
6:00 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/88554543030

Or Telephone: +1 669 900 6833

Meeting ID: 885 5454 3030

Secretary: Samuel Harvey

The Commission may act on any item on this agenda

1. Call to Order 6:00 p.m.

2. Roll Call.

3. Public Comment. *Comments on subjects not on the agenda that are within the Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*

4. Complaint alleging violations of BERA by Rent Stabilization Board candidates Leah Simon-Weisberg, Mari Mendonca, Andy Kelley, Dominique Walker, and Xavier Johnson; discussion and possible action.

5. Adjournment.

Communications

None

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

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S.

Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4th Fl., Berkeley, CA.

Fair Campaign Practices Commission

Date: February 18, 2021

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Complaint alleging violation of BERA by Rent Stabilization Board candidates Leah Simon-Weisberg, Mari Mendonca, Andy Kelley, Dominique Walker, and Xavier Johnson.

On October 20, 2020, Commission staff received the attached complaint alleging that campaign advertisements promoting the candidacies of five candidates for Berkeley Rent Stabilization Board failed to include the required disclaimer identifying the major funding source behind one of the campaign committees. The five Rent Board candidates are Leah Simon-Weisberg, Mari Mendonca, Andy Kelley, Dominique Walker, and Xavier Johnson.

Section 2.12.335 of the Berkeley Election Reform Act ("BERA") (BMC Chapter 2.12) provides that "campaign communications" supporting a candidate must include the name of the committee and the phrase "Major Funding Provided By" followed by the name of the committee's top four contributors over $250 as well as the total contributions and city of domicile for each top contributor.

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.)

The following "campaign communications" are subject to the disclaimer requirements of BMC § 2.12.335:

1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;

2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;

3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

As the complaint identifies, the committee for candidate Simon-Weisberg has received a contribution over $250 in the form of cumulative loans of $800 from the candidate. The candidates' website as well as an online advertisement are both provided in the complaint. Both show a disclaimer that lists the committees responsible for the

communications. However, neither communication discloses the loans to candidate Simon-Weisberg's committee.

Because the candidate has contributed more than $250 to their campaign committee, the disclaimer on these advertisements should have included the following language following the name of candidate Simon-Weisberg's committee:

Major funding provided by Leah Simon-Weisberg, $[amount contributed][1], Berkeley, CA

Based on the failure of the committee's advertisements to include this language, staff asserts that there is probable cause to believe that one or more violations of BERA has occurred.

At this stage in the enforcement process, the Commission may take any of the following actions:

1. The Commission may dismiss the matter (by majority vote) and proceed no further if evidence of any violation is insufficient or unreliable or if the possible violation has only a slight impact on the administration of BERA and/or the outcome of any election that further proceeding would be an inefficient use of resources.

2. The Commission may determine that probable cause exists to believe that the BERA has been violated. Probable cause exists when based on the circumstances presented there is a reasonable basis on which to believe that a violation of the BERA has occurred.

(FCPC Procedures VI.B.)

If the Commission determines that probable cause exists to believe BERA has been violated, the Commission may take any of the following courses of action:

a. Dismiss the complaint, where appropriate, and take no further action.

b. Request the Secretary conduct further investigation, including an audit of campaign records;

c. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;

d. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee,

[1] The dollar amount in any given disclaimer would be determined by the amount of contributions made at the time of the advertisement.

which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.

e. Schedule and conduct a hearing pursuant to Section 2.12.230 of BERA . . .

f. Ask the City Attorney or the District Attorney to seek legal remedies.

g. Seek any other remedy within its authority.

(FCPC Procedures VI.C.2.)

Upon a finding of probable cause, the Commission's procedures direct the Commission to take the following into consideration when determining what course of action to take:

a. Its policies, procedures, regulations, and past actions in similar situations.

b. The amount of experience of the candidate, if any, and treasurer in campaign reporting, the history or absence of other campaign violations, and the degree to which these persons made good faith efforts to correct any relevant reporting deficiencies.

c. The presence, if any, of an apparent intent to conceal, deceive or mislead.

d. Whether the probable violation appears deliberate, negligent or inadvertent.

e. The effect of the probable violation upon the election or upon the administration of BERA

(FCPC Procedures VI.C.1.)

The Commission has reviewed BMC § 2.12.335 during this election cycle as multiple complaints have been received alleging similar violations. At a January 21, 2021 special meeting, the Commission reviewed the legislative history of section 2.12.325. (See Attachment 3.) Specifically, the Commission reviewed whether section 2.12.335 was intended to apply where a candidate contributes to their own committee. As the staff report provided for that meeting indicates, the FCPC and Council considered but ultimately rejected an express exemption from section 2.12.335 for candidate committees, clearly indicating that where a candidate contributes over $250 to their own committee, that contribution should be disclosed on the committee's campaign communications.

At a January 21, 2021 Special Meeting, recognizing that there has been confusion among committees and the public about the applicability of section 2.12.335 to candidate committees, the Commission adopted regulation language making clear that BERA

section 2.12.335 applies to candidate committees where the candidate contributes or loans over $250 to their own committee.

The Commission has resolved one other enforcement matter this election cycle involving a similar violation of section 2.12.335. In that matter, a slate of rent board candidates failed to include a disclaimer on their joint website then ultimately included a disclaimer which omitted a contribution from one of the candidates to their own campaign. The Commission made a finding of probable cause in that matter, but determined, based upon the confusion surrounding the interpretation of section 2.12.335 and the apparent good faith by the candidates to comply with BERA, that the matter should be dismissed.

Staff believes it would be appropriate for the Commission to take similar action in this matter.

Attachments:
1. Complaint of Sandra Clement
2. January 21, 2021 FCPC Special Meeting Staff Report.

Fair Campaign Practices Commission

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

Full Name: ~~Laura Menard~~ Sandra Clement
Date: October 12, 2020
Address: [redacted]
E-mail (optional but suggested):
Phone (optional but suggested):

Party or parties alleged to have committed or are about to commit a violation of BERA:
Leah Simon-Weisberg for Rent Board 2020

Clear, concise and accurate statement of the facts that constitute the violation of BERA. If additional space is needed, you may attach additional pages:
The candidate-controlled committee has failed to publicly disclose on the www.berkeleyrentboard.org website a major contribution made in the form of a loan to the candidate from herself. Public campaign filing for the periods of January 1, 2020 to June 30, 2020 and July 1, 2020 to September 19, 2020 notes loans received in the amount to date of $900. Section 2.12.335 of BERA requires "disclosure on campaign communications of certain contributions and loans." As of October 11, 2020 there is no disclosure listed on the website. (see attached reference material)

The committee also failed to make a similar public disclosure on an ad published on Berkeleyside.com. As of October 11, 2020 there is no disclosure listed on the ad. (see attached reference material)

Documents: Attach any documentation supporting the facts alleged.

Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

I declare under penalty of perjury under the laws of the State of California that all information submitted hereon and in the attachments is true and correct.

Signature Sandra Lee Clement **Date** 10-12-2020

*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 4
Attachment 1

Right to Housing Slate for Rent Board

Leah Simon-Weisberg | Mari Mendonca | Andy Kelley | D

Meet the Sl

ITEM 4
Attachment 1

Leah Simon-Weisberg

Vice Chair, Berkeley Rent Board

View details ▸

Mari Mendonca

Berkeley Rent Stabilization I

Commissioner

View details ▸

ITEM 4
Attachment 1

Dominique Walker
Co-Founder Moms4housing

View details

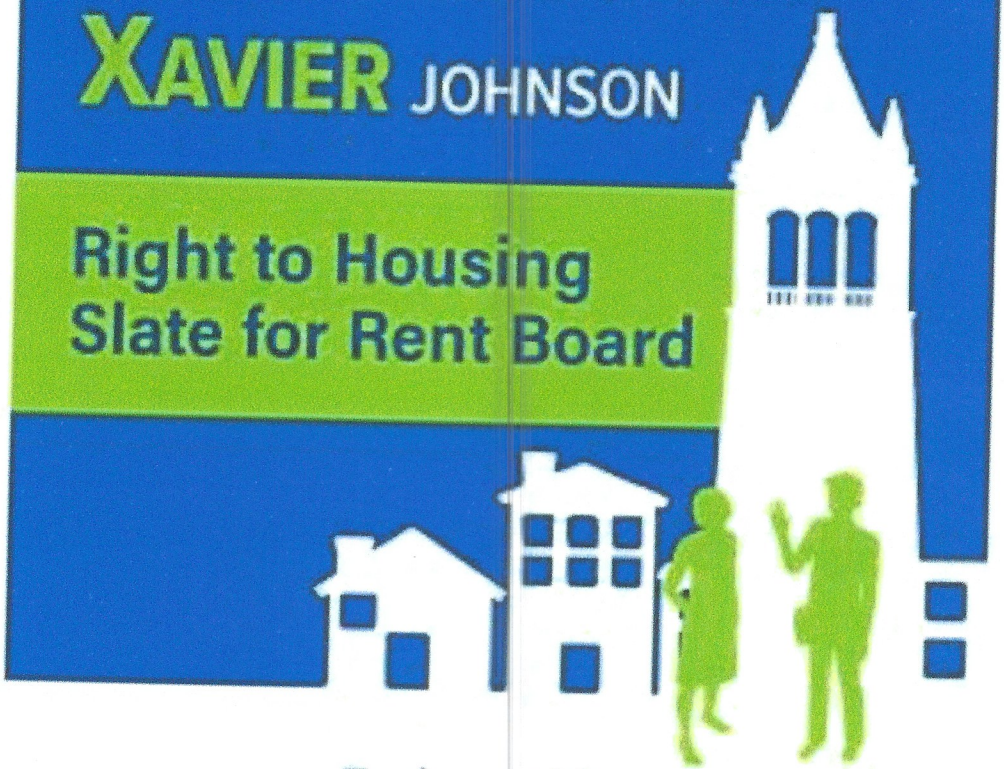
Xavier Johnson
Tenants' Rights Advocat

View details

VOTE NOVEMBER

LEAH SIMON-WEISBERG
MARI MENDONCA
ANDY KELLEY
DOMINIQUE WALKER
XAVIER JOHNSON

Right to Housing Slate for Rent Board



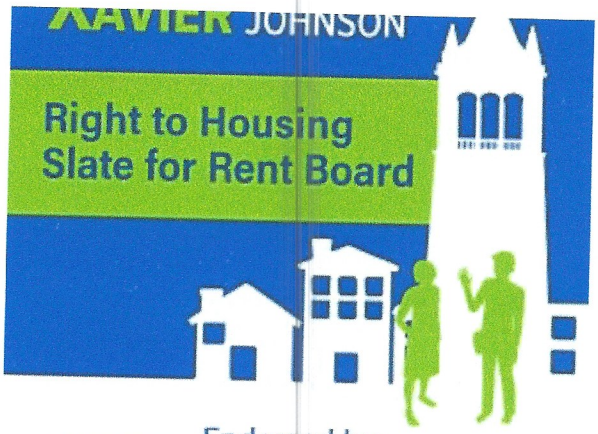
Endorsed by:

Alameda Labor Council

Wellstone Democratic Renewal Club

Berkeley Tenants Union

ITEM 4
Attachment 1



Endorsed by:

Alameda Labor Council

Wellstone Democratic Renewal Club

Berkeley Tenants Union

Paid for by Leah Simon-Weisberg for Rent Board 2020 FPPC #1385855; Mari Mendonca for Rent Board 2020 FPPC #1429074; Andy Kelley for Rent Board 2020 FPPC #1429628; Walker for Rent Board 2020 FPPC #1431143 ; Xavier Johnson for Rent Board 2020 FPPC #1428113.

