



Fair Campaign Practices Commission
Open Government Commission

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

MEETING AGENDA

September 17, 2020

7:00 p.m.

Pursuant to Executive Order N-29-20 issued by the Governor on March 17, 2020, this meeting will be held telephonically. Members of the public interested in attending will be able to observe and address the meeting using the following information:

Please use the following link to join the webinar:

<https://us02web.zoom.us/j/88699200284?pwd=a051WUVKemdDK1VlbkhQNmVQQ0VSZz09>

Or Telephone:

US: +1 669 900 6833

Webinar ID 886 9920 0284

Secretary: Samuel Harvey, Deputy City Attorney

The Commission may act on any item on this agenda

1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes:
 - a. Approval of minutes for July 16, 2020 concurrent regular meeting.
 - b. Approval of minutes for July 23, 2020 special meeting of the Fair Campaign Practices Commission.
 - c. Approval of minutes for August 13, 2020 special meeting of the Fair Campaign Practices Commission.

Fair Campaign Practices Commission Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
6. Regulations defining a "minor violation" for staff approval of public financing applications; discussion and possible action.

7. Amendments to the Berkeley Election Reform Act to regulate officeholder accounts; discussion and possible action.
8. Revisions to Fair Campaign Practices Commission procedures for handling of enforcement matters and other minor changes; discussion and possible action.

Open Government Commission Agenda

9. Reports.
 - a. Reports from Chair.
 - b. Reports from Staff.
10. Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings; discussion and possible action.
11. Amendments to the Berkeley Lobbyist Registration Act (BMC Chapter 2.09); discussion and possible action.
12. Adjournment.

Communications

- Email from Derek Wallace
- Email from Laura Babitt

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

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the secretary of the relevant board, commission or committee. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4th Fl., Berkeley, CA.



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

July 16, 2020

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

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

Secretary: Samuel Harvey, Deputy City Attorney

Members Present: Brad Smith (Chair), Jedidiah Tsang (Vice Chair), Jessica Blome, Janis Ching, Mark McLean, Dean Metzger, Patrick O'Donnell, Patrick Sheahan

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

1. **Call to Order**

Chair Called the meeting to order at 7:04 p.m.

2. **Roll Call**

Roll call taken.

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

No speakers.

4. **Approval of minutes for the June 18, 2020 concurrent regular meeting**

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

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

Fair Campaign Practices Commission Agenda

5. **FCPC Reports**

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

6. **Approval of public campaign financing program certification application**

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

Motion to approve public campaign financing program certification application for Cheryl Davila (M/S/C: O'Donnell/Blome; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

7. **Regulations defining a “minor violation” for staff approval of public financing applications**

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

Motion to draft regulation as amending FCPC Regulation section R2.12.555 (M/S/C: O'Donnell/Blome; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

Motion to direct staff to return at the next regular meeting with a draft amendment to Regulation R2.12.555, based upon the Commission's discussion, for consideration and possible approval (M/S/C: Metzger/Ching; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

8. **Regulation of officeholder accounts and potential direction to Ad Hoc Subcommittee on Officeholder Accounts**

Motion to direct Commissioner O'Donnell to work with staff to revise recommendation as a proposal to Council for Commission to consider (M/S/C: Metzger/Ching; Ayes: Metzger, O'Donnell, Ching, McLean, Tsang; Noes: none; Abstain: Sheahan, Blome, Smith; Absent: none.)

Open Government Commission Agenda

9. **OGC Reports**

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

10. **Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings**

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

Motion to direct the Secretary to continue to investigate the Complaint and, as soon as practicable, provide the Commission with a determination as to whether the actions identified in the Complaint constitute a violation of any provision of law over which the Commission has enforcement authority (M/S/C: Metzger/O'Donnell; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none; Recused due to conflict as member of Zoning Adjustments Board: Sheahan.)

11. **Adjournment**

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

The meeting adjourned at 9:19 p.m.



Fair Campaign Practices Commission

DRAFT MINUTES

Special Meeting

July 23, 2020

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

Secretary: Samuel Harvey, Deputy City Attorney

Members Present: Brad Smith (Chair), Dean Metzger, Patrick O'Donnell, Jessica Blome, Jedidiah Tsang

Members Absent: Janis Ching, Patrick Sheahan, Mark McLean

Also Present: Samuel Harvey, Staff Secretary/Deputy City Attorney
Michael MacDonald, Assistant City Clerk

1. **Call to Order**

Chair called the meeting to order at 7:04 p.m.

2. **Roll Call**

Roll call taken.

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

No Speakers

4. **Approval of public campaign financing program certification applications for Terry Taplin and Todd Andrew.**

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

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

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

5. **Adjournment**

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

The meeting adjourned at 7:10 p.m.



Fair Campaign Practices Commission

DRAFT MINUTES

Special Meeting

August 13, 2020

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

Secretary: Samuel Harvey, Deputy City Attorney

Members Present: Brad Smith (Chair), Dean Metzger, Patrick O'Donnell, Janis Ching, Jessica Blome, Mark McLean

Members Absent: Patrick Sheahan, Jedidiah Tsang

Also Present: Samuel Harvey, Staff Secretary/Deputy City Attorney
Michael MacDonald, Assistant City Clerk

1. **Call to Order**

Chair called the meeting to order at 7:04 p.m.

2. **Roll Call**

Roll call taken.

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

No Speakers

4. **Approval of public campaign financing program certification applications for Timothy Carter, Aidan Hill, and Paul Darwin Picklesimer**

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

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

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

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

5. **Adjournment**

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

The meeting adjourned at 7:15 p.m.



Fair Campaign Practices Commission

Date: September 17, 2020
To: Fair Campaign Practices Commission
From: Samuel Harvey, Secretary
Subject: Amendments to FCPC Regulations to define “Minor Violation”

At its April 23, 2020 meeting, the Commission approved amendments to the Berkeley Election Reform Act (“BERA”) to allow staff to certify public financing applications without Commission action, with subsequent reporting to the Commission.

The Commission amended BMC § 2.12.500.A.10 as follows:

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

The BERA amendments were approved by the City Council and went into effect August 13, 2020.

At its June 18, 2020 meeting, the Commission discussed potential regulation language to define “minor violation” and directed staff to gather proposed language from commissioners and present that language at a subsequent meeting so that the Commission could develop and adopt a regulation defining “minor violation.”

At its July 16, 2020 meeting, the Commission reviewed to sets of draft language and discussed ways to combine portions of each set of proposed language. The Commission voted to direct staff to return with a single draft amendment to R.2.12.555 for Commission review and approval.

Staff recommends the Commission review the attached draft regulation language, amend the draft regulation if it sees fit to do so, and adopt an amendment to the FCPC Regulations to define “minor violation.”

Attachments:

1. Amendments to FCPC Regulation R.2.12.555

**Revisions to FCPC Regulations to Define “Minor Violations”
for Approval of Public Funds**

R2.12.555 Substantial and Minor Violations

(a) A violation is deemed to be substantial if the seriousness of the offense is severe and public harm is significant. Severity and significance will be determined by assessing the following factors:

- (1) the dollar amount of the unreported or misreported violations;
- (2) the presence or lack of intent to deceive the voting public;
- (3) whether the violation appears deliberate, negligent, or inadvertent;
- (4) whether the Respondent demonstrated good faith in consulting with Commission staff during any investigation or made good faith efforts to correct any deficiencies, violations, or errors;
- (5) whether the violation was isolated or was part of a pattern of violations of this chapter by the candidate, either within the same election cycle or in past election cycles;
- (6) the effect of the violation upon the election or upon the administration of the Fair Elections Act.

(b) A violation is deemed to be minor if it is not substantial as provided above, and if the offense is minimal and has resulted in no significant public harm. A violation is minimal if it meets each of the following criteria as applicable:

- (1) The violation is merely technical or clerical in nature and is corrected when discovered. Such an error includes an incorrect contributor name, address, employer or occupation, provided that erroneously including a contribution from a non-Berkeley resident is not a technical or clerical error.
- (2) The dollar amount of the violation is small.
- (3) The violation is capable of being promptly corrected.
- (4) Any improperly received funds have been promptly returned.
- (5) The individual seeking or receiving public financing has demonstrated good faith in consulting with Commission staff regarding the violation and has made good faith efforts to correct any deficiencies, violations, or errors.

