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ACTION CALENDAR

May 23, 2006

To: Honorable Mayor and Members of the City Council

From: Councilmembers Kriss Worthington and Max Anderson

Subject: **Clean Money** Ballot Measure for Public Finance of some future Berkeley Elections

RECOMMENDATION:

That the Berkeley City Council consider placement on the November 7, 2006 election ballot, of a campaign finance reform item providing for public finance of future Berkeley elections.

BACKGROUND:

Clean Money has gained immense momentum on the state level. Also allegations of corruption in campaign fundraising have received enormous media coverage with the federal elected officials. Berkeley previously considered measure H which may have lost due to lack of coordination with good government groups such as the League of Women Voters, questions about threshold requirements, poor wording, poor timing, too many tax measures weighing on the voters minds and wallets, and potential volunteers focusing on the presidential election. I am not suggesting that we place the same old measure back on the ballot. Rather we could evaluate the feasibility of modifications to make the ballot measure clearer, more effective and more popular.

Possible improvements could include:

Reducing grant amount? (to accommodate consideration that much money currently raised is used to pay for the fundraising itself and not for the actual campaigning.)

Capping the administrative costs at a percentage?

Limiting the number of offices to which the measure will be applied?

Reflecting the actual cost per resident in the ballot language and financial analysis?

FINANCIAL IMPLICATIONS:

Approximately \$10,000 to place a ballot measure on a consolidated election.

CONTACT PERSON:

Councilmember Kriss Worthington 981-7170

Councilmember Max Anderson 981-7130

Clean Elections—Charter Amendment and Ordinance Amendment
Draft May 2, 2006

**AMENDMENT TO CITY OF BERKELEY CHARTER ARTICLE III
(ELECTIONS) AND MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM
ACT) TO CREATE A CLEAN ELECTIONS SYSTEM**

Section 1. FINDINGS

The People of the City of Berkeley find that the City of Berkeley’s current campaign finance system:

- A. Discourages many otherwise qualified candidates from running for office because of the need to raise substantial sums of money to be competitive.
- B. Fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions.
- C. Creates a danger of actual corruption by encouraging elected officials to take money from private interests that are directly affected by governmental actions.
- D. Forces candidates to raise larger and larger percentages of money from interest groups that have a specific financial stake in matters before Berkeley City government to keep pace with rapidly increasing campaign costs.
- E. Diminishes elected officials’ accountability to their constituents by compelling them to be disproportionately accountable to the contributors who finance their election campaigns.
- F. Violates the rights of all citizens to equal and meaningful participation in the democratic process.
- G. Disadvantages challengers, because campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive.
- H. Burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities.
- I. Enables independent campaign spenders to disproportionately influence the political process by funneling money through independent expenditure committees and political parties in an effort to skirt the contribution limitations laws.
- J. The People further find that a Clean Elections system is necessary to address these concerns.

Section 2. That Section 5 ½ is added to Article III (“ELECTIONS”) of the City of Berkeley Charter to read as follows:

Section 5 ½. Clean Elections Fund

(3) Establishment of Clean Elections Fund.

A special, dedicated, non-lapsing Clean Elections Fund shall be established by the Mayor and Council for the purpose of:

- (a) Providing public financing for the election campaigns of certified participating candidates during general, runoff and special election campaign periods; and
- (b) Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission and City staff related to the Clean Elections Fund public campaign financing program, including, if feasible, the development of a system to allow electronic filing of campaign finance statements and reports. The administrative and enforcement costs shall not exceed \$250,000 in any four year election cycle.

(4) Appropriations to the Clean Elections Fund.