ELECTION RESOURCES

Campaign Disclosure Statement
Summary Page

Amounts may be rounded to whole dollars.

SUMMARY PAGE

Statement covers period
from 01/01/2020
through 06/30/2020

CALIFORNIA FORM 460

Page 3 of 8

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Leah Simon-Weisberg for Rent Board 2020

I.D. NUMBER

1385855

Contributions Received

		Column A (TOTAL THIS PERIOD FROM ATTACHED SCHEDULES)	Column B (CALENDAR YEAR TOTAL TO DATE)
1. Monetary Contributions	Schedule A, Line 3	$ 0.00	$ 0.00
2. Loans Received	Schedule B, Line 3	800.00	900.00
3. SUBTOTAL CASH CONTRIBUTIONS	Add Lines 1 + 2	$ 800.00	$ 900.00
4. Nonmonetary Contributions	Schedule C, Line 3	0.00	0.00
5. TOTAL CONTRIBUTIONS RECEIVED	Add Lines 3 + 4	$ 800.00	$ 900.00

Expenditures Made

6. Payments Made	Schedule E, Line 4	$ 706.67	$ 706.67
7. Loans Made	Schedule H, Line 3	0.00	0.00
8. SUBTOTAL CASH PAYMENTS	Add Lines 6 + 7	$ 706.67	$ 706.67
9. Accrued Expenses (Unpaid Bills)	Schedule F, Line 3	0.00	0.00
10. Nonmonetary Adjustment	Schedule C, Line 3	0.00	0.00
11. TOTAL EXPENDITURES MADE	Add Lines 8 + 9 + 10	$ 706.67	$ 706.67

Current Cash Statement

12. Beginning Cash Balance	Previous Summary Page, Line 16	$ 2,936.16
13. Cash Receipts	Column A, Line 3 above	800.00
14. Miscellaneous Increases to Cash	Schedule I, Line 4	0.00
15. Cash Payments	Column A, Line 8 above	706.67
16. **ENDING CASH BALANCE**	Add Lines 12 + 13 + 14, then subtract Line 15	$ 3,029.49

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED	Schedule B, Part 2	$ 0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	See instructions on reverse	$ 0.00
19. Outstanding Debts	Add Line 2 + Line 9 in Column B above	$ 900.00

To calculate Column B, add amounts in Column A to the 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).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
__/__/__	$
__/__/__	$

*Amounts in this section may be different from amounts reported in Column B.

ITEM 4
Attachment 1

Schedule B – Part 1
Loans Received

Amounts may be rounded to whole dollars.

Statement covers period
from 01/01/2020
through 06/30/2020

SCHEDULE B - PART 1
CALIFORNIA FORM **460**

Page 4 of 8

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Leah Simon-Weisberg for Rent Board 2020

I.D. NUMBER
1385855

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 PAID OR FORGIVEN THIS PERIOD *	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 100.00	$ 0.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 100.00 DATE DUE	0 % RATE $ 0.00	$ 100.00 07/01/2019 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION** $ G2020 900.00
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 0.00	$ 250.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 250.00 DATE DUE	0 % RATE $ 0.00	$ 250.00 04/21/2020 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION ** $ G2020 900.00
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 0.00	$ 300.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 300.00 DATE DUE	0 % RATE $ 0.00	$ 300.00 05/18/2020 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION** $ G2020 900.00
	SUBTOTALS	$ 550.00	$ 0.00	$ 650.00		$ 0.00 (Enter (e) on Schedule E, Line 3)		

Schedule B Summary

1. Loans received this period ..... $ 800.00
   (Total Column (b) plus unitemized loans of less than $100.)
2. Loans paid or forgiven this period ..... $ 0.00
   (Total Column (c) plus loans under $100 paid or forgiven.)
   (Include loans paid by a third party that are also itemized on Schedule A.)
3. Net change this period. (**Subtract** Line 2 from Line 1.) ..... **NET** $ 800.00
   Enter the net here and on the Summary Page, Column A, Line 2. (May be a negative number)

†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

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

ITEM 4
Attachment 1

Campaign Disclosure Statement
Summary Page

Amounts may be rounded to whole dollars.

SUMMARY PAGE

Statement covers period
from 07/01/2020
through 09/19/2020

CALIFORNIA FORM 460

Page 3 of 13

I.D. NUMBER
1385855

SEE INSTRUCTIONS ON REVERSE
NAME OF FILER
Leah Simon-Weisberg for Rent Board 2020

Contributions Received

		Column A (TOTAL THIS PERIOD FROM ATTACHED SCHEDULES)	Column B (CALENDAR YEAR TOTAL TO DATE)
1. Monetary Contributions	Schedule A, Line 3	$ 3,611.00	$ 3,611.00
2. Loans Received	Schedule B, Line 3	0.00	900.00
3. SUBTOTAL CASH CONTRIBUTIONS	Add Lines 1 + 2	$ 3,611.00	$ 4,511.00
4. Nonmonetary Contributions	Schedule C, Line 3	0.00	0.00
5. TOTAL CONTRIBUTIONS RECEIVED	Add Lines 3 + 4	$ 3,611.00	$ 4,511.00

Expenditures Made

6. Payments Made	Schedule E, Line 4	$ 524.71	$ 1,231.38
7. Loans Made	Schedule H, Line 3	0.00	0.00
8. SUBTOTAL CASH PAYMENTS	Add Lines 6 + 7	$ 524.71	$ 1,231.38
9. Accrued Expenses (Unpaid Bills)	Schedule F, Line 3	0.00	0.00
10. Nonmonetary Adjustment	Schedule C, Line 3	0.00	0.00
11. TOTAL EXPENDITURES MADE	Add Lines 8 + 9 + 10	$ 524.71	$ 1,231.38

Current Cash Statement

12. Beginning Cash Balance	Previous Summary Page, Line 16	$ 3,029.49
13. Cash Receipts	Column A, Line 3 above	3,611.00
14. Miscellaneous Increases to Cash	Schedule I, Line 4	0.00
15. Cash Payments	Column A, Line 8 above	524.71
16. **ENDING CASH BALANCE**	Add Lines 12 + 13 + 14, then subtract Line 15	$ 6,115.78

If this is a termination statement, Line 16 must be zero.

17. LOAN GUARANTEES RECEIVED	Schedule B, Part 2	$ 0.00

Cash Equivalents and Outstanding Debts

18. Cash Equivalents	See instructions on reverse	$ 0.00
19. Outstanding Debts	Add Line 2 + Line 9 in Column B above	$ 900.00

To calculate Column B, add amounts in Column A to the 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).

Calendar Year Summary for Candidates Running in Both the State Primary and General Elections

	1/1 through 6/30	7/1 to Date
20. Contributions Received	$	$
21. Expenditures Made	$	$

Expenditure Limit Summary for State Candidates

22. Cumulative Expenditures Made*
(If Subject to Voluntary Expenditure Limit)

Date of Election (mm/dd/yy)	Total to Date
/ /	$
/ /	$

*Amounts in this section may be different from amounts reported in Column B.

ITEM 4
Attachment 1

Schedule B – Part 1
Loans Received

Amounts may be rounded to whole dollars.

Statement covers period
from 07/01/2020
through 09/19/2020

SCHEDULE B - PART 1
CALIFORNIA FORM 460
Page 10 of 13

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Leah Simon-Weisberg for Rent Board 2020

I.D. NUMBER
1385855

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 PAID OR FORGIVEN THIS PERIOD *	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 100.00	$ 0.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 100.00 DATE DUE	0 % RATE $ 0.00	$ 100.00 07/01/2019 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION** $ G2020 900.00
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 250.00	$ 0.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 250.00 DATE DUE	0 % RATE $ 0.00	$ 250.00 04/21/2020 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION ** $ G2020 900.00
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 300.00	$ 0.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 300.00 DATE DUE	0 % RATE $ 0.00	$ 300.00 05/18/2020 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION** $ G2020 900.00
	SUBTOTALS	$ 0.00	$ 0.00	$ 650.00	(Enter (e) on Schedule E, Line 3) $ 0.00			

Schedule B Summary

1. Loans received this period ..... $ 0.00
   (Total Column (b) plus unitemized loans of less than $100.)

2. Loans paid or forgiven this period ..... $ 0.00
   (Total Column (c) plus loans under $100 paid or forgiven.)
   (Include loans paid by a third party that are also itemized on Schedule A.)

3. Net change this period. (**Subtract** Line 2 from Line 1.) ..... **NET** $ 0.00
   Enter the net here and on the Summary Page, Column A, Line 2. (May be a negative number)

†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

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

ITEM 4
Attachment 1

ITEM 4
Attachment 1

Schedule B – Part 1 (Continuation Sheet)
Loans Received

Amounts may be rounded to whole dollars.

SCHEDULE B - PART 1 (CONT.)