In the event that City staff is unable to make a determination whether a violation is minor, the issue of the scope of the violation shall promptly be presented to the Commission for its

ITEM 6
Attachment 1

determination, and no public funds will be disbursed until the Commission makes a determination as to whether the violation is minor. The following factors will be used by the Commission when reviewing a potentially minor violation:

(1) the violation has not had any significant impact on the election process, on the fairness of the election, or on other candidates' ability to conduct their campaigns; and

(2) the violation does not significantly affect, or undermine, the purposes of the Fair Elections Act or its effective administration.



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Commissioner Patrick O'Donnell

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

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

Background

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

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

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

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

The Commission's proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: "Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016." (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Alternative Proposal for Legislation on Officeholder Accounts

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

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

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

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

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

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

Attachments:

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



Fair Campaign Practices Commission

PUBLIC HEARING
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council
From: Brad Smith, Chair, Open Government Commission
Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

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

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

Action:

Vote:

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

BACKGROUND

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

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

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

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

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

The Commission’s proposal was presented to the City Council at a February 4, 2020 special meeting. (Report to the Council, with Attachments, is attached.) The FCPC report summarized its proposal: “Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also the goal of the Fair Elections Act of 2016.” (Report, page 1.) At the February 4 meeting, the Council had a lengthy discussion about their D13 accounts and the lack of discretionary funds that members have to spend. They also decided not to approve the FCPC recommendation to prohibit officeholder Accounts. (See Memorandum to FCPC dated February 12, 2020, a copy of which is attached.)

The City Council, however, referred both the issues relating to D13 accounts and those relating to officeholder accounts to its Agenda and Rules Committee for further consideration. At a special meeting on March 9, 2020, that Committee had an initial discussion of these topics. At that meeting, it was agreed that the Council Committee would work collaboratively with the FCPC on matters relating to D13 accounts and officeholder accounts. This collaborative work with the Council was included in the FCPC and OGC 2020-2021 workplans, which were approved on May 21, 2020.

Alternative Proposal for Legislation on Officeholder Accounts

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

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

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

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

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

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

Attachments:

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

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT TO REGULATE
OFFICEHOLDER ACCOUNTS

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

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

Section 2.12.157 Officeholder account.

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

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

Article 9. Officeholder Accounts

Section. 2.12.600 Regulation of officeholder accounts.

A. The mayor and council members (the “officeholder” or “office holders”) shall each be permitted to establish one officeholder account, as defined in section 2.12.157.

B. All donations deposited into an officeholder account shall be deemed to be held in trust solely for expenses associated with holding the office currently held by the elected city officer. For the purpose of this section, “donation” means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, in support of the office currently held by an elected official.

C. Only a natural person who is a resident of the City may make a donation to an officeholder account.

D. Donations to an officeholder account must be made by a separate check or other separate written instrument. Single donations may not be divided between the officeholder account and any candidate committee or other entity.

E. No donor shall make, and no elected officer shall receive from a donor, a donation or donations under this section totaling more than fifty [or two-hundred and fifty] dollars (\$50.00 [or \$250.00]) per person for the calendar year. “Donor” means a natural person who is a resident of the City who makes a donation as defined in paragraph B.

F. For the office of mayor, total donations to an officeholder account from all donors shall not exceed ten thousand dollars (\$10,000.00) in the aggregate per calendar year. For each member of the city council, total donations to an officeholder account from all donors shall not exceed five thousand dollars (\$5,000.00) in the aggregate per calendar year.

G. All donations received for, and expenditures made from, an officeholder account during a calendar year shall be reported at least annually on the date or dates prescribed by the commission and the report shall be made available to the public promptly thereafter. The commission shall adopt or designate a form or forms for the purpose of reporting the information about each elected officer's officeholder account. The forms shall be filed electronically. The information on the form or forms shall be verified by the officeholder. The information that shall be included in the officeholder account report shall include the following:

1. The name of the officeholder and the office held;
2. The reporting period covered by the report;
3. A description of all receipts and expenditures.
4. The full name of each donor from whom a donation or donations has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed; the amount which he or she donated; the date on which the each donation was received during the period covered by the report; and the cumulative amount that the donor donated. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated with regard to each lender, together with the date and amount of the loan, and if the loan has been repaid, the date of the payment and by whom paid;
5. The full name and street address of each person to whom an expenditure or expenditures have been made, together with the amount of each separate expenditure to each person during the period covered by the report; a description of the purpose for which the expenditure was made; and the full name and street address of the person receiving the expenditure.
6. Under the heading "receipts," the total amount of donations received, and under the heading "expenditures," the total amount of expenditures made during the reporting period and cumulative amount of such totals;
7. The balance of cash and cash equivalents, including the amounts in the officeholder bank account, at the beginning and end of each period covered by the report.

H. Expenditures from an officeholder account may be made only for lawful officeholder purposes, and may not be used for any of the purposes prohibited in subsections J. and K. of this section.

I. Allowable expenditures from an officeholder account include the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder account;
2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) or such other person designated by the officeholder who is authorized to perform such government duties;

8. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

9. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

10. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council or Mayor;

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

12. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions; and

13. Expenditures for accounting, professional and administrative services provided to the officeholder account.

J. Officeholder expense funds shall not be used for the following:

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

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519, and any provisions of the BERA.

K. Prohibitions:

1. No funds may be contributed or transferred from an officeholder account to any candidate or committee, as defined in sections 2.12.085 and 2.12.095 of this chapter, including to any committee in which the officeholder is a candidate. An officeholder may not redesignate his or her officeholder account as a committee for a future term of the same office or redesignate his or her officeholder funds to be used as campaign funds by his or her committee for a future term of the same office.

2. No funds may be used from an officeholder account to pay any campaign expenses.

3. An officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account.

L. Once an officeholder's term of office ends or she or he leaves that office, whichever is earlier, the former officeholder may use his or her officeholder funds only for the following purposes:

1. Paying for legitimate, outstanding officeholder expenses.

2. Repaying contributions to contributors to the officeholder accounts.

3. Making a donation to a bona fide charitable, educational, civic, religious or similar tax-exempt, non-profit organization if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

M. The officeholder shall terminate the officeholder account within 90 days of the date that the officeholder's term of office ends or he or she leaves that office, whichever is earlier. The Commission may for good cause extend the termination date. The disposition of all funds from the closed officeholder account, including the identification of all persons and entities that have received funds from the account and the amounts distributed, shall be described on a form prescribed by the Commission. The officeholder must verify and file the form electronically no later the date prescribed for the termination of the officeholder account or an approved extension thereof.

N. All funds from a closed officeholder account not properly disposed of within the 90 day period prescribed above, or an approved extension thereof, shall be deposited in the City's general fund.