- (a) The Mayor and City Council shall annually appropriate \$5 per Berkeley Resident per year, according to the most recent data available from the US Census Bureau from the City General Fund to the Clean Elections Fund. The Council's duty to appropriate funds for the public financing program shall cease upon the termination of the public financing program.
- (b) Other sources of revenue to be deposited in the Fund shall include:
 - 1) The qualifying contributions required of candidates seeking to become certified as participating candidates and candidates' excess qualifying contributions;
 - 2) The excess seed money contributions of candidates seeking to become certified as participating candidates;
 - 3) Unspent funds distributed to any participating candidate who does not remain a candidate until the general election, special election or runoff election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the general election, special election or runoff election for which they were distributed;
 - 4) Fines levied by the commission against candidates for violation of election laws;
 - 5) Voluntary donations made directly to the Clean Elections Fund;
 - 6) Other funds appropriated by the Mayor and City Council;
 - 7) Any interest generated by the Fund; and
 - 8) Any other sources of revenue determined as necessary by the Mayor and City Council.

- (c) The amount in the Clean Elections Fund shall not exceed \$2.5 million. In order to comply with this limitation, revenue which would otherwise be deposited in the Clean Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.
- (d) The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

(3) Cost of Living Adjustments.

The commission shall adjust the dollar amounts specified in subsections (3)(b), (4)(a) and (4)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

Section 3. Be it Ordained by the People of the City of Berkeley that Berkeley Municipal Code, Title 2, Chapter 2.12, Election Reform Act, is hereby amended as follows:

That Article 2 (“Definitions”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.097 Competitive Special Election.

“Competitive special election” means:

- A. A special election in which at least two candidates for a single office are participating candidates; or
- B. A special election in which at least one non-participating candidate for a single office has raised, spent or has cash on hand in an amount equal to at least 20% of the public funding grant amounts specified in Section 2.12.515(A) of this chapter; or
- C. A special election in which a participating candidate is opposed by the incumbent in that office, whether or not the incumbent receives public funding.

2.12.098 Competitive General Election.

“Competitive general election” means:

- A. A general election in which at least two candidates for a single office are participating candidates; or
- B. A general election in which at least one non-participating candidate for a single office has raised, spent or has cash on hand in an amount equal to at

least 20% of the public funding grant amounts specified in Section 2.12.515(A) of this chapter; or

- C. A general election in which a participating candidate is opposed by the incumbent in that office, whether or not the incumbent receives public funding.

2.12.128 Excess Expenditure.

“Excess expenditure” means the amount of money spent or obligated to be spent by a non-participating candidate in excess of the Clean Elections amount available to a participating candidate running for the same office.

2.12.133 Exploratory Period.

“Exploratory period” means the period beginning on the first day of the 12th month before the general election and ending at the close of the nomination period for the general election.

2.12.136 Fund.

"Fund" means the Clean Elections Fund created by City Charter Article III Section 5 ½.

2.12.137 General Election.

“General election” means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4.

2.12.138 General Election Campaign Period.

“General election campaign period” means the period beginning at the close of the nomination period for the general election and ending on the day of the general election.

2.12.155 2.12.153 Measure.

2.12.153.5 Nomination Period

“Nomination period” means the period specified by state law during which candidates must submit nomination papers for City offices.

2.12.154 Non-Candidate Expenditure.

“Non-candidate expenditure” means:

- A. An independent expenditure as defined by Section 2.12.142;

- B. A payment made pursuant to Cal. Govt. Code Section 85312 for the purpose of supporting or opposing a candidate for Berkeley elective office; or
- C. A payment totaling \$250 or more, that is made without cooperation or consultation with any candidate, for a communication that clearly identifies a candidate for Berkeley elective office but does not expressly advocate the election or defeat of the candidate, which is disseminated, broadcast, or otherwise published in the City within 45 days of an election.

2.12.155 Non-Competitive Special Election.

“Non-competitive special election” means a special election not meeting the definition of “competitive special election” in Section 2.12.097 of this chapter.

2.12.156 Non-Competitive General Election.

“Non-competitive general election” means an election not meeting the definition of “competitive general election” in Section 2.12.098 of this chapter.

2.12.157 Non-Participating Candidate.

“Non-participating candidate” means a candidate who is on the ballot but has chosen not to apply for Clean Elections campaign funding, or a candidate who is on the ballot and has applied but has not satisfied the requirements for receiving Clean Elections funding.

2.12.158 Participating Candidate.

“Participating candidate” means a candidate who qualifies for Clean Elections campaign funding. Such candidates shall be eligible to receive Clean Elections funding during general and runoff election campaign periods.