CALIFORNIA FORM **460**

Statement covers period
from 07/01/2020
through 09/19/2020

I.D. NUMBER
1385855

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER
Leah Simon-Weisberg for Rent Board 2020

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 PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Leah Simon-Weisberg Berkeley, CA 94703 †☒ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC	lawyer Eviction Defense Collaborative	$ 250.00	$ 0.00	☐ PAID $ 0.00 ☐ FORGIVEN $ 0.00	$ 250.00 DATE DUE	0 % RATE $ 0.00	$ 250.00 06/19/2020 DATE INCURRED	CALENDAR YEAR $ 800.00 PER ELECTION** $ G2020 900.00
†☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC		$	$	☐ PAID $ ☐ FORGIVEN $	$ DATE DUE	% RATE $	$ DATE INCURRED	CALENDAR YEAR $ PER ELECTION** $
†☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC		$	$	☐ PAID $ ☐ FORGIVEN $	$ DATE DUE	% RATE $	$ DATE INCURRED	CALENDAR YEAR $ PER ELECTION** $
†☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC		$	$	☐ PAID $ ☐ FORGIVEN $	$ DATE DUE	% RATE $	$ DATE INCURRED	CALENDAR YEAR $ PER ELECTION** $
SUBTOTALS $		0.00 $	0.00 $	0.00 $	250.00 $	0.00		

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

†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

Fair Campaign Practices Commission

Date: January 21, 2021

To: Fair Campaign Practices Commission

From: Samuel Harvey, Secretary

Subject: Analysis of Berkeley Municipal Code section 2.12.335 and its applicability to candidate campaign committees

The Commission has received three complaints during the 2020 election cycle alleging violations of Berkeley Municipal Code (BMC) section 2.12.335 by one or more candidate committees. Some commissioners have expressed concern with the application of section 2.12.335 to candidate committees, noting that the language of the section could be intended to only apply to ballot measure and independent committees. As a result, at its November 19, 2020 meeting, the Commission directed staff to perform additional analysis of section 2.12.335, including review of the section's legislative history and prior Commission actions. As discussed herein, staff's analysis indicates that section 2.12.335 was intended to apply to candidate committees.

Analysis of the language of section 2.12.335

Section 2.12.335 of the Berkeley Election Reform Act ("BERA") (BMC Chapter 2.12) (Attachment 1) requires campaign advertisements to list the name, city of domicile and cumulative contributions for each of the committee's top four contributors over $250:

> A. 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.
>
> B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be

used. For purposes of this section, "campaign communication" means any of the following items:

1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers

2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;

3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

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.)

Contributions to Berkeley candidate committees are limited to $250 per person, except where a candidate contributes or loans their own money, in which case the $250 limit does not apply. (BMC § 2.12.415.) As a result, the only circumstance in which a candidate committee could be required to provide contributor information on an advertisement is where the candidate makes a contribution or loan to their own committee in excess of $250.[1]

Some commissioners and respondents have asserted that requiring disclosures on advertisements of a candidate's contribution to their own committee does not serve the same purpose as the disclosure of contributions to ballot measure and independent committees. For example, in the case of a ballot measure or independent committee, section 2.12.335 serves to identify individuals or entities separate from the committee who are providing major funding to the committee, thereby identifying sources of funding and potential influence behind a campaign. In the case of a candidate who contributes to their own campaign, the argument goes, there is no additional information gained by the public in listing the candidate as a major contributor because the public already assumes that the committee is acting at the candidate's direction and in the candidate's interests.

On the other hand, it has been asserted that, while disclosure of a candidate's contribution to their own committee does not provide the public with information about outside people or entities who may influence the candidate, it is important that the public be made aware when a candidate is providing substantial funding to their own campaign. Under this reasoning, section 2.12.335 serves somewhat of a dual purpose, both identifying separate people and entities who are top contributors (in the case of a ballot measure or independent committee), and informing the public about the degree to which a candidate is self-funding (in the case of a candidate committee). Regardless of whether a contribution must be disclosed on campaign communications, all contributions to a committee must be

[1] Presumably, if a candidate committee violated BERA by accepting a contribution in excess of $250 from a person other than the candidate, that contributor's information would be required on campaign advertisements.

reported on the committee's campaign statements filed with the City Clerk and available for public inspection through the City's website.

Legislative History of section 2.12.335

The legislative history indicates an intent to apply section 2.12.335 to candidates who make contributions or loans to their own campaign committees. Section 2.12.335 was presented by the FCPC to the City Council at its April 3, 2012 meeting as part of a package of BERA amendments. (See Attachment 2.) The language of section 2.12.335.A presented to Council read as follows:

> Campaign communications supporting or opposing any candidate or measure shall include 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. Excluded from this disclosure requirement are contributions by a candidate to his or her own committee.

(Attachment 2, p. 9 [p. 3 of attached ordinance], emphasis added.)

In presenting section 2.12.335, the FCPC stated that "[t]he proposed ordinance excludes contributions in any amount from a candidate to his or her own candidate committee. Based on this exclusion and the $250 cap on candidate contributions, this amendment will not apply to communications funded by candidate committees." (Attachment 2, p. 4.)

At the April 3, 2012 Council meeting, some councilmembers expressed concern about the proposed exclusion of candidate committees from section 2.12.335. (See Attachment 3.) The FCPC subsequently revised the proposed amendments based upon Council comments and returned at the Council's June 26, 2012 meeting with a revised proposal. (See Attachment 4.)

The Commission report for this item summarizes the process as follows:

> At the April 3 Council meeting, the City Council considered Section 2.12.335 as part of a package of six proposed BERA amendments. Council ultimately approved five of the amendments, but did not pass Section 2.12.335. Prior to voting on the amendment, Council discussed a number of possible revisions to the amendment. The Commission then held a Special Meeting on May 3 to discuss each of the concerns and suggestions raised at the April 3 Council meeting. After discussion, the Commission passed the following motions by unanimous vote of its membership:
> . . .
>
> e. Motion to accept proposal to remove exception for candidate contributions to their own committees: (M/S/C:.Bedrick/Cummins. Ayes:

> Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

(Attachment 4, pp. 1-3.)

The new section 2.12.335.A proposed by the FCPC and subsequently adopted by the Council reads as follows

> 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.

(Attachment 4, p. 4.)

Based on review of this legislative history, it is clear that the applicability of section 2.12.335 to candidate committees was considered by both the FCPC and the Council when adopting the current language of the provision. The FCPC removed an express exemption for candidate committees from this provision prior to its adoption by Council. The legislative history of this provision therefore clearly indicates that disclosure under section 2.12.335 is triggered when a candidate makes a contribution over $250 to their own campaign committee.

<u>Commission enforcement of section 2.12.335</u>

Staff has identified one prior enforcement matter in which the Commission addressed a violation of section 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 5, FCPC Stipulation with Ben Bartlett for Berkeley City Council 2016.)

In that instance, a candidate's mailers failed to disclose a $10,000 loan from the candidate's spouse. The Commission and respondent reached a settlement for a penalty of $50. There is potentially some nuance in this prior matter which is not present in the cases currently before the commission. Specifically, it was the candidate's spouse who made the loan which triggered disclosure under section 2.12.335, potentially creating an illegal contribution over $250 by someone other than the candidate. However, the candidate subsequently provided a signed statement indicating that although the loan check was signed by the candidate's spouse, the amount was loaned from a joint bank account at the candidate's

direction. The commission has therefore been willing to enforce section 2.12.335 against a candidate committee based upon a loan from the candidate to their own committee.

Next steps for the Commission

I. Adopt regulatory clarification

A number of commissioners have noted confusion by campaign committees and the public about the applicability of section 2.12.335 to candidate committees. The Commission therefore may wish to adopt a regulation clarifying the applicability of section 2.12.335. Staff has provided the following sample regulation language:

R2.12.335

The provisions of BMC section 2.12.335 apply to all campaign committees, including candidate committees that have received contributions or loans over $250 from the candidate.

II. Application of section 2.12.335 to pending enforcement matters

The Commission currently has three pending enforcement matters affected by section 2.12.335:

1. Rent Stabilization Board candidates Bahman Ahmadi, Dan McDunn, Soulmaz Panahi, Wendy Saenz Hood Neufeld and Pawel Moldenhawer

2. Re-Elect Mayor Jessie Arreguin 2020

3. Rent Stabilization Board candidates Leah Simon-Weisberg, Mari Mendonca, Andy Kelley, Dominique Walker, and Xavier Johnson

The Commission should determine how it wishes to enforce section 2.12.335 in light of the analysis provided in this report. Each of the above enforcement matters will be agendized for a later meeting. At this time, the Commission should not take specific action on any one enforcement matter, but could use this agenda item as an opportunity to discuss the best approach to enforcing section 2.12.335. This discussion will inform staff's subsequent reports to the Commission for these enforcement matters.

Attachments:

1. BERA section 2.12.335
2. FCPC April 3, 2012 Report to Council: Amendments to Berkeley Election Reform Act

3. Excerpt from Berkeley Council Meeting Transcript – April 3, 2012
4. FCPC June 26, 2012 Report to Council: Amendment to Berkeley Election Reform Act, Adding BMC Section 2.12.335
5. FCPC Stipulation: In the Matter of Ben Bartlett for Berkeley City Council 2016

Berkeley Municipal Code

2.12.335 Disclosure on campaign communications of certain contributions and loans.

A. 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.

B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, "campaign communication" means any of the following items:

1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;

2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;

3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

C. For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

D. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection A, campaign communications must be updated on the following schedule:

1. For printed campaign communications under subsection B.1 or subsection B.2, disclosures must be updated within seven calendar days to include current disclosure information every time an order to reproduce the campaign communication is placed, or any time the campaign communication is reprinted;

2. For e-mails or pre-recorded telephone calls under subsection B.3, disclosures must be updated to include current disclosure information within seven calendar days. (Ord. 7253-NS § 1, 2012)

Fair Campaign Practices Commission

ACTION CALENDAR
April 3, 2012
(Continued from March 20, 2012)

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Kristy van Herick, Secretary, Fair Campaign Practices Commission

Subject: Amendments to Berkeley Election Reform Act

RECOMMENDATION

Adopt the first reading of an Ordinance amending the Berkeley Election Reform Act (BERA), Berkeley Municipal Code Chapter 2.12, as follows:

(1) amend section 2.12.065 to provide for electronic posting of campaign contributions in lieu of newspaper publication;
(2) add section 2.12.231 to create additional remedies for violations including issuance of monetary penalties;
(3) add section 2.12.271 to create additional filing requirements for committees making expenditures in support of or opposition to a measure;
(4) add section 2.12.297 to require additional filing of independent expenditure reports in 40 days preceding election;
(5) add section 2.12.335 to require disclosure on campaign communications of certain contributions (top four contributors with total contributions over $250); and
(6) amend section 2.212.485 to create a penalty for late filing of reports required by section 2.12.297.

FISCAL IMPACTS OF RECOMMENDATION

There could be a slight increase in staff time spent by the City Clerk's Office and the Fair Campaign Practices Commission (Commission) Secretary for processing additional filings and educating committees and treasurers of the new requirements, balanced by the potential for collection of penalties payable to the general fund for violations of the BERA. There will also be a cost savings from modifying the newspaper publication requirement by reducing the newspaper advertising cost and City Clerk staff time.

CURRENT SITUATION AND ITS EFFECTS

Enacted in 1974, BERA regulates local campaign activities by, among other things, requiring campaign committees to file specified disclosure statements, limiting candidate contributions to $250 and prohibiting certain organizations (such as business entities and non-profit corporations) from making candidate contributions.