O. Violations of this article involving the unlawful use of officeholder accounts are subject to the procedures of, and the penalties in, Article 7 of this chapter.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

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

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

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

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

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

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

Published: [Publication Date in Newspaper]

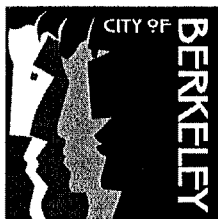
Pursuant to Berkeley Municipal Code section 2.12.051

~~~~~  
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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City's website, on [Enter Date].

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Mark Numainville, City Clerk





Fair Campaign Practices Commission

PUBLIC HEARING  
February 4, 2020

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

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

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Election Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

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

**Vote:** Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused).

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

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING  
February 4, 2020

BACKGROUND

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

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

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

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

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

**Definition of an Officeholder Account**

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

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

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

### **Contributions to Officeholder Accounts**

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

### **Expenditures from Officeholder Accounts**

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

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

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

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

Amendments to the Berkeley Election Reform Act  
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Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

### Recommendation

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

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

#### Part 8 - OFFICEHOLDER ACCOUNTS

##### 12.06.810 - Officeholder account prohibited.

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

The following additions to BERA are proposed:

#### 2.12.157 Officeholder Account

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

#### 2.12.441 Officeholder account prohibited

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

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

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

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

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

CITY MANAGER

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

CONTACT PERSON

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

Attachments:

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

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

OFFICEHOLDER ACCOUNT PROHIBITED; AMENDING BERKELEY MUNICIPAL CODE  
CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

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

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

**BMC 2.12.441 Officeholder account prohibited**

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

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



# California

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### GOVERNMENT CODE - GOV

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

### ARTICLE 3. Contribution Limitations [85300 - 85321]

( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totaling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

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

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

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

(1) "Officeholder" means an elected state officer.

(2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.

(3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).

(4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

(1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.

(2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.



**ITEM 7**  
**Attachment 2**

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

**(d) Prohibitions:**

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

**(e) Contributions to the Officeholder Account:**

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

**ITEM 7**  
**Attachment 2**

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

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

**ITEM 7  
Attachment 2**

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

**(f) Contributions Over the Limits:**

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

**(g) Terminating Officeholder Accounts and Committees:**

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of

**ITEM 7**  
**Attachment 2**

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

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision

(e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

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

ITEM 7  
Attachment 2

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.

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



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

**ISSUE:**

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

**CONCLUSION:**

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

**ANALYSIS:**

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

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

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

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apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

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

#### Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opinions Index: H.E.I. and H.L.G.

CCM

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<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

ITEM 7  
Attachment 2

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff Counsel

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

BACKGROUND AND ISSUE

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

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

CONCLUSION

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

ANALYSIS

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

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or



ITEM 7  
Attachment 2

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

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

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

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

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

Attachment

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

**NOTICE OF PUBLIC HEARING  
BERKELEY CITY COUNCIL**

**AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

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

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

A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **January 30, 2020**.

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

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

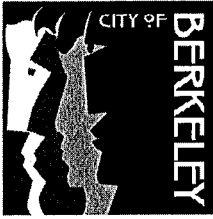
Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication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

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

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

Mark Numainville, City Clerk

ITEM 7
Attachment 2



[First Last name]
Councilmember District [District No.]

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

Meeting Date: February 4, 2020

Item Number: 2

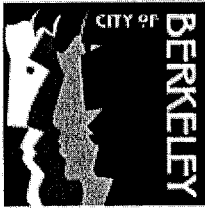
Item Description: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

Submitted by: Councilmember Hahn

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

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

ITEM 7 Attachment 2



SOPHIE HAHN

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

ACTION CALENDAR

February 4, 2020

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Sophie Hahn
Subject: Statement on Item 2 - Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; Amending BMC Chapter 2.12

RECOMMENDATION

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

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

Officeholder accounts are accounts an elected official can open, and raise funds for, to pay for expenses related to the office they hold.¹ They are not campaign accounts, and cannot be used for campaign purposes. The types of expenses Officeholder Accounts can be used for include research, conferences, events attended in the performance of government duties, printed newsletters, office supplies, travel related to official duties, etc. Cities can place limits on Officeholder Accounts, as Oakland has done.² Officeholder Accounts must be registered as official "Committees" and adhere to strict public reporting requirements, like campaign accounts. They provide full transparency to the public about sources and uses of funds.

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

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

¹ <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/LegalDiv/Regulations/Index/Chapter5/18531.62.pdf>

² <http://www2.oaklandnet.com/w/OAK052051>

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

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

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

First, by State Law, elected officials are prohibited from using public funds for a variety of communications that many constituents nevertheless expect. For example, an elected official may not use public funds to send a mailing announcing municipal information to constituents, "such as a newsletter or brochure, [] delivered, by any means [] to a person's residence, place of employment or business, or post office box."³ Nor may an elected official mail an item using public funds that features a reference to the elected official affiliated with their public position.⁴ Note that Electronic newsletters are not covered by these rules, and can and do include all of these features, even if the newsletter service is paid for by the public entity. That said, while technically not required, many elected officials prefer to use email newsletter distribution services (Constant Contact, MailChimp, Nationbuilder, etc.) paid for with personal (or "Officeholder") funds, to operate in the spirit of the original rules against using public funds for communications that include a photo of, or references to, the elected official.

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