2.12.160 2.12.159 Period covered.

2.12.165 2.12.160 Persons.

"Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Ord. 4700-NS § 219, 1974)

2.12.161 Petty Cash.

“Petty cash” means cash amounts of one hundred dollars (\$100) or less per day that are used to pay expenses of no more than twenty-five dollars (\$25) each.

2.12.162 Qualified Elector

“Qualified elector” means a person who is properly registered to vote pursuant to state law.

2.12.163 Qualifying Contribution.

“Qualifying contribution” means a contribution of five dollars (\$5) that is received during the designated qualifying period by a candidate seeking to become eligible for Clean Elections campaign funding. A person shall not be employed or compensated to solicit or collect qualifying contributions on behalf of a candidate. A qualifying contribution shall be:

- A. in the case of a candidate for citywide office, from a qualified elector in the City; and
- B. in the case of a candidate for a district-based office, from a qualified elector in the district to be represented by the candidate.

2.12.164 Qualifying Period.

“Qualifying period” means the period during which candidates are permitted to collect qualifying contributions in order to qualify for Clean Elections funding. It begins 210 days before the beginning of the general election campaign period and ends at the beginning of the nomination period for the general election.

2.12.165 Runoff Election.

“Runoff election” means an election held pursuant to City Charter Article V Section 9, in the event that no candidate for Mayor, Auditor or Council office receives the votes required by law to be elected to that office in the initial election. The initial election may be either a general election or a special election.

2.12.166 Runoff Election Campaign Period.

“Runoff election campaign period” means the period beginning the day after the general election and ending on the day of a runoff election required by City Charter Article V Section 9.

2.12.167 Seed Money Contribution.

“Seed money contribution” means a contribution of no more than \$250 made by an individual adult resident of the City during the exploratory period.

2.12.168 Special Election.

“Special election” means a special municipal election held pursuant to City Charter Article III Section 4 but does not include a runoff election held pursuant to City Charter Article V Section 9.

2.12.169 Special Election Campaign Period.

“Special election campaign period” means the period beginning on the day the election is called and ending on the day of the special election.

Section 4. That Section 2.12.205 of Berkeley Municipal Code is amended to read as follows:

2.12.205 Administrative responsibility.

The commission has the primary responsibility for the impartial, effective administration of this chapter. The commission may delegate its responsibility for administration of this chapter to City staff. (Ord. 4700-NS § 307, 1974)

Section 5. That Article 4 (“Disclosure Requirements and Procedures”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.297 Report of Excess Expenditures.

If a non-participating candidate’s total expenditures or obligations to make expenditures exceed the amount of Clean Elections funding allocated to the candidate’s Clean Elections opponent(s), the candidate shall report every excess expenditure which, in the aggregate, is more than two-hundred and fifty dollars (\$250) to the commission within 24 hours using a form specified by the commission.

2.12.298 Report of Non-candidate Expenditures.

- A. In addition to any other report required by this Chapter, a person that makes non-candidate expenditures of \$250 or more during an election cycle in connection with a candidate for Berkeley elective office shall file a report disclosing the making of the non-candidate expenditure. This report shall disclose the same information required by Section 2.12.280 and shall be filed within 24 hours of the time the non-candidate expenditure is made using a form specified by the commission.
- B. The report shall include a signed statement under penalty of perjury by the person or persons making the non-candidate expenditure identifying the candidate or candidates whom the non-candidate expenditure is intended to support or oppose and affirming that the non-candidate expenditure is totally independent and involves no cooperation or coordination with a candidate. Any individual or organization that fails to file the required report or provides materially false information in that report may be fined up to three times the amount of the non-candidate expenditure upon a two-thirds vote of the commission following a hearing held pursuant to Section 2.12.230.