The voters enacted the BERA with the following stated purposes:

> "A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
> B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.
> C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced." (BMC § 2.12.015)

BERA may be amended to further these purposes through a "double-green light" procedure. First, the Commission must approve any amending ordinance by not less than a two-thirds vote of its membership. Second, following a period of at least thirty days, the City Council must hold a public hearing and also approve the amendment by not less than a two-thirds vote of its membership. (BMC § 2.12.051.A.)

Five of the six proposed amendments were initially presented to City Council on July 12, 2011. At that time, City Council raised some questions and concerns about some of the proposed amendments, and sent the proposed amendments back to the Commission as a whole for further review as follows:

> ***Action:*** *M/S/C (Wengraf/Wozniak) to remand the matter to the Fair Campaign Practices Commission for further review.*
> ***Vote:*** *Ayes – Maio, Capitelli, Wengraf, Wozniak, Bates; Noes – Arreguin, Worthington; Abstain – Moore, Anderson.*

Since last July, the Commission has taken numerous steps to address Council's questions and concerns. The Commission wrote to all local campaign committees to seek further input, held a September 22, 2011 public workshop, and made multiple revisions to the proposed amendments.

At its January 19, 2012 meeting, the Commission, which currently has six members, approved each of the six proposed amendments by more than a two-thirds vote as follows:

> *Move to approve language at Section 1 as stated in staff report (to amend BMC Section 2.12.065)*: (M/S/C:Smith/Cummins. Cummins, O'Donnell, Ritchie, Smith, and Wollmer; Noes: Bedrick; Abstain: None; Absent: None.)
>
> *Move to approve language at Section 2 as stated in staff report (to add BMC Section 2.12.231)*: (M/S/C: O'Donnell/Richie. Bedrick, Cummins, O'Donnell, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: None.)

Move to approve language at Section 3 as stated in staff report (to add BMC Section 2.12.271): (M/S/C: O'Donnell/Smith. Bedrick, Cummins, O'Donnell, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: None.)

Move to approve language at Section 4 as stated in staff report (to add BMC Section 2.12.297): (M/S/C: O'Donnell/Ritchie. Bedrick, Cummins, O'Donnell, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: None.)

Move to approve language at Section 5, as discussed by Commission and amended from language in staff report (to add BMC Section 2.12.335)[1]: (M/S/C: Bedrick /O'Donnell. Bedrick, Cummins, O'Donnell, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: None.)

Move to approve language at Section 6 as stated in staff report (to amend BMC Section 2.12.485): (M/S/C: O'Donnell/Cummins. Bedrick, Cummins, O'Donnell, Ritchie, Smith, and Wollmer; Noes: None; Abstain: None; Absent: None.)

The Commission again presents amendments to the City Council for consideration under the "double green light" process. Of the six proposed amendments, all are severable (i.e. Council can approve some and not others), except Section 6. Section 6 creates a penalty for late filing of the campaign statement required under Section 4, so Section 6 is moot if Section 4 is not approved.

BACKGROUND

Since at least 2009, this Commission has been discussing possible revisions to BERA increasing disclosure and reporting requirements, particularly regarding the funding of independent expenditures and expenditures both for and against ballot measures. Then in early 2010, the Supreme Court decided the case of *Citizens United v. FEC*, expanding corporate campaign spending power by holding that, although "[t]he government can regulate corporate political speech through disclaimer and disclosure requirements," it is unconstitutional for the government to suppress corporate political speech entirely. (*Citizens United v. FEC* (2010) 130 S.Ct. 876, 886.) In doing so, the Court expanded the ability of corporations to spend money on electioneering communications in federal elections. While not the main focus of the decision, the case nevertheless confirmed that "disclaimer and disclosure" requirement would continue to be a constitutionally valid manner of campaign spending regulation.

Most of the proposed amendments and additions, discussed below, further the purposes of BERA by providing for additional disclosure of campaign fundraising and

[1] Before voting, the Commission discussed changing the Section 5 heading to "***Disclosure requirements regarding contributions to ballot measure and independent expenditure committees*".** The Commission suggested that the title be changed unless staff, after further consulting the ordinance, found the title inaccurate or inconsistent with the existing language in BERA. Staff determined that this heading may mislead other types of committees who are not listed in the title but also need to comply with this provision. Staff consulted with the Chair, and has slightly clarified the heading in line with the Commission's discussions and direction.

expenditures. Additionally, the suggested revisions further the purposes of BERA through improved enforcement mechanisms.

Independent Expenditures in 40 days preceding election: An "independent expenditure" is an expenditure made in connection with a communication expressly advocating for or against a clearly identified candidate or measure which is independent of, and not at the request of or in coordination with, the affected candidate or committee. State law currently requires reporting within 24 hours of independent expenditures of $1000 or more made during the final 16 days before an election. State law requires the reporting, through a Form 496 filing, to be made by fax, guaranteed overnight delivery, or personal delivery. State law has no provision for notifying the affected candidate or committees of the reporting. BERA currently has no late independent expenditure reporting requirements.

Amendment 2.12.297, if approved, would require reporting of independent expenditures of $1000 or more within 24 hours to the City Clerk during the expanded period of the last 40 days before an election. The extended period is proposed to take into account increased use of vote by mail ballots. Based on Council feedback and after consultation with the City Clerk's Office, the current proposal provides that the City Clerk will mail a copy of the late independent expenditure filing to all committees in the affected race. This provision will leave candidate and ballot measure committees better informed of independent expenditures in the 40 days of an election without putting an undue burden on the committee making the independent expenditures. The revised proposed draft allows for BERA to remain consistent with state law as filing methods are modernized by adding a provision for filing electronically as "authorized by law". The proposed amendment to Section 2.12.485 adds the late independent expenditure filing to the list of filings resulting in state law established $10 per day penalty for filing a report after the filing deadline.

Disclosures of major donors on campaign communications: Currently, BERA has no requirements for information to be listed on campaign materials, except for mass mailings funded by independent expenditure. Amendment 2.12.335, if approved, will require campaign communications to include information about the top four donors to the committee funding the communication, but only for donations in excess of $250. The proposed ordinance excludes contributions in any amount from a candidate to his or her own candidate committee. Based on this exclusion and the $250 cap on candidate contributions, this amendment will not apply to communications funded by candidate committees.

The Commission made a number of changes to this proposed amendment based on Council's feedback. First, the Commission limited the contribution disclosure to the top four contributions over $250 (rather than disclosure of all contributions of $2500 or more), placing reasonable limits on the space taken up by the disclosure on written communications. Second, the Commission further limited what is considered a campaign communication, excluding lawn signs, television and radio advertisements.

Third, the Commission replaced specific requirements regarding type, font size, and contrast with a more flexible "clear and conspicuous" standard. Fourth, the Commission provided for a reasonable period to update the disclosure on communications if the list of major donors changes.

Quarterly filings for committees supporting or opposing measures, including referendum petitions: During a recent referendum petition circulation, there was some ambiguity as to whether a referendum petition process constitutes a measure such that expenditures for or against the petition process constitute campaign spending triggering campaign statement filing requirements. City staff obtained an opinion letter from the state Fair Political Practices Commission confirming that state law recognizes a measure as existing when a referendum petition begins to circulate, and the Commission then voted to adopt the state's interpretation. An inconsistency in disclosure requirements was discovered, however, in that a ballot measure committee spending on a referendum petition process must file quarterly, but a general purpose committee spending money to oppose the same petition process only files semi-annually. The addition of Section 2.12.271 would address this inconsistency, providing that all committees actively making expenditures on a measure must file quarterly for a set period.

Amending newspaper publication requirement: Currently, the BERA requires that the City publish in one or more newspapers during the week prior to each election, a list, by contributor name and contribution amount, of all contributions of $50 or more. Prior to 2010, the contributor list was published in the Berkeley Daily Planet. This is no longer an option as the Planet is now solely available electronically. Berkeley Voice and the The Daily Cal are the only two cost-effective options for reaching Berkeley residents. However, both of these newspapers have limited distribution. There is also significant staff time spent putting together the publication in a manner appropriate for newspaper publication.

While local print media has become less available, voters are getting more information through online sources. The Commission's proposed amendment provides for electronic posting of the contributor lists on the City's website. The list would also be posted in print form in other public locations (such as public libraries and senior centers), and City staff would also publish a print media advertisement notifying the public where they can find the contributor list. If approved, this revision would reduce the cost of the print advertisement, and significantly reduce the staff time spent preparing the newspaper publication during the busy final weeks before elections. This proposed revision was not presented to Council last July as it was still under review by the Commission at that time.

Administrative penalties: On multiple occasions over the last five years, the Commission has considered the idea of creating a penalty system for campaign violations. Currently, a committee can only be fined through an administrative process if a campaign report is late, or if the committee accepts a contribution in excess of

allowable sums. However, there is no general administrative penalty provision for most violations of the BERA, such as failure to file a campaign report, nondisclosure of multiple contributors, or ignoring mass mailing disclosure requirements. The BERA has a misdemeanor provision, requiring reliance on the District Attorney's Office for prosecution. The Commission has made a prior referral to the Alameda County District Attorney's Office for willful violation of filing requirements, but they did not pursue the matter.

Under the proposed amendment, a penalty can only be imposed after a good cause determination and formal hearing, or through a negotiated stipulated settlement. Section 2.12.231 caps the penalty at $1000 per violation, but allows for a penalty of a lower amount or other resolutions such as an order to "cease and desist" or to file reports or other documentation. Should Council adopt the penalty provision, the Commission plans to create clear and consistent guidelines for determining whether to impose a penalty and the penalty amount.

RATIONALE FOR RECOMMENDATION
See report.

ALTERNATIVE ACTIONS CONSIDERED
None.

CITY MANAGER
The City Manager takes no position on the content and recommendations of the Commission's Report.

CONTACT PERSON
Steve Wollmer, Chair, Fair Campaign Practices Commission 510 843-2053
Kristy van Herick, Secretary, Fair Campaign Practices Commission 510-981-6998

Attachments:
1: Ordinance

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT, BERKELEY MUNICIPAL CODE CHAPTER 2.12, TO POST CONTRIBUTIONS ELECTRONICALLY IN LIEU OF NEWSPAPER PUBLICATION, CREATE ADDITIONAL REMEDIES, ADD FILING REQUIREMENT FOR COMMITTEES MAKING EXPENDITURES ON A BALLOT MEASURE, REQUIRE LATE INDEPENDENT EXPENDITURE REPORTS 40 DAYS PRECEDING ELECTION, AND REQUIRE MAJOR CONTRIBUTORS TO BE LISTED ON CAMPAIGN COMMUNICATIONS

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

Section 1. That Berkeley Municipal Code 2.12.065 is amended to read as follows:

2.12.065. Electronic posting ~~Publication~~ of contributions prior to elections.
The City shall ~~publish~~ post in at least two public locations and electronically on the City website ~~in one or more newspapers at least once in~~ during the seven days before each municipal election a list of all persons contributing fifty dollars or more to any candidate or committee in that election and the amounts of the contributions reported through the filing deadline for the second pre-election statements. The City shall additionally publish in one or more newspapers at least once in the seven days before each municipal election a notice listing the locations of the posted information. The City shall direct publication of the notice in such newspaper or newspapers as are best suited to reach the largest number of Berkeley residents in a cost-effective manner.