³ <http://www.fppc.ca.gov/learn/public-officials-and-employees-rules-/communications-sent-using-public-funds/campaign-related-communications.html>

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

ITEM 7

Attachment 2

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

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

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

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

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

⁵ Councilmembers receive annual compensation of approximately \$36,000, while the Mayor receives annual compensation of approximately \$55,000.⁵

ITEM 7 Attachment 2

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

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

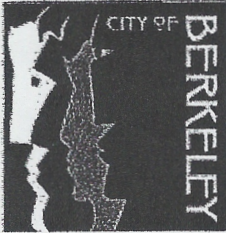
By allowing Officeholder Accounts and regulating them, Berkeley can place limits on amounts that can be raised, and on the individuals/entities from whom funds can be accepted, similar (or identical) to the limits Berkeley places on sources of campaign funds. Similarly, Berkeley can restrict uses of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

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

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

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

ITEM 7
Attachment 3



Fair Campaign Practices Commission

Date: February 12, 2020
To: FAIR CAMPAIGN PRACTICES COMMISSION
From: Dean Metzger, Commission Chair
Subject: Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

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

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

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

Attachments:

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

MAYOR AND CITY COUNCIL FINA

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials	36,942	43,407	113,526	113,526	113,526
Capital Outlay	1,953	7,674			
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
By Division:					
Mayor's Office	515,095	558,137	584,877	554,389	566,917
Council Offices	1,273,561	1,334,744	1,333,447	1,474,052	1,507,821
Exiting Officials					
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
By Fund:					
General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738

General Fund FTE	12.00	12.00	12.00	12.00	12.00
Total FTE	12.00	12.00	12.00	12.00	12.00

ITEM 7
Attachment 3

DRAFT

DRAFT

DRAFT

Date: February 20, 2020
To: Dee Williams-Riley
City Manager
From: Fair Campaign Practices Commission
Subject: Request for budget details of the Mayor and each individual Council Member.

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

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

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

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

Thank you,

Fair Campaign Practices Commission



Fair Campaign Practices Commission

Date: September 17, 2020

To: Fair Campaign Practices Commission

From: Jessica Blome, Commissioner; Samuel Harvey, Secretary

Subject: Amendments to Enforcement Procedures

This item offers a set of amendments to the Commission's procedures for handling enforcement matters and is the product of a collaborative effort between Commissioner Blome, the Commission Secretary, and the offices of the City Attorney and the City Clerk.¹ These proposed changes seek to provide greater clarity regarding the processes for handling complaints and enforcing the Berkeley Election Reform Act (BERA) by more clearly outlining the roles of staff and the Commission.

This proposal would move the early stages of the enforcement process – up to and including a finding of probable cause by the Commission – to closed session. Handling these portions of the process in closed session is consistent with the Brown Act's provisions allowing the Commission to meet in closed session to address pending litigation, including adjudicatory proceedings. (Cal. Gov. Code § 54956.9(a).) It is also consistent with the practices of other similar agencies such as the California Fair Political Practices Commission (FPPC), Los Angeles Ethics Commission, and San Francisco Ethics Commission (SFEC), among others.

Unlike some agencies in which staff, such as an Executive Director, makes a finding of probable cause, this proposal would keep that power with the commissioners. The proposal would merely handle this process in closed session to protect the Commission's position in a pending enforcement matter. This change would have the added benefit of ensuring a fair process for respondents by protecting the privacy interests of political candidates during elections.

Additionally, the proposal makes adjustments to enforcement process deadlines to ensure that matters are handled in a deliberative manner and the Commission is not rushed to reach a conclusion before a full investigation has been completed and all impacted parties have had an opportunity to provide information and explanations.

The proposal would also introduce a set of "penalty factors" to be used when determining the appropriate penalty for a violation of BERA. A number of enforcement agencies, including the FPPC, Oakland Public Ethics Commission, and SFEC utilize a similar set of factors to ensure consistent levying of penalties.

¹ These amendments also include non-substantive changes to add clarity and to comply with the City's policy regarding the use of gender-neutral pronouns in City documents.

ITEM 8

These procedures may be adopted by a majority vote of the Commission.

Attachments:

1. Amendments to the Procedures of the Fair Campaign Practices Commission

PROCEDURES

for the

FAIR CAMPAIGN PRACTICES COMMISSION

July 1998
(Revised July 2014)

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Fair Campaign Practices Commission Procedures

Note: The terms used in these procedures shall have the same meaning as in the Berkeley Election Reform Act of 1974, as amended (hereafter cited as BERA) to the extent they appear in that ordinance.

I. Meetings

A. Regular Meetings

1. A regular meeting of the Commission shall be held on the third Thursday of each month beginning at 7:00 p.m. By majority vote, the Commission may change the date on which a given regular meeting will take place and may schedule regular meetings more or less frequently than once each month.
2. The agenda for each regular meeting shall be established by the Chairperson. Any commissioner may propose to the Commission matters for a future agenda. For matters of a time sensitive nature, a commissioner may submit a request to the Chairperson (through the Secretary) to add an item to the next agenda. For good cause, a majority of the Commission may delete matters from the agenda.
3. When the Chairperson, in consultation with the Secretary, determines that there is presently no business requiring Commission action, ~~he or she~~ they may cancel the next regular meeting.

B. Special Meetings

The Chairperson or a majority of commissioners may call a special meeting to occur at any time other than a regular meeting, consistent with the Brown Act. Notice of at least 24 hours must be provided to all commissioners and, to the extent required by law and these procedures, to the public and the press. Only matters contained in the meeting notice may be considered.

C. Executive Session

The Commission may meet in closed session to consider such matters as the law allows. Closed sessions shall generally be scheduled to occur immediately following regular meetings.

D. Meetings in General

1. Unless otherwise specified in these procedures, conduct of all Commission meetings shall be in accordance with the guidelines in the City of Berkeley

Commissioners' Manual (current ed.) and, where that document is silent, the current edition of Robert's Rules of Order.

2. Public participation in all Commission meetings is encouraged. Public comment shall be held in compliance with the Brown Act and the Commissioners' Manual.
 - a. *Public comment-non-agenda items*: At the beginning of each meeting, there will be a public comment period of two minutes per speaker during which members of the public may speak on items within the Commission's jurisdiction but that are not on the agenda. If there more than five speakers on matters not on the agenda, the Chairperson, prior to opening public comment, may limit public comment for all speakers to one minute per speaker.
 - b. *Public comment- agenda items*: The Commission will take public comment on items that are on the agenda prior to or during the Commission's consideration of each item. The time for public comment shall generally be two minutes per speaker. If there more than ten speakers on an issue, the Chairperson, prior to public comment on the agenda item, may limit public comment for all speakers to one minute per speaker.
 - c. When the Commission is considering an investigative report stemming from a Complaint or initiated by the Secretary, the Complainant, if any, and Respondent will each be given ~~the opportunity up to five minutes to~~ speak to the Commission.
3. The Secretary shall cancel any meeting where ~~he or she~~ the Secretary has good cause to believe that a quorum will not be present, and shall attempt to notify commissioners and all others previously given notice of that meeting of its cancellation. The Secretary shall also post a cancellation notice. In consultation with the Chairperson, the Secretary may also cancel a regular meeting if there are no items of new or old business before the Commission.

II. Organization and

Responsibilities A. Officers

1. The Commission shall elect a Chairperson and a Vice Chairperson annually at its regular meeting in February. If the Commission does not hold a February meeting, the election shall take place at the first regular meeting thereafter. After receiving written notice of resignation from an

officer, the Commission shall promptly elect a successor to serve the balance of that officer's term.

2. The Chairperson shall perform the following duties in addition to any other duties which are necessary or customary to this office:
 - a. Preside at all Commission meetings;
 - b. Appoint committees and chairpersons of committees with the consent of the Commission;
 - c. Approve the agenda prior to distribution, however the Chair may not exclude items from other commissioners that are submitted in a timely manner and meet any other applicable requirements;
 - d. Sign authorized correspondence on behalf of the Commission or, unless expressly prohibited, delegate such responsibility to the Secretary;
 - e. Administer oaths and affirmations to persons testifying before the Commission;
 - f. Provide guidance to the Secretary regarding staff execution of the Commission's business, including, but not limited to, investigation of possible violations of BERA, review of campaign statements and audits of candidates and committees;
 - g. Represent the Commission in dealings with the City Manager, the City Attorney, and other City staff regarding administrative and budgetary matters and the execution of enforcement activities authorized by the Commission;
 - h. Represent the Commission before the City Council on matters authorized by the Commission. No prior authorization is required for budgetary matters consistent with prior Commission action;