2.12.299 Report of Contributions and Expenditures

A. Non-participating candidates shall file a campaign statement for the period ending at the close of the nomination period, five days thereafter, that contains the same information required by Section 2.12.280, if the following criteria are satisfied:

1. The non-participating candidate is opposed by a candidate that has applied for and is eligible for public funds;

2. The non-participating candidate's most recently filed campaign statement shows that the candidate has not raised, spent or has cash on hand of at least 20% of the applicable grant; and

3. Since the campaign statement specified by subsection A(2) was filed, the non-participating candidate has raised, spent or has cash on hand of at least 20% of the applicable grant.

B. If the criteria specified in subsections A(1) and A(2) are satisfied but subsection A(3) is not, the non-participating candidate shall, by the deadline specified in section A, file a statement under penalty of perjury to this effect on a form specified by the commission. If at any time following this date the non-participating candidate satisfies the criteria specified in subsection A(3), the candidate shall file the campaign statement required by section A within 24 hours.

Section 6. That Article 6 (“Limitations on Contributions”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

Article 6. Limitations on Contributions and Non-candidate Expenditures

2.12.420 Prohibition of Non-candidate Expenditures By Candidate Controlled Committees

A controlled committee of a candidate may not make non-candidate expenditures and may not contribute funds to another committee for the purpose of making non-candidate expenditures to support or oppose other candidates.

Section 7. That Berkeley Municipal Code Chapter 2.12 Article 7 is amended to read as follows:

Article7. Berkeley Clean Elections Act of 2006

2.12.445 Title and Purpose.

This Article shall be known as the Berkeley Clean Elections Act of 2006. Its purposes are to:

A Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.

- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Reverse the escalating cost of elections that increase far beyond the increases in the cost of living.
- I. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties.
- J. Ensure that non-candidate expenditures are not used to evade contribution limits.

2.12.450 Offices Covered.

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

2.12.455 Eligibility for Clean Elections Campaign Funding.

- A. A candidate qualifies as a participating candidate for the general election campaign period:
 - 1) If the candidate files a declaration that the candidate has complied and will comply with all of the requirements of this Act, including the requirement that during the exploratory period and the qualifying period the candidate not accept or spend private contributions from any source other than seed money contributions and Clean Elections qualifying contributions;
 - 2) The candidate meets all requirements of applicable law to be listed on the ballot; and
 - 3) The candidate meets the following qualifying contribution requirements before the close of the qualifying period:
 - a) A candidate must collect at least the following number of qualifying contributions:
 - i) 600 qualifying contributions for a candidate running for the office of Mayor;

- ii) 200 qualifying contributions for a candidate running for the office of Auditor;
 - iii) 150 qualifying contributions for a candidate running for the office of City Council;
 - iv) 200 qualifying contributions for a candidate running for the office of School Board Director;
- b) Each qualifying contribution shall be acknowledged by a receipt to the contributor, with a copy to be filed by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualifying contribution is to help the candidate qualify for Clean Elections campaign funding and that the contribution is made without coercion or reimbursement.
 - c) A contribution submitted as a qualifying contribution that does not include a signed and fully completed receipt shall not be counted as a qualifying contribution.
 - d) All five dollar (\$5) qualifying contributions, whether in the form of cash, or checks or money orders made out to the candidate's campaign account, shall be deposited by the candidate in the candidate's campaign account.
 - e) All qualifying contributions' signed receipts shall be filed and shall be accompanied by a check from the candidate's campaign account for the total amount of qualifying contribution moneys received for deposit in the Clean Elections Fund. This submission shall be accompanied by a signed statement from the candidate indicating that all of the information on the qualifying contribution receipts is complete and accurate to the best of the candidate's knowledge and that the amount of the enclosed check is equal to the sum of all the five-dollar (\$5) qualifying contributions the candidate has received.
 - f) The City shall verify that a candidate's qualifying contributions are from appropriate qualified electors as required by Sections 2.12.162 and 2.12.163 prior to the disbursement of public funds to the candidate.

B. A candidate qualifies as a participating candidate for the runoff election campaign period if:

- 1) The candidate has met all of the applicable requirements and has filed a declaration that the candidate has fulfilled and will fulfill all of the requirements of a participating candidate as stated in this Act; and
- 2) The candidate qualifies for a runoff election pursuant to City Charter Article V Section 9 to compete in a runoff election.