Section 2. That Berkeley Municipal Code 2.12.231 is added to read as follows:

2.12.231. Violation--Penalties.
When determining an appropriate remedy for a violation of this Chapter as specified in Section 2.12.230, the Commission may order any of the following:

A. Cease and desist violation of this Chapter.
B. File any reports, statements, or other documents or information required by this Chapter.
C. 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 General Fund of the City.

Section 3. That Berkeley Municipal Code 2.12.271 is added to read as follows:

Section 2.12.271. Campaign statements--Additional filing requirements.
A. Each committee that makes expenditures in excess of $250 in support of or in opposition to a measure must, in addition to campaign statements required by Section 2.12.270 of this Chapter, file campaign statements on the following dates: (1) no later than April 30 for the period January 1 through March 31; and

(2) no later than October 31 for the period July 1 through September 30. If the committee has earlier pre-election statement filing deadlines, the earlier deadlines apply.

B. Any additional filing requirement under this section shall cease upon the occurrence of any of the following dates, whichever occurs first: (1) the election day on which the measure is voted upon, (2) six months after the measure fails to qualify for the ballot, (3) six months after an ordinance subject to referendum is repealed by the City Council, or (4) six months after an elected official subject to recall resigns or otherwise leaves office.

Section 4. That Berkeley Municipal Code 2.12.297 is added to read as follows:

Section 2.12.297. Independent Expenditures in 40 days preceding election.

A. Disclosure of Expenditures. Any person that makes an independent expenditure of $1,000 or more in support of or in opposition to any measure or candidate, or group of measures or candidates, in the 40 days before an election in which the measure or candidate, or group of measures or candidates, appears on the ballot, shall notify the City Clerk within 24 hours by personal delivery, fax, overnight mail, or other electronic means as authorized by law each time an expenditure which meets this threshold is made. The City Clerk shall post a copy of the notice to the City's website within two business days after receiving the notice. Late independent expenditures shall be reported on subsequent campaign statements in addition to the reports filed pursuant to this section. The person shall also provide to the City Clerk three copies of the communication funded by the expenditure.

B. Contents of Notice. The notice shall specify:
   a. Each candidate or measure supported or opposed by the expenditure;
   b. The amount spent to support or oppose each candidate or measure;
   c. Whether the candidate or measure was supported or opposed;
   d. The date and amount of each expenditure;
   e. A description of the type of communication for which the expenditure was made;
   f. The name and address of the person making the expenditure; and
   g. The name and address of the payee.

C. Notification to Candidates of Expenditures. The City Clerk shall notify all candidates and committees in each affected race by first class mail within two business days of receiving notice of the independent expenditures of $1,000 or more.

D. Exemption for Regularly Published Newsletters. For purposes of the notification required by subsection (A) of this section, payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals

and those who request or purchase the publication, shall not be required to be reported.

Section 5. That Berkeley Municipal Code 2.12.335 is added to read as follows:

Section 2.12.335. Disclosure on campaign communications of certain contributions.

A. Campaign communications supporting or opposing any candidate or measure shall include 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. Excluded from this disclosure requirement are contributions by a candidate to his or her own committee.

B. The disclosures required by this section shall list contributors in descending order by the amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms or abbreviations may be used. For purposes of this section, “campaign communication” means any of the following items:

1. More than 200 substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;

2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;

3. Two hundred or more substantially similar pre-recorded telephone calls or e-mails made within a calendar month.

C. For purposes of this section, “campaign communication” does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

D. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection A, campaign communications must be updated on the following schedule:

1. For printed campaign communications under subsection B.1 or subsection B.2, disclosures must be updated within seven calendar days to include current disclosure information every time an order to reproduce the

campaign communication is placed, or any time the campaign communication is reprinted;

2. For pre-recorded telephone calls or e-mails under subsection B.3, disclosures must be updated to include current disclosure information within seven calendar days.

Section 6. That Berkeley Municipal Code 2.12.485 is amended to read as follows:

2.12.485. Late filing penalties.

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections 2.12.270, ~~or~~ 2.12.295, or 2.12.297 of this chapter and who files such report or reports after the deadlines imposed in these sections, shall, in addition to any other penalties or remedies established by this chapter, be liable for the penalties enumerated in California Government Code Section 91013, which is incorporated herein.

Section 7. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

This information provided by a Certified Realtime Reporter. The City of Berkeley cannot certify the following text since we did not create it.

>> And we felt it was better policy, public policy, that all committees that receive contributions greater than $250 disclose those contributions rather than have a threshold of $2500 which could easily be gamed.
What we want to know is who are the main contributors to your campaign at this point in time because, again, it does change as the campaign goes on.
>> K. Worthington: So I move the commission recommendation.
>> Second.
>> Mayor Bates: Does anyone want to second it?
>> J. Arreguin: I seconded it.
>> Mayor Bates: Seconded by Arreguin.
So Councilmember Capitelli.
>> L. Capitelli: Yeah.
Steve, I think the last time we got together on this I asked you -- I have got several issues with this section.
Why are we excluding contributions by a candidate to his or her own committee?
>> Two reasons.
One is many of the contributions from a candidate are in the form of a loan.
At what point do we disclose that loan?
Is it a loan or is it -- it becomes a contribution if you don't pay the loan back, but do you disclose the loan?
Many people try to jump start their campaigns with a loan and hope that they get paid back.
And the second reason was that we already know who is speaking to us.
>> L. Capitelli: Well, I guess -- and I brought this up --
>> And again, if the council chooses to have those be disclosed, then every candidate who contributed more than 250 would put that on -- the amount of their contributions on their communications and all we need to know is how do you want us to handle loans.
Outstanding loans are considered contributions.
Right now they are considered contributions.
>> L. Capitelli: That's really my concern, which is a well-healed candidate can loan their independent committee $20,000, and then the day after the election, they forgive the loan, and the intention all along was that it was a contribution.
Or ABC bad corporation president loans the committee $10,000.
That doesn't get reported; right?
You could fund a pretty good campaign.
>> L. Maio: Let's hear if it gets reported.
>> Although technically, they would not be able to loan that money to a candidate.
>> L. Capitelli: No, no. To a committee.
And that would not be public information.
The way I understand --
>> Mayor Bates: Let her answer that.
>> It's public in that it's right there on the campaign filings.
You have to list all your loans.
It's just not on the mailer.
>> L. Capitelli: And realistically, how many people go to the campaign filings?
The idea here is to put the information out in front of the public.
I would really challenge you, you haven't convinced me we should be excluding loans; okay?

My second problem goes back to these e-mails of 200, and I kind of feel like I might get picked to death by the rooster or the hen.
I send a lot of e-mails out now through my office, it's a newsletter, but a lot of them go viral.
If I send it to someone in a neighborhood group, invariably they say, "Here is so-and-so's communication," and then a third party gets it. And they don't look to see it's coming from some Yahoo! group.
They just see Capitelli's newsletter.
So I could easily send out 50 or 60 newsletters and it could wind up going to 500 people.
>> And you could easily demonstrate that to us by --
>> How?
>> How.
You can show details when you -- You know, your e-mail program will allow you to disclose who it went to.
But let's --
>> L. Capitelli: It's a problem.
>> Let's get back to the point of what do we do with loans and what do we do for candidate contributions.
>> Mayor Bates: Excuse me a minute.
We have to extend to -- we have how many more items?
>> L. Maio: 11:30.
>> Clerk: We have five more items after this.
>> We'll be glad to take --
>> Mayor Bates: Shall we extend to 11:30?
Do we have a motion?
>> L. Maio: I'll move it.
>> Second.
>> Mayor Bates: We will all be voted aye.
You still have the floor.
>> We will be glad to take any suggestions that you have.
>> Roll call.
>> Did we vote?
>> Mayor Bates: We did it unanimously.
Did anybody object?
>> If you want candidate loans to be disclosed under this, we will be glad to come up with language.
We are going to have a special meeting in April anyway and we will come up with language to do it that way.
>> L. Capitelli: I would like -- has there been a motion yet on this one?
>> Yes, there has.
>> Mayor Bates: Okay.
Well, I don't want to -- I'm not quite -- I don't quite have my head around it now to make a motion but I would like to see loans treated as contributions, and I don't quite know how to address this 200 e-mails.
Let me think about that for a minute and let somebody else --
>> That's already the requirement under mass mailings, is when you do -- I know, it's for hard copy.
That's why we brought it forward into the electronic age, which you keep on telling us you want us to do.
>> L. Capitelli: I understand that logic.
I just think the idea of it -- in other words, nobody is going to take my hard copy flier and make 300 copies of it and send it, you know, to people.

On the other hand, somebody might take my campaign e-mail and send it to a whole bunch of people.
>> That's not your liability.
>> L. Capitelli: Pardon?
>> That's not your liability.
>> L. Capitelli: I know that but I don't want be to be sitting in front of your committee saying here are the cc's I sent it to.
>> You would demonstrate it to Christy.
>> Mayor Bates:Wait a minute.
I thought I understood you to say -- and I think I agree with this, if you are identified as the candidate touting your own position or you are identified as a person, you people know who it came from; right?
>> Absolutely.
>> Mayor Bates: So it's not a big problem if it goes larger than 200 as an example; right?
It's not a problem.
Because you are trying to safeguard people doing some various things by forming a committee that nobody knows about, and then they get....
Same thing with the loans.
Let's go back to the loans for a second.
If a candidate loans the campaign money, I can see the logic of saying it doesn't -- you know, it's an important bit of information, but it's disclosed during the filing periods, and especially if you made a large one, it would go right to the top.
So I don't think it's a problem.
But -- In that regard.
But if you loan money to a committee that's an independent committee or a general committee, I think you have to disclose that, because that is different.
That's like cash that they can use.
>> It could be spent.
That's for sure.
>> Mayor Bates: Pardon?
>> It can be spent like cash.
>> Mayor Bates: It is cash.
So I think that kind of a loan should be disclosed.
>> Okay.
It sounds like a reasonable thing.
>> Mayor Bates: Okay.
So --
>> Any discussion on the 200?
>> Mayor Bates: Wait.
We have a motion, and I think Capitelli wants to make a referral to, I think, -- and I am interested in the loan provision that's made to an independent committee or to a general committee be disclosed.
>> L. Capitelli: Could I ask, what about candidates making a large loan to his own committee?
>> Mayor Bates: That's what I said I wasn't as concerned about that.
>> L. Capitelli: You are not concerned about that.
>> D. Moore: I think it should be disclosed, too.
>> L. Capitelli: My concern is that a candidate could conceivably -- I'm not going to say buy an election, but it certainly gives an advantage or leads the perception that somebody who has a lot of money -- What's your objection?