 - i. Exercise the authority of the Commission with regard to administrative matters on which prompt action must be taken prior to the next scheduled meeting, provided that (1) the Chairperson shall report fully each action taken pursuant to this authorization at the next meeting and (2) this authority shall not include the power to dismiss a complaint, to make any finding of probable cause or violation, to demand records under BERA Section 2.12.250(d) or to seek judicial relief or remedies on behalf of the Commission.

3. In the event of absence of the Chairperson from a meeting or ~~his or her~~the Chairperson's inability to conduct other duties of that office, the Vice Chairperson shall assume the duties of the Chairperson for the duration of such absence or inability. If both officers should be absent or unable to conduct other duties of the Chairperson, the commissions shall elect one of their members to act as Chairperson pro tem for the duration of such absence or inability.

B. Commissioners

1. Commissioner Attendance/Termination for Absences

- a. Leaves of Absence. The appointing official, or ~~his or their~~ successor, may grant a commissioner a leave of absence for up to three months.
- b. Automatic Termination of Appointment for Excessive Absenteeism. Because the Fair Campaign Practices Commission was created as a result of an initiative ordinance adopted by the voters, members of this commission are exempt from the automatic termination provision of BMC Section 3.02.020. However, through the adoption of these Procedures, the Commission agrees that a commissioner's appointment shall be terminated upon ~~his or her~~the commissioner's unexcused absence from three consecutive regular meetings of the Commission. Absences during an approved leave of absence are considered excused and thus do not count toward the three consecutive absences.
- c. Notice of Absenteeism. If the commissioner's absence from the next meeting will result in termination, the secretary shall so advise that commissioner.

2. Other Grounds for Termination

The following are additional reasons that a commissioner shall be terminated from the Commission:

- a. The non-filing of required Conflict of Interest Disclosure Statements;
- b. Failure to take the Oath of Office within thirty days of the date of the appointment letter; and
- c. Failure to meet the qualifications for membership pursuant to Section 2.12.195 of the Berkeley Election Reform Act.

3. Reappointment

Section 2.12.175 states “Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember....A member whose term has expired shall serve until ~~his or her~~a successor is appointed.” Based on this provision, a commissioner can continue to serve once appointed for the full term of the appointing Councilmember, and cannot be removed by the Council-member who appointed ~~him or her~~them. If a new Councilmember is elected, that Councilmember may immediately replace the commissioner, or allow the existing commissioner to continue to serve until a new commissioner is appointed. Pursuant to Section 2.12.175, a terminated commissioner cannot be reappointed by the same Councilmember. This does not preclude a commissioner’s reappointment by a different Councilmember for an open seat on the Commission. This means that upon termination for the reasons set forth above, a commissioner cannot be reappointed by ~~his or her~~their appointing Councilmember.

4. Resignation

A Commissioner wishing to resign shall submit a letter of resignation to the City Clerk, the appointing Councilmember and the Commission Secretary. Once submitted to the City Clerk, a letter of resignation cannot be withdrawn.

C. Commission Staff

1. The Secretary of the Commission means the employee of the City designated by the City Manager to act in this capacity:
2. The duties of the Secretary are as follows:
 - a. Assist the Commission in the discharge of its responsibilities, including providing the Commission with advice and recommendations concerning possible violations, enforcement options, procedures and regulations;
 - b. Attend all Commission meetings and, to the extent feasible, meetings of ad hoc subcommittees;
 - c. Obtain and maintain minutes of meetings and records of proceedings, including hearings, and official actions, and all other records and documents relevant to the duties of the Commission;
 - d. Prepare and distribute Commission correspondence and reports, including materials for meetings;

- e. Notify commissioners of meetings and prepare the agenda as approved by the Chairperson;
 - f. Report on attendance of each commissioner to the City Clerk;
 - g. Provide technical assistance and informal advice regarding compliance with BERA to actual or potential candidates and committees active in Berkeley;
 - h. Review each campaign statement filed or required to be filed pursuant to BERA for adherence to the law and Commission regulations and request amendments to correct apparent violations or deficiencies; process all complaints alleging violations of BERA according to procedures below at section IV and report to the Commission all significant possible violations as provided by these procedures;
 - i. Perform or supervise investigations, including audits of possible violations of BERA as provided by these procedures or specifically requested by the Commission, and provide thorough reports to the Commission of the results;
 - j. To the extent authorized by the City Manager or the City Attorney, represent the Commission in civil or criminal proceedings it has instituted pursuant to BERA, and in dealings with judicial or other governmental officials;
 - k. Preserve strict confidentiality with regard to details and documents concerning any matter under investigation for potential violation of law or regulation until it can be fully reported to the Commission and affected parties, or unless it is required to be disclosed pursuant to the California Public Records Act. (All campaign statements and reports, as well as correspondence concerning amendments to such documents, are public records and are not confidential.)
3. Other Commission Staff. Unless otherwise prohibited, the Secretary may delegate to other City staff any matter or duty for which ~~he or she~~ the Secretary is responsible.

III. Request for Advice and Opinions

A. Requests for Advice

- 1. Any person may informally request advice from the Commission regarding ~~his or her~~ their duties and responsibilities under BERA. Such requests shall

present all relevant facts as concisely as possible and shall state the question or questions based on the facts.

2. The Secretary shall provide advice orally if the matter is routine or does not require substantial interpretation of the ordinance.
3. If a request for advice is complex or requires interpretation of the ordinance in an area where there is not a regulation or clear Commission policy, the Secretary shall consult with the Chairperson and may seek the advice of the City Attorney prior to giving any advice, which shall be made in writing. The Secretary may also decide that the matter must be handled only through the formal opinion process.
4. In any proceeding before the Commission, a candidate or committee may present evidence of advice rendered to it only if that entity and its representative(s) were identified to the Secretary at the time the advice was requested. Advice of the Secretary does not constitute an opinion of the Commission issued pursuant to BERA Section 2.12.220 or a declaration of policy by the Commission, but shall be evidence of good faith conduct in any Commission, civil, or criminal proceeding if the request for advice disclosed truth-fully all the material facts, and the requestor acted in reliance on such advice.

B. Requests for Opinions

1. Opinion requests shall present all material facts as concisely as possible and shall state the question or questions based on the facts. They shall be signed by the person requesting the opinion and shall indicate which candidate or organization such person is representing. The good faith reliance protection granted under BERA Section 2.12.220 shall extend only to those persons identified in the request, and only if the request for advice disclosed truth-fully all the material facts and the requestor acted in reliance on such advice.

IV. Review of Campaign Reports and Statements

A. Detailed Review and Monitoring

1. The Secretary shall monitor campaign statements for compliance with Section 2.12.440 of BERA.
2. The Secretary shall monitor campaign statements for compliance with BERA Section 2.12.415 regarding transfers between committees and cumulative contributions.

3. The Secretary shall monitor compliance with the late reporting requirement of Sections 2.12.295 and 2.12.297.
4. The Secretary shall review all campaign communications which have been filed with the City Clerk to assure that candidates and committees are complying with the requirements of BERA, including but not limited to 2.12.297, 2.12.325, and 2.12.330.

B. Substantial Compliance

1. A campaign statement is not in substantial compliance with BERA if there is:
 - a. Any internal discrepancies in reporting contributions, expenditures, or cash balance which total \$250 or more;
 - b. Any discrepancy of \$250 or more between the cash position or total contributions and expenditures reported and those reported in prior statements;
 - c. Any omission of the address and date of receipt of any single or aggregate contribution of \$100 or more from a single source;
 - d. Any omission of any required ~~original~~ signature or electronic verification by an officer or officers of the committee (treasurer, assistant treasurer, candidate, principal officers)~~the treasurer or by any candidate, including one who controls a committee~~; or
 - e. Any gap in periods of time covered by successive campaign statements, or statements in which the period covered is not in conformance with the law.

C. Reports of Possible Violations

1. The Secretary shall report as soon as feasible all possible violations of BERA to the Commission, along with a written preliminary investigative report if the matter involves complex factual or legal issues.

V. Complaints of Alleged Violations

A. Filing Requirements

1. Any person who believes that a violation of any portion of this ordinance has occurred or is about to occur may file a complaint with the Secretary. Each complaint shall:

- a. State the full name and address of the complainant;
 - b. Allege who has committed or is about to commit a violation;
 - c. Clearly, concisely and accurately state the facts which constitute the violation;
 - d. Be accompanied by any documentation supporting the facts alleged. Statements which are not based upon personal knowledge should identify the source of information which gives rise to the complainant's belief in the truth of such statements; and
 - e. Be signed by the complainant under penalty of perjury.
2. Complaints which are not signed under penalty of perjury or which do not meet the standards for completeness described above shall be returned to the complainant and shall not be deemed received until such a declaration is made or the complaint is amended to be complete.