2.12.460 Transition Rule for Current Election Cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions or making of expenditures from private funds before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any private funds accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or,
- C. Submitted to the City for deposit in the Clean Elections Fund.

2.12.465 Special Elections.

The provisions of this chapter apply to special elections. The commission shall adjust the deadlines in this Act to account for the circumstances of the special election.

2.12.470 Continuing Obligation to Comply.

A participating candidate who accepts any benefits during the general election campaign period or special election campaign period shall comply with all the requirements of this Act through the runoff election campaign period whether the candidate continues to accept benefits or not.

2.12.475 Contributions and Expenditures.^[p1]

- A. During general, runoff and special election campaign periods, a participating candidate who has voluntarily agreed to participate in, and has become eligible for, Clean Elections benefits, shall not accept private contributions from any source.
- B. No person shall make a contribution in the name of another person. A participating candidate who receives a qualifying contribution or a seed money contribution that is not from the person listed on the receipt required by Section 2.12.455(A)(3)(b) of this chapter shall be liable to pay the Clean Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

- C. During the general election, special election and runoff election campaign periods, a participating candidate may pay for all of the candidate's campaign expenditures, except petty cash expenditures, by means of a "Clean Elections Debit Card" if issued by the City, or by check, if authorized by Section 2.12.540.
- D. Eligible candidates shall furnish complete campaign records, including all records of seed money contributions and qualifying contributions, to the City upon request by the commission. Candidates shall cooperate with any audit or examination by the commission or any enforcement agency.

2.12.480 Campaign Accounts for Participating Candidates.

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign account required by Section 2.12.250.
- B. A participating candidate may maintain a campaign account other than the campaign account described in subdivision (A) if the other campaign account is for:
 - 1) the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subdivision B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

2.12.485 Use of Clean Elections Funds.

- A. Participating candidates shall use their Clean Elections funds only for direct campaign purposes.
- B. A participating candidate shall not use Clean Elections funds for:
 - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act;
 - 2) Indirect campaign purposes, including but not limited to:
 - a) The candidate's personal support or compensation to the candidate or the candidate's family;
 - b) Clothing and other items related to the candidate's personal appearance;

- c) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
- d) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
- e) An independent expenditure;
- f) Any payment or transfer for which compensating value is not received.

2.12.490 Use of Personal Funds.

- A. Personal funds contributed as seed money by a candidate seeking to become eligible as a participating candidate or adult members of the candidate's family shall not exceed the maximum of two hundred and fifty dollars (\$250) per contributor.
- B. Personal funds shall not be used to meet the qualifying contribution requirement except for one five dollar (\$5) contribution from the candidate and one five dollar (\$5) contribution from the candidate's spouse, provided that the candidate's spouse is a qualified elector pursuant to Sections 2.12.162 and 2.12.163.

2.12.495 Seed Money.

- A. The only private contributions a candidate seeking to become eligible for Clean Elections funding shall accept, other than qualifying contributions, are seed money contributions contributed by individual adults prior to the end of the exploratory period.
- B. A seed money contribution shall not exceed two hundred and fifty dollars (\$250) per donor, and the aggregate amount of seed money contributions accepted by a candidate seeking to become eligible for Clean Elections funding shall not exceed 10% of the competitive general election Clean Elections funding amount available for the office sought, pursuant to Section 2.12.515(A).
- C. Receipts for seed money contributions under fifty dollars (\$50) shall include the contributor's signature, printed name, street address and ZIP Code. Receipts for seed money contributions of fifty dollars (\$50) or more shall also include the contributor's occupation and name of employer. Contributions shall not be accepted if the required disclosure information is not received.
- D. Seed money shall be spent only during the exploratory and qualifying periods. Seed money shall not be spent during the general or runoff election campaign periods.

- E. Within 72 hours after the close of the qualifying period, candidates seeking to become eligible for Clean Elections funding shall:
- 1) Fully disclose all seed money contributions and expenditures to the commission, and
 - 2) Turn over to the City for deposit in the Clean Elections Fund any seed money the candidate has raised during the exploratory period that exceeds the aggregate seed money limit.