>> There is no objection.
The point is once that person makes a contribution, a large contribution, pick it up in the filings.
You say what's going on.
So then you campaign --
>> L. Capitelli: But that happens after the election.
I forgive the loan after the election.
>> Mayor Bates: It has to be disclosed right away, Laurie; right?
>> Still disclosed as a loan.
>> Mayor Bates: But we're not kidding ourselves.
I want my own campaign, my life Loni runs campaign.
It's cash money that they can use in the campaign, and they hope to get paid back.
They may or may not get paid back, so it gets disclosed because when you file it says suddenly Hancock put $100,000 into her account and you can say she is buying the election.
You can pick it up.
What's really egregious is when you lend the money to an issue, an independent committee and it doesn't get picked up, because you if he ever know that.
>> We'll be glad to consider that either as --
>> Mayor Bates: You can refer both of them, Laurie.
Why don't you refer both?
It's okay.
We're going to have a regular motion -- is everybody okay with the regular motion?
>> No.
>> G. Wozniak: No.
I want to speak against the motion on three points; okay.
One, 200 -- I mean, having it on major pieces of campaign literature, fine, but I think there are better ways to list the four largest contributors.
You should require everybody to list the link to the campaign disclosure document so you can see all of them. That's much less information. You just have to put the URL.
The second is on item number 1, door hangers are relatively small.
Requiring you to put the names of four contributors on a door hanger isn't practical.
I would suggest striking that.
Paid advertisements, maybe, okay.
But the last three is I think one should not combine prerecorded telephone calls with e-mails.
It says if you send out more than 200 e-mails a month, that's like --
>> Substantially similar.
>> G. Wozniak: Well, 200 a month is how many a day; okay?
That's like 15 a day.
So you can get -- that means you send out 15 e-mails, someone can start saying, well, last month this committee -- gotcha.
200 is way too low.
And on an e-mail electronic document rather than having them list them, you should put the URL and say combine the information on all the contributors and you click on this and the information is available on the City Web site.
200 is way too low.

And it should be per instance.
It should be something like maybe a thousand.
Any -- Take for example the marijuana initiative last time.
Whenever they sent out an e-mail citywide I bet they sent out multiple thousands.
And each one of those you are going to have to put all the contributors, or the top four contributors.
That I think is a burden.
He is it's different from disclosure.
You are asking to put out the names of all the contributors.
>> The four.
Top four.
>> G. Wozniak: I understand.
And there's a reason why you want to do that and I think you can disclose the information without actually putting that explicitly in the document.
Particularly electronically.
It's a click.
It's a click.
It's a click.
>> No.
>> G. Wozniak: It is.
It's a click.
>> It makes more sense -- if you are talking about somebody receiving this piece of literature asking them to go to their computer and look at a URL, no.
If --
>> G. Wozniak: They are already on the computer in electronic e-mail.
Come on.
They are already on.
It's much faster to do it there.
Psych all of the contribution.
>> Okay.
Tell us what you want us to do.
>> G. Wozniak: I want you to make it easy to see all of them.
>> No, as a group tell us what you want us to do.
>> Mayor Bates: I don't think we know.
We are getting punchy.
>> G. Wozniak: And it should be per day, not per month.
>> Tell us what you want to do.
Make a motion, tell us what and we will bring it back next month.
>> G. Wozniak: My motion would be to raise the limit to a thousand, and one, and on three, we add a fourth, we strike the e-mail, 200 for similar and prerecorded telephone calls but there should be a four and it should be a thousand e-mails per day with a link for -- you know, requiring there be a sentence saying all the information on contributors is available at this link.
>> S. Wengraf: I'll second that motion.
>> His motion or his?
[Laughter]
>> Mayor Bates: Okay.
So I think he's right.
So what do you have for a motion?
Where are we?
We're lost, we're lost.

>> D. Moore: Two motions and one substitute.
>> Clerk: Were you substitute to the main motion?
>> G. Wozniak: I don't know.
Is there another motion?
>> Clerk: The main motion was to adopt the item with -- to add loans.
That was the main motion.
>> G. Wozniak: Mine is a substitute.
>> To refer.
>> Clerk: To refer.
>> Mayor Bates: Refer the loans.
>> J. Arreguin: For candidate and noncandidate contributions.
>> Mayor Bates: Gordon, what do you want?
>> That wasn't part of his motion.
>> My motion.
>> G. Wozniak: The substitute is on B1, to raise it to a thousand pieces of literature, excluding door hangers.
For 3, leave it at 200 for prerecorded telephone calls and add a 4, raise it to a thousand e-mails per day, and that there should be a sentence at the bottom of the e-mail with a link to all the contributors to that cause -- you know, that are supporting that whatever, for or against.
That they have to link to the city's Web site that has that disclosure.
>> Mayor Bates: That's a referral back to the committee.
>> G. Wozniak: Yes, that's a referral.
But I think 200 per month on e-mails is not workable.
>> Mayor Bates: I agree.
>>Audience: You already said that.
>> Mayor Bates: Please.
You're not helping, sir.
You're not helping.
>>Audience: Please.
>> Mayor Bates: Then leave.
>>Audience: Why don't you -- (shouting off microphone from the audience).
You call this government?
>> Mayor Bates: Yeah, it is government.
>>Audience: This is sorry.
This is a really sorry thing and it's a really sorry thing that you put --
>> Mayor Bates: Sir, please.
>> Audience: (Off microphone) At end of the agenda and you ask us all to sit around while you guys do nothing! Do nothing!
>> Mayor Bates: Really?
I thought we were doing campaign reform stuff but I guess he doesn't agree.
>> Clerk: Councilmember Wozniak your substitute motion does not include the referral about adding loans to this?
>> G. Wozniak: I'm happy --
>> Mayor Bates: We have a lot of people who want to speak.
Jesse, you want to speak?
>> J. Arreguin: Just about the first part of Councilmember Wozniak's substitute, I believe it's city law that says that 200 or more pieces of campaign literature have to be filed.
So this is very similar to existing city law so I don't want to change that.
I think that would be a bad idea for us to change that.

You do have a valid point, Councilmember Wozniak, with regard to the 200 or more e-mails.
My concern is as somebody who has run campaigns before, if I send 200 e-mails in a month to volunteers or to campaign staff, that may be subject -- I believe the way this is written -- to disclosure.
>> This is not written to include candidate campaigns.
>> J. Arreguin: But initiative campaigns would be subject; right?
>> Yes.
>> J. Arreguin: And I have run initiative campaigns.
So my understanding about -- getting to the point that Councilmember Capitelli made earlier, first of all, e-mails that I send to my office e-mail list, the newsletter, that is not subject to this.
That's separate.
And additionally, e-mails I send as a candidate committee to voters would not be subject to this.
So we're just talking about committees supporting or opposing candidates that are not controlled committees or independent expenditure committees.
>> Or if you add the --
>> J. Arreguin: Or ballot measure committees.
>> Yes, yes.
>> G. Wozniak: Which are citywide.
>> Mayor Bates: Okay.
Councilmember Wengraf.
>> S. Wengraf: Yeah, Gordon, you said that it should link to the contributions?
I just want some clarity on where is that -- where does that link live?
>> G. Wozniak: The information has to be filed with the city clerk, so that's on the Web site.
Just like you go to --
>> Clerk: I think he is saying linking to where the campaign filings are on the City's Web site.
>> Have you ever tried to....
>> S. Wengraf: So you could game it a little bit by timing it in certain ways, but....
>> G. Wozniak: You have got to file now 40 days ahead.
>> S. Wengraf: I agree with you about the 200.
I think it's an archaic number.
>> Mayor Bates: It's a referral back.
>> L. Maio: But they are actually asking for guidance.
>> Please, give us guidance.
We don't want to do this over and over again.
>> Mayor Bates: Councilmember Worthington.
>> K. Worthington: Well, unfortunately the substitute motion is just increasing secrecy the commission recommendation is very simple and straightforward.
Listing your top four contributors over $250 is not an excessive requirement.
Saying people who give $999 don't have to be reported makes -- there's no reason to limit it to only a thousand dollars.
I think if one of the top four is over 250, then that's a significant amount of money that people deserve to know.
In terms of the 200 e-mails.
It's not a burden when sending an e-mail, you just have a little snippet and you cut and paste it when you are sending hundreds of e-mails.

It's not an awful lot of work.
You just put the list in the e-mail.
What's so complicated?
I think we sudden err on the side of giving the public as much information as possible and to keep the increased secrecy of the substitute motion by limiting how many contributors get reported and by taking away the -- putting this little tiny thing onto your e-mails when we send this out, why would we want to keep this information secret?
The public deserves to know this information.
The public won't get this information, and --
>> (Off mic).
>> S. Wengraf: It will, because it --
>> Mayor Bates: Have a little order.
>> K. Worthington: If you want to add a link to all the contributors, I'm sure the commission would be happy to do that, in addition to, not instead of reporting the top contributors.
I think it says something meaningful to the public, if they -- if they just see a link and they are not going to bother.
If they see your top four contributors and there's a link, you know, it might give them more of an incentive to go to the link and, like, oh, my, these are it and I want to see the rest.
But to say we're not going to give them the top four unless they get even more money is just keeping information away from the public that should be out there on campaign literature.
>> Mayor Bates: Okay.
Councilmember Maio and then we will go to a vote.
>> L. Maio: "A" is candidate or measure over 250, and "B" is how they should be listed.
Is that right?
>> Yes.
>> L. Maio: So having them listed in descending order seems fine to me. So can we just pass A and B without going to 1, 2 and 3 and then we can decide what we want it to be applicable to and how many?
So if we say those two things, we could settle those A and B without going to 1, two, and three,.
>> Z. Cowan: B doesn't mean much without something after the colon.
>> L. Maio: It says it should be in descending order by amount of their contributions, and clear.
>> L. Capitelli: Are we saying contributions or loans?
>> L. Maio: Okay.
I haven't gotten to loans yet.
I am just trying to get this language so that we could then focus on one, which basically seems to me to be -- I don't want -- see, I think we can keep going around there because there's so much to grab on to so if we could just pass "A."
>> Mayor Bates: I think we could pass "A," too.
>> L. Maio: Do we have the ability to pass "A" with the measures that are on the floor?
>> Z. Cowan: You can't pass "A" because it refers to what is defined on campaign literature and that is defined in "B."
>> G. Wozniak: You can pass "C."
>> Z. Cowan: That only says what it doesn't --
>> L. Maio: Here we go again.