 3. The Secretary may investigate the facts surrounding such a complaint or any oral complaint which ~~he or she~~ the Secretary receives if it provides reasonable cause to believe a violation has occurred or will occur. ~~Any evidence of violation discovered in such investigation shall be reported to the Commission at its next meeting~~
 4. The Secretary may conduct an initial review of the complaint to ascertain whether the complaint alleges a violation of BERA or instead falls outside of the Commission's purview. If the Secretary believes the complaint to fall outside of the Commission's purview, the complaint shall be presented as an information item to the Commission, and will only be referred back to the Secretary for investigation if the Commission determines, by a vote of a majority of appointed members, that the complaint falls within the Commission's purview.
- B. Notification to Commission Processing of Complaints
1. The Secretary shall notify the Commission of the complaint in closed session at the next practicable Commission meeting in compliance with the Brown Act.
 2. The Secretary's notification shall describe the nature of the complaint and inform that Commission that the Secretary will perform a Preliminary Analysis of the complaint. The Secretary shall not disclose the identities of the complainant(s) or respondent(s).

3. For purposes of the seven-day requirement for Commission response under BMC § 2.12.225, a complaint shall not be deemed received by the Commission until the first ~~regular~~ Commission meeting at which following the Secretary's notifies the Commission receipt of the complaint, ~~provided that it is received in time to provide copies to the Commission and to the subject of the complaint (respondent) prior to the meeting, and to be placed on the agenda consistent with the Brown Act.~~ Within seven days of this meeting, the Secretary shall notify the complainant in writing that the Commission has received the complaint and that the Commission Secretary is performing a Preliminary Analysis, after which the Commission will decide on further action.

C. Determination based on Preliminary Analysis

1. As soon as practicable, the Secretary shall present the Preliminary Analysis to the Commission in closed session. The Preliminary Analysis shall contain a recommendation from the Secretary to (1) find probable cause, (2) dismiss the complaint, or (3) investigate further (including requesting subpoenas from the Commission if necessary).
2. ~~At the first regular Commission meeting following the Secretary's verification that the complaint meets the above specified filing requirements, the Commission shall decide: (a) whether to direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (b) whether to dismiss the complaint; or (c) whether to find probable cause to believe a provision of the BERA has been violated.~~
 - a. If the Commission finds probable cause of a violation, the Chair shall announce such a finding in open session immediately following closed session. A finding of probable cause shall identify the Respondent.
 - b. If the Commission dismisses the complaint, the Secretary shall notify the complainant, and the complainant may then take any other action as provided in the BERA.
 - c. If the Commission decides to investigate the complaint, to the extent not already done so by the Secretary, the Secretary shall investigate the complaint to the extent feasible as authorized by these procedures and ~~to~~ may make inquiry of the parties to establish facts and ~~to shall~~ make a report to the Commission at its next meeting following completion of the Secretary's investigation. Notice of the date the complaint will be considered, along with a copy of the complaint and pertinent portions of Commission procedures shall be transmitted to the ~~subject of respondent~~ to the complainant as soon as possible. The complainant shall also receive

a notice of the date the matter has been scheduled along with a copy of pertinent portions of Commission procedures.

- d. The Commission shall not make a finding of probable cause except as provided in Parts VI ~~(A) and~~ (B).
3. Consideration of the complaint by the Commission shall proceed according to Parts VI and VII.
- ~~4. Upon conclusion of its consideration of the complaint, the Commission shall decide what further actions it intends to take, if any, and shall inform the complainant of the reasons for its decision.~~

⊕ D. Restrictions on Investigation/Consideration by Individual Commissioners

1. Individual commissioners shall not receive complaints. Individual commissioners may not investigate complaints or discuss pending complaints with persons other than commissioners during a noticed meeting, or the Secretary.
2. Each commissioner has an obligation, as to every item before the Commission, to consider whether ~~he or she~~they have~~s~~ a financial conflict of interest as defined by law or a political conflict of interest as set forth in Section 2.12.196. ~~If~~ a conflict exists, the commissioner must ~~to~~ recuse ~~himself or herself~~themselves from participating in the item.
- ~~3. For any enforcement or other adjudicatory matter, each commissioner must determine whether they can function as an unbiased decisionmaker and, if not, must recuse themselves from the matter.~~
- ~~34. Any commissioner absent from a meeting where substantial information is presented in connection with a complaint shall disqualify himself or herself~~themselves from voting on the merits of the complaint at a subsequent meeting, unless ~~he or she~~they have~~s~~ reviewed all relevant information.

E. Conduct of Investigations

1. The Secretary is authorized to conduct investigations on behalf of the Commission. Investigations will be commenced either based on information discovered by the Secretary in the commission of ~~his or her~~their duties or based on a Complaint.
2. The Secretary may request records to which the Commission is entitled pursuant to BERA when ~~he or she~~the Secretary has reason to believe that a violation has occurred.

3. Failure to respond to written inquiries and requests for interviews or records by reasonable deadlines established by the Secretary shall be considered evidence of bad faith and shall be cause for the Commission to demand records or to initiate an audit unless the party or parties involved come forward with an explanation satisfactory to the Commission. A deadline may be extended if sufficient progress is made toward answering inquiries and the candidate or committee agrees to fully answer questions within a time established by mutual agreement between the Secretary and the parties involved.
4. If the Secretary has been unable to obtain voluntary access to such documents which the Secretary reasonably believes to be relevant to the investigation and/or the Commission's proceedings, then, upon majority vote, the Commission may issue a demand for campaign records pursuant to Section 2.12.250(e) of BERA.
5. The Secretary may request, and the Chairperson may appoint from time to time an investigative committee to assist the Secretary in carrying out an investigation, auditing financial records, and preparing a report with specific recommendations to the Commission. In such cases, members of the investigative committee shall be bound by the same rules of confidentiality as the Secretary and must recuse themselves from the final determination on the complaint.
6. The Secretary shall present a written investigative report to the full Commission at the earliest opportunity following completion of the investigation. An investigative report shall include the following information: a description of alleged violation(s); the identification of the respondent(s); summary of evidence; discussion of applicable law and precedents from FCPC and, to the extent applicable, FPPC and FEC; statement by respondent(s) or other affected parties; any aggravating or mitigating circumstances; and recommendation for action.

VI. Disposition of Alleged Violations

A. Report by Secretary.

The Secretary shall submit a Report of Investigation to the Commission in closed session memorandum. The Report of Investigation shall:

1. Summarize the complaint;
2. outlining Outline the Secretary's investigation ~~before any probable cause determination or violation hearing.~~

~~2.3. Provide an analysis of the merits of the complaint and, in the event the Report finds a violation has occurred, an analysis of the harm done by the violation; and~~

~~3.4. Provide a recommendation that the Commission either (1) dismiss the complaint; or (2) make a finding of probable cause.~~

~~B. Whenever a person files a complaint with the Commission alleging a violation of BERA, in addition to the above, the Secretary's report shall include a copy of that complaint, an analysis of its merits, and an analysis of the harm done by the alleged violation.~~

B. Proceeding After Presentation of Secretary's Report

~~A.~~ 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.

~~B.~~ 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.

C. Proceeding after a Determination of Probable Cause

1. Upon making a determination of probable cause, the Commission shall consider what course of action to take. This determination shall be made in the closed session in which the Commission made a determination of probable cause. When deciding upon appropriate action, the Commission may take into consideration:
 - 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
2. Following a finding of probable cause, ~~t~~The Commission may take any of the following courses of action:
- ~~a. Dismiss the complaint, where appropriate, and take no further action.~~
 - a. Request the Secretary conduct further investigation, including ~~an~~ a full and complete audit of campaign records;
 - ~~b. 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;~~
 - b. Invite the respondent(s) 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, 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.
 - c. Issue a letter of warning based upon a finding that the potential violation is of such a minor nature as to not warrant a penalty or further action.
 - d. Schedule and conduct a hearing pursuant to Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after the Secretary has completed ~~his or her~~their report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.
 - e. Ask the City Attorney or the District Attorney to seek legal remedies.
 - f. Seek any other remedy within its authority.
- a3. Immediately following the closed session in which the Commission makes a determination that probable cause exists, the Chair shall make an announcement in open session of the finding, which shall include the identity of the Respondent. This announcement may, at the Chair's

discretion, provide additional information regarding what further action the Commission will take.

4. After making a probable cause determination, the Commission shall promptly inform the parties of the determination and of the course(s) of action it intends to pursue.

VII. Hearings

A. Parties

1. The parties to any hearing are (a) the Secretary or ~~his or her~~ the Secretary's designee, and (b) the candidate(s), committee(s) and other persons who are the alleged violators of BERA (respondents).