2.12.500 Certification.

- A. A candidate who wishes to be certified as a participating candidate shall, before the end of the qualifying period, file an application in a form specified by the commission.
- B. The application shall identify the candidate, the office that the candidate plans to seek, and shall contain the candidate's signature, under oath, certifying that:
- 1) The candidate has complied with the restrictions of this chapter during the election cycle to date.
 - 2) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate.
 - 3) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, will not accept private contributions.
- C. At the earliest practicable time after a candidate applies for Clean Elections benefits, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the candidate commits a substantial violation of the requirements of this Act, in which case all Clean Elections funds shall be repaid. Such a determination shall be made by the commission upon a two-thirds vote following a hearing held pursuant to Section 2.12.230. A candidate shall be certified as eligible contingent on the City's determination that the candidate has met all requirements to be listed on the ballot as required by Section 2.12.455(A)(2).
- D. The candidate's request for certification shall be signed by the candidate and the candidate's campaign treasurer under penalty of perjury.
- E. The commission's determination is final except that it is subject to a prompt judicial review.
- F. If the commission determines that a candidate is not eligible, the candidate's qualifying contributions shall be returned and deposited into the candidate's campaign account, unless the candidate elects to donate the contributions to charity or to the Clean Elections Fund. Regardless of whether the contributions are returned to the candidate or donated to

charity or the Fund, they shall be treated as campaign contributions in accordance with state and local law.

2.12.503 Administrative Modification of Timelines

Notwithstanding any provision in this chapter to the contrary, the commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter.

2.12.505 Benefits Provided to Candidates Eligible to Receive Clean Elections Funding.

- A. Candidates who qualify for Clean Elections funding shall:
- 1) Receive Clean Elections funding for each election, the amount of which is specified in Section 2.12.515 of this chapter. This funding may be used to finance any and all campaign expenses during the particular campaign period for which it was allocated.
 - 2) Receive additional Clean Elections funding pursuant to Section 2.12.520 to match any excess expenditure amount spent by a non-participating candidate, as disclosed pursuant to Sections 2.12.297 or 2.12.520 of this chapter.
 - 3) Receive additional Clean Elections funding pursuant to Section 2.12.525 to match any non-candidate expenditure made in opposition to their candidacies or in support of their opponents' candidacies, as disclosed pursuant to Sections 2.12.298 or 2.12.525, provided that the dollar value of the non-candidate expenditure, combined with the amount raised or received thus far by any opposing candidate who benefits from the non-candidate expenditure, exceeds the original Clean Elections funding amount received by the participating candidate.
 - 4) Be identified as Clean Elections program participants by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6 ½.

2.12.510 Schedule of Clean Elections Funding Payments.

- A. An eligible candidate shall receive the candidate's Clean Elections funding for the general election upon certification by the City of the candidate's eligibility for public funds and the City's review and approval of the candidate as meeting all requirements to be listed on the ballot.
- B. A candidate's application for public funds shall include the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that the

candidate has complied with all other requirements for eligibility as a participating candidate.

C. An eligible candidate shall receive the candidate's Clean Elections funding for the runoff election campaign period as soon as reasonably practicable after certification of the general election results.

D. An eligible candidate shall receive the candidate's Clean Elections funding for a special election upon certification by the City of the candidate's eligibility for public funds and the City's review and approval of the candidate as meeting all requirements to be listed on the ballot. A candidate's application for public funds shall include the required number of qualifying contribution receipts, a check for the total amount of qualifying contributions collected, and a declaration stating that the candidate has complied with all other requirements for eligibility as a participating candidate.

2.12.515 Determination of Clean Elections Funding Amounts.

A. The amount of Clean Elections funding for an eligible candidate in a competitive general election or competitive special election is:

- 1) \$140,000 for a candidate running for the office of Mayor;
- 2) \$20,000 for a candidate running for the office of Auditor;
- 3) \$20,000 for a candidate running for the office of City Council;
- 4) \$12,000 for a candidate running for the office of School Board Director.