So I am going to go back to "A" and we're really only talking about the top four in A and B; correct?
>> Mayor Bates: Yep.
>> L. Maio: And now in one, it depends on how many we want this to apply to.
And it seems to me that 200 is totally insignificant.
It's like it's a small number of people.
I mean, having a reasonable number where you are sending out a major number of pieces, 200 seems very small to me.
And I don't know if anybody is going to actually run off 200 of anything.
It doesn't seem realistic.
>> At Kinko's, you might.
>> L. Maio: Is there a motion on the floor?
>> Mayor Bates: There's two.
>> L. Maio: Then I can't say anything about a motion.
>> Mayor Bates: Yes, you can.
>> L. Maio: So I think a thousand is reasonable, too, because you're not really going to run off 200.
You could -- You have a district of, you know, 7,000 -- yeah.
You just -- 200 is -- I could see really putting it out for a large number that you would want to list that, but these are generally small little things that you might do for people who are coming to your house to work on your campaign or something.
>> Mayor Bates: We've got it.
Okay.
>> L. Maio: But I can't make a motion but I would --
>> Mayor Bates: Gordon already has a thousand.
He already has that.
>> L. Maio: But you did say not door hangers.
>> J. Arreguin: You should take out mailers, then.
>> L. Maio: I think mailers are postcards.
>> J. Arreguin: They are subject to a separate section of BMC --
>> Mayor Bates: Linda has the floor.
We are getting a little out of control here.
>> L. Maio: Well, it's late.
>> Mayor Bates: I know it's late but there's no reason we have to do it.
Gordon has --
>> L. Maio: I am happy to support that and I think we should deal with loans separately because it's too complicated and it's too much for tonight anyway, I just think.
We're over because we have every one of these things is going to take a lot of discussion, and we have people in the audience who have been waiting for a long time as we heard.
>> Mayor Bates: Yeah.
We are not trying to do it on purpose.
>> L. Maio: I know we're not.
We're really trying to do the best we can with a big agenda tonight.
>> Mayor Bates: We have a choice which is we can just stop right here.
>> G. Wozniak: What about section 6?
Is it controversial?
>> It just enforces this one.
>> Clerk: No.
It enforces --
>> Item 4.

And you already passed 4 so it is creating a penalty for the independent expenditure filing if it isn't filed in time.
>> I move.
>> Second.
>> K. Worthington: You can't have three motions --
>> Mayor Bates: Wait a minute.
We have two motions on the floor but I am going to rule that --
>> We have four motions --
>> G. Wozniak: I will withdraw mine if we are going to hold this over.
>> Mayor Bates: I would ask who made the first motion to withdraw too, please.
>> Clerk: That was Kriss.
>> Mayor Bates: We'll be back.
>> K. Worthington: I want to see how many votes we get for doing the right thing and getting the public information.
>> L. Maio: Let's vote on his motion.
>> Mayor Bates: You are not withdrawing?
>> K. Worthington: I think -- This was delayed --
>> Mayor Bates: I am just asking yes or no.
>> K. Worthington: This has been repeatedly delayed.
It's a very simple requirement.
It gives the public more information.
I think we should move forward.
>> Mayor Bates: Okay.
We're going to vote, then.
So call the roll on the motion, then.
>> What is the motion?
>> Main motion.
>> Mayor Bates: Main motion as printed without the 1,000 and other changes.
I am recommending we vote know and we will have it back.
>> Clerk: It was to refer it back to include loans.
>> K. Worthington: No.
It was to adopt what the commission recommended at -- four contributors over 250 and to refer the new issues brought up tonight to the commission to consider.
>> Mayor Bates: The loan issues.
(Multiple people talking at once.)
>> L. Maio: I am not going to vote for it.
>> Mayor Bates: Call the roll, please.
>> Clerk: Councilmember Maio.
>> Abstain.
>> Moore.
>> Abstain.
>> Anderson.
>> Yes.
>> Arreguin.
>> Yes.
>> Capitelli.
>> Abstain.
>> Wengraf.
>> Abstain.
>> Worthington.
>> Yes.

>> Wozniak.
>> Abstain.
>> Mayor Bates.
>> Mayor Bates: Abstain.
So that doesn't pass.
So we're on item number 6.
>> K. Worthington: So moved.
>> L. Maio: Second.
>> Second.
>> Clerk: I already have a motion and seconder.
>> L. Maio: So then we should vote now?
>> Clerk: Yes.
>> K. Worthington: That motion was not able to be made at that time.
>> Mayor Bates: It wasn't legal so we will now accept the same mover and end seconder as was previously made.
Okay.
So is there objection to us all being voted aye on the last section?
Seeing none, okay.
That passes.
So we have five out of six, something like that.
Not too bad.
So we'll continue.
What I suggest, Steve, is you take these comments back to the commission and then see if you can massage it.
Listen to the tape and come back.
Okay.
So now we don't have much time and we are all getting cranky so let me go to item number 37, which is the next item, which is referring ballot language to the city manager.
There's been a suggestion, Jesse, on the -- on number 37 that a supermajority being required in order to pass the new district boundaries.
>> L. Maio: Going to take comment?
>> Mayor Bates: So you want to move that; right?
>> Public comment?
>> Mayor Bates: We are going to hear from them but I want a motion on the floor.
>> J. Arreguin: I will put a motion on the floor to adopt item 37, adding -- well, first amending at the suggestion of Councilmember Capitelli number 4 to say that no two incumbents should be drawn in the same district and adding a fifth asking staff to explore approval of a redistricting plan by a supermajority vote and then asking staff to look at ways to address the issue of impasse if a supermajority is not reached.
>> Supermajority is?
>> Mayor Bates: Six.
I have been resisting that but we just had a supermajority on the last item.
Anybody who wishes to speak on this item, now is the time.
>> Good evening, Mayor Bates and councilmembers.
My name is Sidney fang, I am a current ASUC Senator and I am here because I am happy to see that the charter is being reformed to follow -- reformed to allow more flexible and equitable redistricting and eliminating the 1986 boundaries will go a long way towards creating districts that better represent Berkeley's diverse communities of interest.

Fair Campaign Practices Commission

ACTION CALENDAR
June 26, 2012

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Steve Wollmer, Chair, Fair Campaign Practices Commission

Subject: Amendment to Berkeley Election Reform Act, Adding BMC Section 2.12.335

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance amending the Berkeley Election Reform Act (BERA) to add Berkeley Municipal Code section 2.12.335, requiring disclosure on campaign communications of the committee's name and certain contributions and loans received by the committee.

FISCAL IMPACTS OF RECOMMENDATION

There could be a slight increase in staff time spent by the City Clerk's Office and the Commission Secretary educating committees and treasurers of the new requirement, balanced by the potential for collection of penalties payable to the general fund for violations of the BERA.

CURRENT SITUATION AND ITS EFFECTS

Currently, BERA has no requirement that campaign committees include identifying information on campaign materials, except for certain mass mailings. Section 2.12.335, if approved, will require committees to list on campaign communications both the name of the committee and information about the top four donors (both contributors and lenders) to the committee in excess of $250. Campaign communications subject to the disclosure requirement include campaign literature (mailers, flyers, pamphlets and doorhangers), advertisements (newspapers, magazines and the Internet), emails and pre-recorded calls.

At the April 3 Council meeting, the City Council considered Section 2.12.335 as part of a package of six proposed BERA amendments. Council ultimately approved five of the amendments, but did not pass Section 2.12.335. Prior to voting on the amendment, Council discussed a number of possible revisions to the amendment. The Commission then held a Special Meeting on May 3 to discuss each of the concerns and suggestions raised at the April 3 Council meeting. After discussion, the Commission passed the following motions by unanimous vote of its membership:

a. *Motion to accept proposed revision to add loans and name of committee to information subject to disclosure on campaign communications*:
*(*M/S/C:.Ritchie/Smith. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

b. *Motion to accept proposal to increase number of substantially similar printed campaign materials considered campaign communications subject to disclosure requirements from 200 to 1000*: *(*M/S/C:.Smith/Cummins. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

c. *Motion to leave door hangers on list of campaign communications subject to disclosure*: *(*M/S/C:.Ritchie/Smith. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

d. *Motion to accept proposal to increase number of substantially similar email and recorded calls considered campaign communications subject to disclosure requirements from 200 to 1000, retain email as a form of campaign communication, and maintain the timeframe as one month*: *(*M/S/C:.Ritchie/Smith. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

e. *Motion to accept proposal to remove exception for candidate contributions to their own committees*: *(*M/S/C:.Bedrick/Cummins. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

Staff incorporated all of the Commission's revisions and forwarded the revised draft to local news media, in line with BMC Section 2.12.051, and to the Commission for a further vote. At a May 10 special meeting, the Commission approved the revised Section 2.12.335 by a unanimous vote of those in attendance as follows:

> *Move to approve Section 2.12.335 as amended:* (M/S/C: Murray, Cummins. Ayes: Cummins, Murray, O'Donnell, and Wollmer; Noes: None; Abstain: None; Absent: Ritchie. [Smith on approved leave of absence].)

The Commission again presents the amendment to the City Council for consideration.

BACKGROUND

The voters enacted the BERA in 1974 with the following stated purposes:

> "A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
> B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.
> C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced." (BMC § 2.12.015)

BERA may be amended to further these purposes through a "double-green light" procedure. First, the FCPC must approve any amending ordinance by not less than a two-thirds vote of its membership. Second, following a period of at least thirty days, the City

Council must hold a public hearing and also approve the amendment by not less than a two-thirds' vote of its membership. (BMC § 2.12.051.A.)

Since at least 2009, this Commission has been discussing revising the BERA to add reporting and disclosure requirements, with a particular focus on campaign communications by independent expenditure, ballot measure and general purpose committees. In early 2010, the Supreme Court decided the case of *Citizens United*, which expanded corporate campaign spending power by holding that it is unconstitutional for the government to suppress corporate political speech. The case nevertheless confirmed that "[t]he government can regulate corporate political speech through disclaimer and disclosure requirements." (*Citizens United v. FEC* (2010) 130 S. Ct. 876, 886.)

The proposed amendment furthers BERA's purposes while remaining consistent with the constitutional limits set forth in *Citizens United* by providing for fuller disclosure of the source of, and major donors supporting, local campaign communications.

RATIONALE FOR RECOMMENDATION
See report.

ALTERNATIVE ACTIONS CONSIDERED
None.