2. Each candidate or committee who is a party shall be represented by its treasurer or assistant treasurer or the committee's attorney of record.

B. Scheduling and Notices

1. All hearings shall be scheduled by the Chairperson in consultation with the Secretary. The Chairperson may, if requested by a party, reschedule such a hearing upon a showing of good cause.
2. The Secretary shall provide notice of the hearing to all parties either by deposit in the U.S. Mail or delivery to that party's representative or to the address of that party's representative on file with the Commission.
3. Before the Commission undertakes a hearing it shall provide each party with reasonable notice. Reasonable notice shall be considered fourteen (14) calendar days, unless a finding of probable cause is made within the four (4) weeks prior to an election, in which case seventy-two (72) hours notice will be sufficient.

C. Rules Regarding Written and Oral Submissions

1. Memoranda of argument and authorities may be submitted before the hearing by any party. The submitting party shall furnish copies to the Commission and to all other parties. Memoranda may be up to 15 pages. For good cause, the Chairperson may extend these limits.
2. Evidence, oral and documentary, may be presented to the Commission. The formal rules of evidence do not apply. All testimony offered shall be under oath. The Chair shall administer the oath or affirmation.

Any party or commissioner, including the Chairperson, may challenge the admissibility of evidence offered to the Commission at the time it is offered. The Chairperson shall rule on its admissibility, subject to being overruled by a majority of the Commission.

D. Conduct of Hearing

1. All hearings shall be audio recorded by the Secretary.
2. Order of presentation:
 - a. Secretary;
 - b. Each respondent; and
 - c. Questions by commissioners.
3. The hearing may be continued upon a majority vote of the Commission.

E. Commission Deliberations

1. Following the hearing, the Commission shall deliberate and decide whether a violation has occurred.
2. A commissioner who has not been present at the hearing in regard to the alleged violation(s) shall not take any part in any deliberations in such proceedings.

F. Remedies

Upon making a finding of violation or willful violation, the Commission shall determine what remedy should be pursued. The Commission shall consider the factors set forth in Part VII, Section G below~~Part VI, Section C.1. above~~ and may pursue the following remedies:

1. A stipulated agreement between itself and the party or parties found to have violated BERA. A stipulated agreement may include any of the following provisions:
 - a. The history of Commission activity regarding the matter and a statement of violation.
 - b. An admission of violation by the party or parties.
 - c. A monetary penalty to be paid to the City's ~~General~~ Fair Elections Fund.

- d. A promise by the violating party or parties to comply with BERA.
 - e. Any other terms or conditions within the scope of the Commission's power (for example, nonmonetary settlement terms, such as attending a treasurer training, agreement to file or amend statements).
2. A monetary penalty.
 - a. The Commission may seek a monetary penalty pursuant to Section 2.12.231 ~~or Section 2.12.435 of BERA~~ of up to \$1,000 per violation, or the unlawful or undisclosed contribution or expenditure, whichever is greater, to the Fair Elections Fund of the City.
 - b. If the candidate or committee found to have violated BERA may have similarly violated the California Political Reform Act of 1974 as amended, the Commission may recommend that the City refer the matter to the California Fair Political Practices Commission seek monetary penalties as prescribed in the Political Reform Act, on behalf of the State.
 3. When the violation involves the misuse of public funds, the Commission shall order the candidate or committee found to have violated BERA to return the public funds to the Fair Elections Fund of the City pursuant to Section 2.12.435 of BERA.
 4. Require the timely filing of campaign statements and/or amendments to campaign statements if the 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;
 5. Seek authorization from the City Council to file an action at law or equity to enforce and compel compliance with the provisions of the BERA.
 6. Referral of willful violations to the District Attorney for criminal prosecution under Section 2.12.460 of BERA.
 7. A written press release setting forth the Commission's finding of violation.

G. Penalty Factors

When deciding on penalties, the Commission will consider all the relevant circumstances surrounding the case, including but not limited to:

1. The severity of the violation;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was willful;
4. Whether the violation was an isolated incident or part of a pattern;
5. Whether the respondent has a prior record of violations of law;
6. The degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations; and
7. The respondent's ability to pay will be considered a mitigating factor if the respondent provides documentation to Commission staff of such inability, which must include three years' worth of income tax returns and six months' worth of bank records or accounting statement, at a minimum.

H. Reconsideration

~~Within 60 days of any final Commission action (dismissing or suspending a matter, approving a stipulated agreement, initiating legal proceedings or otherwise concluding all deliberations and decisions) a party may request the Commission to reconsider its action by reopening the evidentiary phase of the proceedings. The only ground for reconsideration is an offer of admissible evidence capable of affecting the outcome of Commission action, provided that the requesting party also shows good cause why such evidence could not have been presented earlier.~~

VIII. Communications with City Council

A. Periodic Reports

Periodic reports to Council, other than those accompanying proposed ordinance amendments, shall be submitted in accordance with the City Council agenda process in the Commissioners' Manual. Proposed Ordinance amendments must be submitted to Council in compliance with Berkeley Municipal Code Section 2.12.051.

B. Spokesperson for Commission

The Chairperson shall speak on behalf of the Commission or shall direct the preparation of written memoranda, correspondence and reports for the Commission. The Chairperson may delegate this responsibility to other

Commissioner(s), to the Secretary, or to a subcommittee of the Commission as circumstances dictate.

IX. Communications With The Press

- A. Notice of meeting and agendas shall be sent to media. Minutes shall be sent out to media or other persons upon request.
- B. Copies of written press releases authorized by the Commission on various matters shall be sent to the City Manager's office pursuant to the Commissioner's Manual.



Open Government Commission

Date: September 17, 2020
To: Open Government Commission
From: Samuel Harvey, Secretary
Subject: Amendments to the Berkeley Lobbyist Registration Act

The Berkeley Lobbyist Registration Act went into effect January 1, 2020. During the past several months, staff have fielded a variety of questions from residents and other people and entities subject to the Act. These questions have focused on the Act's provisions regarding registration, payment of fees, lobbyist training and the extent to which certain activities and entities are subject to the Act.

At its May 21, 2020 meeting, the Commission reviewed feedback from staff regarding the manner in which organizations that employ in-house lobbyists are affected by the Act and the degree to which compliance with the Act may be simplified for these entities. The Commission directed staff to return with proposed amendments to the Act to address these concerns.

The attached proposed ordinance includes provisions enabling entities that employ in-house lobbyists to complete and submit all required documentation on behalf of their in-house lobbyists. Staff believe these amendments will simplify the procedures for compliance with the Act by these regulated entities. The ordinance also includes a variety of "clean-up" amendments which provide greater clarity regarding the requirements of the Act. The specific proposed amendments are enumerated in the attached report to Council.

Attachments:

1. Ordinance amending Lobbying Registration Act



Open Government Commission

ACTION CALENDAR
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council
From: Brad Smith, Chair, Open Government Commission
Submitted by: Samuel Harvey, Secretary, Open Government Commission
Subject: Amendments to the Berkeley Lobbyist Registration Act

RECOMMENDATION

Adopt an ordinance amending the Berkeley Lobbyist Registration Act (BMC Chapter 2.09) to incorporate the recommendations of the Open Government Commission (OGC).

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

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

Action:

Vote:

This recommendation is provided by the OGC pursuant to its authority under BMC § 2.06.190.A.2 to “propose additional legislation or procedures that it deems advisable to ensure the City’s compliance with ... the Lobbyist Registration Act, and advise the City Council as to any other action or policy that it deems advisable to enhance open and effective government in Berkeley.” This ordinance may be adopted by majority vote of the Council. The Council may amend the proposed ordinance without resubmitting the ordinance to the OGC.

BACKGROUND

The Berkeley Lobbyist Registration Act (BMC Chapter 2.09) was adopted by the City Council on October 16, 2018 and went into effect on January 1, 2020. During the first year of implementation, City staff and the OGC have fielded a variety of questions from residents and entities subject to the Act. During this period, staff and the OGC have

noted some areas where the Act could benefit from amendments in order to facilitate easier compliance and provide greater clarity while ensuring fairness and transparency.

Particularly, staff have identified areas where the Act's provisions pertaining to registration, payment of fees, lobbyist training and reporting are silent as to their application in certain scenarios. Additionally, the OGC has noted that a number of organizations subject to the Act have expressed concern about the burdensomeness of complying with the Act. The OGC therefore is recommending the Act be amended to enable entities and organizations that employ in-house lobbyists to prepare and submit all required registrations, reports and declarations on behalf of their in-house lobbyists to simplify compliance with the Act. Finally, the OGC is recommending a number of minor "clean-up" changes which generally provide clarity without substantively altering the affected provisions.

To these ends, the amendments to the Act in the attached Ordinance make the following changes and clarifications:

Definitions:

1. Clarifies that, in the case of an in-house lobbyist, the "client" for the sake of registration and reporting is the in-house lobbyist's employer. (BMC § 2.09.050.C)