B. The amount of Clean Elections funding for an eligible candidate in a non-competitive general election or non-competitive special election is 20% of the competitive general election Clean Elections funding amount available for the office sought.

C. The amount of Clean Elections funding for an eligible candidate in a runoff election is 50% of the competitive general election Clean Elections funding amount available for the office sought.

2.12.520 Matching Funds for Excess Spending by Non-Participating Candidates.

A. In addition to receiving reports of excess expenditures pursuant to Section 2.12.297, the commission may make its own determination as to whether excess expenditures have been made by non-participating candidates.

B. Upon receiving an excess expenditure report or determining that an excess expenditure has been made or obligated to be made, the commission shall as soon as practicable release additional Clean Elections funding to the opposing participating candidate(s) equal to the excess expenditure amount the non-participating candidate has spent or has obligated to spend.

2.12.525 Matching Funds for Non-Candidate Expenditures.

- A. In addition to receiving reports of non-candidate expenditures pursuant to Section 2.12.298, the commission may make its own determination as to whether non-candidate expenditures have been made.
- B. Upon receiving a report that a non-candidate expenditure has been made or obligated to be made, the commission shall as soon as practicable release additional Clean Elections funding, equal in amount to the cost of the non-candidate expenditure, to any participating candidate opposed by the non-candidate expenditure, or to any participating candidate whose opponent is supported by the non-candidate expenditure, provided that the total dollar value of the amount raised or received thus far by any opposing candidate who benefits from the non-candidate expenditure, combined with all non-candidate expenditures benefiting opposing candidates, exceeds the original Clean Elections funding amount received by the participating candidate.

2.12.530 Maximum Clean Elections Funding

The maximum aggregate amount of additional funding a participating candidate shall receive to match non-candidate expenditures and excess expenditures by non-participating candidates shall be no more than two-hundred percent of the participating candidate's initial Clean Elections funding allocation for the relevant office.

2.12.540 Dispersal of Money from the Fund.

- A. Upon determination that a candidate has met all the requirements for becoming a participating candidate as provided for in this Act, the City may, if feasible, issue to the candidate a card, known as the "Clean Elections Debit Card," and a "line of debit" entitling the candidates and members of the candidate's staff to draw Clean Elections funds from a City account to pay for all campaign costs and expenses up to the amount of Clean Elections funding the candidate has received. In the event it is not feasible to implement the "Clean Elections Debit Card" system, Clean Elections funding shall be distributed to candidates by check.
- [p2]B. The commission may establish regulations and procedures to allow participating candidates and members of the candidate's staff to pay campaign expenses by check. Records of all such expenditures shall be maintained by candidates and provided to the commission upon request.
- C. Petty cash amounts of one hundred dollars (\$100) or less per day may be drawn on the Clean Elections Debit Card, if issued, and used to pay expenses of no more than twenty-five dollars (\$25) each. Records of all such expenditures shall be maintained and reported to the commission.

2.12.545 Insufficient Funds in the Program.

If the commission determines that there are insufficient funds in the Clean Elections Fund to fund adequately all candidates eligible for Clean Elections funds, the commission shall prioritize the distribution of grants disbursed pursuant to Section 2.12.515 over the distribution of matching funds pursuant to Sections 2.12.520 and 2.12.525. If there are insufficient funds in the program necessary to distribute grants under Section 2.12.515, the commission shall reduce the grants proportionately to all eligible candidates. If the commission determines that there are insufficient funds to provide a candidate with the funds for which he or she is eligible under this Act, such a candidate may collect contributions up to the public funding grant amounts specified in Section 2.12.515 or up to the amount of total public funds the candidate could have received pursuant to Sections 2.12.520, 2.12.525 and 2.12.530. If, at a later point, the commission determines that adequate funds have become available, candidates who have not raised private funds shall receive the funds owed to them.

2.12.550 Cost of Living Adjustments.

The commission shall adjust the dollar amounts specified in Sections 2.12.495(B) and 2.12.515(A) for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest one hundred dollars (\$100) for Section 2.12.495(B) and to the nearest one thousand dollars (\$1,000) for all other provisions.