CITY MANAGER
See companion report.

CONTACT PERSON

Steve Wollmer, Chair, Fair Campaign Practices Commission	510 843-2053
Kristy van Herick, Secretary, Fair Campaign Practices Commission	510-981-6998

Attachments:
1: Ordinance
2: Proposed Notice of Public Hearing

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT, BERKELEY MUNICIPAL CODE CHAPTER 2.12, TO REQUIRE THE COMMITTEE NAME AND CERTAIN CONTRIBUTORS AND LENDERS TO BE LISTED ON CAMPAIGN COMMUNICATIONS

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

Section 1. That Berkeley Municipal Code 2.12.335 is added to read as follows:

Section 2.12.335. Disclosure on campaign communications of certain contributions and loans.

A. 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.

B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, “campaign communication” means any of the following items:

1. 1000 or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;

2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;

3. 1000 or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

C. For purposes of this section, “campaign communication” does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

D. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection A, campaign communications must be updated on the following schedule:

1. For printed campaign communications under subsection B.1 or subsection B.2, disclosures must be updated within seven calendar days to include current disclosure

information every time an order to reproduce the campaign communication is placed, or any time the campaign communication is reprinted;

2. For e-mails or pre-recorded telephone calls under subsection B.3, disclosures must be updated to include current disclosure information within seven calendar days.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 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.

NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL

AMENDMENT TO BERKELEY ELECTION REFORM ACT (BERA)

The Fair Campaign Practices Commission is proposing an amendment to the BERA to add Berkeley Municipal Code section 2.12.335, requiring disclosure on campaign communications of the committee's name and certain contributions and loans received by the committee.

The hearing will be held on **JUNE 26, 2012** at 7:00 p.m. in the City Council chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **JUNE 14, 2012.**

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. Comments received no later than Monday, **JUNE 11, 2012** will be included in Council agenda packets. Comments received thereafter will be submitted to Council as supplemental communications. For further information, call Mark Numainville, Acting City Clerk, 981-6900. FAX: (510) 981-6901. TDD: (510) 981-6903.

For further information, please contact Kristy van Herick, Staff Secretary at (510) 981-6998.

Published: June 15, 2012 – The Berkeley Voice

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on June 14, 2012.

Mark Numainville, Acting City Clerk
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FARIMAH BROWN, City Attorney SBN 201227
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
TEL.: (510) 981-6998
FAX: (510) 981-6960

Attorney for FAIR CAMPAIGN PRACTICES COMMISSION

BEFORE THE FAIR CAMPAIGN PRACTICES COMMISSION

CITY OF BERKELEY

In the Matter of: ***Ben Bartlett for Berkeley City Council 2016,*** Respondent.	[DRAFT] **STIPULATION, DECISION AND ORDER**

This stipulation is entered into by and between the Fair Campaign Practices Commission (the "Commission" or "FCPC") and Candidate-Controlled Committee *Ben Bartlett for Berkeley City Council 2016* ("committee" or "Respondent"), through its controlling candidate Ben Bartlett. The following is a true and accurate summary of the facts in this matter:

1. The committee violated the Berkeley Election Reform Act (BERA), which is codified in Chapter 2.12 of the Berkeley Municipal Code (BMC).

2. Respondent accepted one contribution in excess of Berkeley's contribution limit, codified in Section 2.12.415 of the BMC. The contribution was a loan from the candidate's spouse Yelda Bartlett in the amount of $10,000, incurred on June 29, 2016. The contribution was reported on the committee's Form 460 campaign statements, including statements filed August 1, 2016 and January 31, 2017. The committee violated BMC Section 2.12.415 by accepting a contribution in excess of $250 from a person other than the candidate, *i.e.*, the $10,000 loan from the candidate's spouse.

3. On November 2, 2016, the committee mailed 6,021 pieces of campaign literature, at a cost of $4,195.40, which were subject to the City's "major funding provided by" disclosure requirement contained in BMC Section 2.12.335. The committee violated BMC Section 2.12.335 by failing to disclose the $10,000 contribution on campaign communications

within 6 months of the contribution, i.e., 6,021 pieces of campaign literature mailed on November 2, 2016.

$10,000 LOAN FROM YELDA BARTLETT

4. BERA prohibits "contributions," including loans (BMC § 2.12.100), which exceed $250 to any candidate-controlled committee by any person other than the candidate himself or herself. (BMC § 2.12.415.) Accordingly, only a "candidate himself or herself" may contribute more than $250 to his or her candidate-controlled committee.

5. FCPC Regulation R2.12.415.3 governs contributions from joint accounts. Contributions from joint accounts are presumed to come *from the person who signs the check.* In order for a contribution to be allocated between accountholders, both accountholders have to sign the check or an accompanying written statement. The regulation, in full, is as follows:

> A contribution drawn on a joint account is presumed to come from the person or 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 instrument, each party to the joint account intending to make the contribution must sign the check or other instrument, or sign a written statement accompanying the check or other instrument indicating that all of the signatories intend to make the contribution. The amount of the contribution shall be allocated equally between or among the signers, unless otherwise indicated by the contributors.

(FCPC Reg. R2.12.415.3; *see also* BMC § 2.12.210 (authorizing the regulations).)

6. On June 29, 2016, Yelda Bartlett, the spouse of candidate Ben Bartlett, wrote and signed a check in the amount of $10,000, described as a loan, to the candidate-controlled committee *Ben Bartlett for Berkeley City Council 2016*. Yelda Bartlett alone signed the check. The funds came from a joint, personal bank account held by both Yelda Bartlett and Ben Bartlett. Ben Bartlett explained to staff that Yelda Bartlett customarily signed their checks. The committee reported the amount as a loan from Yelda Bartlett in its Form 460 campaign statements for the periods covering January 1 through June 30, 2016, filed August 1, 2016, and October 23 through December 31, 2016, filed January 31, 2017.

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.

10. The committee's mass mailing on November 2, 2016 exceeded one thousand pieces of campaign literature, and was a "campaign communication" subject to Section 2.12.335. The committee was required to disclose Yelda Bartlett's $10,000 loan on the campaign communication because the expenditure was made within six months of the loan, yet the committee failed to include the required disclosure information.

FACTORS IN MITIGATION

11. Respondent, through the committee's treasurer, the candidate, and the candidate's spouse cooperated with the Commission staff throughout this process and timely provided requested information.

12. State law is consistent with BERA's handling of spousal contributions.[1] However, the California Fair Political Practices Commission's Campaign Manual 2 included incorrect guidance. The FPPC's Senior Commission Counsel confirmed that Campaign Manual 2 appeared to misinterpret controlling state law—*i.e.*, Government Code Section 85308, FPPC Regulation 18533, and FPPC Advice Letter I-97-442. FPPC's counsel stated that the FPPC would remove the statement from the next version of the manual to be consistent with state law. Further, Campaign Manual 2 states that "[i]f there are any discrepancies between the manual and the [California Political Reform] Act or its corresponding regulations, the Act and its regulations will control." *See* Campaign Manual 2 at Introduction – 1. However, the Commission considered the existence of contradictory guidance as a mitigating factor in determining the remedy for the committee's violation of BMC Section 2.12.415.

13. With regard to the committee's violation of BMC 2.12.415, the committee did disclose the contribution prior to the election and reported the amount as a loan from Yelda Bartlett in its Form 460 campaign statements for the periods covering January 1 through June

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[1] Under state law, contributions from joint checking accounts are attributed to the individual "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 states that "[c]ontributions made by a husband and wife *may not be aggregated.*"

30, 2016, filed August 1, 2016, and October 23 through December 31, 2016, filed January 31, 2017.

FACTORS IN AGGRAVATION

14. The committee's November 2, 2016 mass mailer included 6,021 identical mailers, which is well above the one thousand pieces of campaign literature threshold, which triggers the "Major Funding Provided By" disclosure under BMC Section 2.12.335.

15. The committee failed to provide the "Major Funding Provided By" disclosure for the $10,000 contribution on the face of the mailer, which is a sizeable contribution in a Berkeley election, given the $250 contribution limit in BMC Section 2.12.415 for all persons aside from the candidate himself or herself.

PROCEDURAL POSTURE

16. At its July 20, 2017 meeting, the FCPC found probable cause that the committee had violated both BERA's contribution limit in violation of Section 2.12.415 and the requirement to provide a "Major Funding Provided By" disclosure on campaign communications in violation of Section 2.12.335.

17. If the Commission held a hearing and concluded that the committee violated Section 2.12.415, the Commission would have authority to issue a monetary penalty of up to $9,750, the amount by which the unlawful contribution exceeded the City's contribution limit. Following a hearing and a finding that the committee violated Section 2.12.335, the Commission would have authority to issue a separate monetary penalty of up to $10,000, which is the amount of the contribution that the committee failed to disclose on its campaign communications within six months within the date of the $10,000 contribution.

18. In lieu of setting this matter for a hearing after probable cause determination, the FCPC delegated authority to the FCPC chair and staff to prepare a Stipulation resolving the two BERA violations.

19. The FCPC moved to require a written statement signed under penalty of perjury by Ben Bartlett stating that the $10,000 loan from Yelda Bartlett to the committee was made with his knowledge, consent, and at his direction, and that the $10,000 loan, although signed by

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

action for any false statements stemming from any of Respondent's representations in this Stipulation.

6. The parties agree that if the FCPC refuses to accept this Stipulation, it shall become null and void. Respondent stipulates and agrees that if a full evidentiary hearing before the Commission becomes necessary, no member of the Commission or FCPC staff shall be disqualified because of their consideration of this Stipulation and Order.

7. Respondent acknowledges that the FCPC retains jurisdiction over this Stipulation and Order, and is acting under Section VI.C.2.d of the FCPC Procedures, enacted pursuant to the Commission's authority to enact rules and procedures under BMC Section 2.12.210.

Dated: September 15, 2017

FARIMAH BROWN, City Attorney
Attorney for Fair Campaign Practices Commission

Dated: September 13, 2017

BEN BARTLETT, Candidate
Ben Bartlett for City Council 2016

ORDER

The foregoing Stipulation of the parties *In the Matter of Ben Bartlett for Berkeley City Council 2016*, is hereby accepted as the final decision and order of the Fair Campaign Practices Commission effective upon execution below by the Chairperson. Further, it is hereby ordered that this Stipulation, Decision and Order be appended to the committee's campaign statements on file with the Office of the City Clerk, City of Berkeley.

IT IS SO ORDERED.

Dated: September 21, 2017

BRAD SMITH, Chairperson
DEAN METZGER, Vice Chairperson
FAIR CAMPAIGN PRACTICES COMMISSION

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 B.

BEN BARTLETT, Candidate
Ben Bartlett for City Council 2016