Section 8. That Section 2.12.435 of Berkeley Municipal Code is amended to read as follows:

2.12.435 Excess amounts—Payment to City required.

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

Section 9. That Article 7 (“Enforcement—Penalties for Violation”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

~~Article 7.~~ **Article 8. Enforcement—Penalties For Violation**

2.12.445 2.12.600 Complaints—Filing, investigation and commission action.

~~2.12.450~~ **2.12.605 Actions for compliance—Who is authorized to institute.**

2.12.455 2.12.610 Actions for compliance—Procedure required and commission authority.

Before instituting an action pursuant to Section ~~2.12.450~~ 2.12.605, a person must file a written request with the commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the commission is dismissed without prejudice. If the commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter.

2.12.460 2.12.615 Violation—Deemed misdemeanor—Penalty.

2.12.465 2.12.620 Actions for compliance—Disposition of amounts recovered.

If a judgment is entered against the defendant or defendants in an action brought under Section ~~2.12.450~~ 2.12.605, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the ~~general fund~~ Clean Elections Fund of the City. In an action brought by the commission or the City Attorney, the entire amount recovered shall be paid to the ~~general fund~~ Clean Elections Fund of the City. (Ord. 4700-NS § 701, 1974)

2.12.470 2.12.625 Violation—Candidate's office forfeited when.

2.12.475 2.12.630 Violation—Candidacy terminated when.

2.12.480 2.12.635 Violation—Persons ineligible for candidacy—Time limit.

2.12.485 2.12.640 Late filing penalties.

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections ~~2.12.270, 2.12.295, 2.12.297, 2.12.298 and 2.12.299~~ 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.

2.12.645 Clean Elections Act Penalties

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Clean Elections Act benefits than those to which they are entitled, spend more than the amount of Clean Elections funding they have received, or misuse such benefits or Clean Elections funding.
- B. If a participating candidate spends or obligates to spend more than the Clean Elections funding the candidate is given, then the candidate shall repay to the Clean Elections Fund an amount equal to the excess.
- C. If a participating candidate knowingly or willfully spends or obligates to spend more than the Clean Elections funding the candidate is given, then the candidate shall repay to the Clean Elections Fund an amount equal to twice the value of the excess. There shall be a rebuttable presumption of knowing or willful intent if the applicable spending limit is exceeded by more than ten percent.
- D. The commission shall, after a hearing held pursuant to Section 2.12.230, have the authority to impose the fine created by this section upon a two-thirds vote.

2.12.650 Violation—Persons Ineligible for Public Funds—Time Limit

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section 2.12.230. The commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation.

Section 10. EFFECTIVE DATES

Section 2 of this Act (“Establishment of Clean Elections Fund”) shall take effect January 1, 2007. If the next City election following enactment includes a Mayoral election, all provisions of this Act related to the office of Mayor shall take effect and provisions of this Act related to all other offices shall take effect January 1 of the calendar year following the Mayoral election. If the next City election following enactment does not include a Mayoral election, all provisions of this Act related to the office of City Council member shall take effect immediately and provisions of this Act related to all other offices shall take effect January 1 of the calendar year following the City Council election.[p3]

Section 11. SEVERABILITY

In the event any court of competent jurisdiction holds any provision of this Act invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.

[p1]You've removed the ban on candidate solicitation for other political committees here. I discourage you from doing so, but respect your judgment if you've determined such an amendment to the proposal is necessary.

[p2]You've inserted the phrase "if feasible" here, without creating an alternative form of payment to the candidate in the event the the debit card system isn't created. As a result, this section, as written, creates the possibility that the City will simply declare it "not feasible" (due to tight budget, etc.) to distribute public funds to qualified candidates . . . sabotaging the Clean Elections system. If your intent was to simply not require the funding to be distributed via a debit card, then you better insert a sentence allowing the city to distribute checks to candidates.

[p3]I recommend editing this section to remove the "ifs" and, instead, state clearly when the different provisions will take effect.

If I recall correctly, we originally used the "if" language because we didn't know when the council would vote to implement the system. This is no longer the case.