2. Adds clarifying language to the definition of "governmental action." (BMC § 2.09.050.K)
3. Creates three new defined terms as part of clarifying the treatment of in-house lobbyists and organizations: "in-house local governmental lobbyist," "lobbyist employer," and "lobbying firm." (BMC § 2.09.050.M-O)
4. Clarifies that a lobbyist includes someone paid to lobby by their employer regardless of whether they are salaried or paid hourly. (BMC § 2.09.050.P)

Registration and reporting:

1. Allows a grace period of ten business days for registration fee payment with provision that failure to timely pay will invalidate registration. (BMC § 2.09.050.E-F)
2. Provides that registration fees are non-refundable. (BMC § 2.09.060.E)
3. Provides that registrations and fees are non-transferrable. (BMC § 2.09.060.G)
4. Provides/clarifies that failure to complete lobbyist training and file signed declaration within 30 days of registration is a violation of the Act and may result in invalidation of registration. (BMC § 2.09.080.D)
5. Adds 501(c)(6) organizations (i.e., non-profit business leagues, chambers of commerce, real-estate boards, boards of trade) to groups exempt from paying the registration fee. (BMC § 2.09.060.G)
6. Clarifies that proof of tax-exempt status includes IRS determination letter or other documentation deemed sufficient by City Clerk. (BMC § 2.09.060.G)

7. Clarifies that a lobbyist who terminates lobbying activities must file a final disclosure report and final registration indicating termination. (BMC § 2.09.070)
8. Clarifies that a lobbyist must submit an amended registration form when they add a new client. (BMC § 2.09.170)

Exemptions:

1. Adds language clarifying but not changing exemption for persons acting on behalf of a union. (BMC § 2.09.090.H)
2. Adds exemption for an attorney acting on behalf of a party to litigation or administrative proceeding. (BMC § 2.09.090.I)

Registration and reporting by businesses and organizations retaining in-house lobbyists:

1. Provides that a lobbyist-employer (e.g., company or organization employing an in-house lobbyist) may prepare and submit registrations, reports and declarations on behalf of in-house lobbyists. (BMC §§ 2.09.120, 2.09.150)
2. Provides that an in-house lobbyist whose employer has four or fewer employees must file annual rather than quarterly reports. (BMC § 2.09.140)

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed amendments to the Berkeley Lobbyist Registration Act will provide clarification, simplify compliance for certain regulated persons and entities, and improve the Act's ability to provide the public important information about lobbying in the City of Berkeley.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

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

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

Attachments:

1. Ordinance

ORDINANCE NO. -N.S.

AMENDMENTS TO THE BERKELEY LOBBYIST REGISTRATION ACT

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

That Chapter 2.09 of the Berkeley Municipal Code (Berkeley Lobbyist Registration Act) is hereby amended to read as follows:

Chapter 2.09

LOBBYIST REGISTRATION AND REGULATIONS

Article 1. General Provisions

Section 2.09.010 Title.

This chapter shall be known as the Berkeley Lobbyist Registration Act, hereafter "the Act."

Section 2.09.020 Findings.

A. Democracy in our representative form of government requires that the public have an opportunity to know as much as possible what lobbying efforts are taking place that may affect decisions being made by our elected officials, City staff, boards, and commissions.

B. To the extent possible, it is the government's responsibility to balance the responsibility to ensure the health, safety, and general welfare of the public at large in a fiscally and environmentally sustainable manner.

Section 2.09.030 Purpose.

Therefore, the purpose of this ordinance is to codify certain existing practices, as well as to adopt new practices, to ensure that the public has an adequate opportunity to be informed of the City's activities and to communicate its concerns to its elected and appointed officials.

Article 2. Definitions and Interpretation of This Act

Section 2.09.040 Words and phrases.

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12) and the Political Reform Act of 1974, California Government Code 81000 — 91014, hereafter the Political Reform Act, as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

Section 2.09.050 Definitions.

For the purposes of this Act, the following definitions shall be applicable:

A. "Campaign consultant" means any person or entity that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for campaign consulting services. The term "campaign consultant" includes any person or entity that subcontracts with a campaign consultant to provide campaign consulting services, and that receives or is promised economic consideration equaling \$1,000 or more in a calendar year for providing campaign consulting services. The term "campaign consultant" does not include attorneys who provide only legal services, accountants who provide only accounting services, pollsters who provide only polling services, and treasurers who provide only those services which are required of treasurers by the Political Reform Act and the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

B. "Campaign consulting services" means participating in campaign management or developing or participating in the development of campaign strategy.

C. "Client" means the real party in interest for whose benefit the services of a local governmental lobbyist are actually performed. In the case of an in-house local governmental lobbyist, "client" means the lobbyist employer of which the in-house local governmental lobbyist is an employee, officer or director. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such member is individually represented by an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

D. "Committee" shall be defined as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

E. "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars (\$1,000), and, (1) The City is a party, or (2) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the City Council or any board or commission, officer or employee of the City.

F. "Contribution" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12).

G. "Controlled committee" shall have the same meaning as set forth in the Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), but shall not include any state committees.

H. "Employee" shall have the same meaning as set out in Title 20 of the Code of Federal Regulations § 404.1007(b).

I. "Gift" shall be defined as set forth in the Political Reform Act, and the regulations adopted thereunder.

J. "Gift of travel" shall mean payment, advance, or reimbursement for travel, including transportation, lodging, and food and refreshment connected with the travel.

K. "Governmental action" means any discretionary administrative or legislative action of the City other than an action which is ministerial in nature. An action is ministerial in nature if it does not require the City official or employee who is the subject of the communication or contact to exercise any discretion concerning an outcome or course of action.

L. "Influence" or "influencing" means contacting a City elected or appointed official or employee, either directly or indirectly, for the purpose of promoting, supporting, modifying,

opposing, causing the delay or abandonment of conduct, or otherwise intentionally affecting the official actions.

M. "In-house local governmental lobbyist" means a local governmental lobbyist who is an employee, officer or director of a business, firm or organization and who lobbies solely on behalf of that business, firm or organization. "In-house local governmental lobbyist" does not include a local governmental lobbyist who is a partner, owner, officer or employee of a lobbying firm.

N. "Lobbyist employer" means any business, firm, or organization for which an employee, officer or director qualifies as an in-house local governmental lobbyist. "Lobbyist employer" does not include a lobbying firm.

O. "Lobbying firm" means any business entity which receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing any proposed or pending governmental action of the City on behalf of any other person or entity, and any partner, owner, officer, or employee of the business entity is a local governmental lobbyist. "Lobbying firm" does not include a bona fide trade, labor or membership organization which is ongoing in nature and whose membership services are not limited to influencing governmental action of the City.

M. P. "Local governmental lobbyist" means any individual who: (1) receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, to communicate directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City; or (2) whose duties as a ~~paid~~salaried employee, officer or director of any ~~corporation, organization or association~~business, firm, or organization include communication directly or through agents with any elected or appointed City official or City employee, for the purpose of influencing any proposed or pending governmental action of the City. No person is a local governmental lobbyist by reason of activities described in Section 2.09.090. In case of any ambiguity, the definition of "local governmental lobbyist" shall be interpreted broadly.

M.Q. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

N.R. "Person doing business with the City" means any person whose financial interests are materially affected by governmental action as defined by Section 2.09.050(K). It includes persons currently doing business with the City, planning to do business with the City, or having done business with the City within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by City elected or appointed officials or employees.

O.S. "Public event" shall mean an event or gathering that any member of the public may attend, has been publicly announced and publicized in advance, and for which there is no admission cost or fee.

P.T. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

Q.U. "Registered client" means any client of a local governmental lobbyist listed as part of the requirements of sections 2.09.060 and 2.09.140.

R.V. "State committee" shall mean a committee that makes contributions or expenditures to support or oppose candidates or measures voted on in state elections, or in more than one county.

Article 3. Registration of Lobbyists

Section 2.09.060 Registration with the Open Government Commission.

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Open Government Commission, through the office of the City Clerk.

B. At the time of registering, the local governmental lobbyist shall file with the City Clerk, in writing:

1. His or her name, business address, e-mail address, and business telephone number.
2. The name, business address, and business telephone number of each client for whom the local governmental lobbyist attempts or receives compensation to influence any proposed or pending governmental action of the City.
3. The name, business address, and business telephone number of the local governmental lobbyist's employer, firm or business affiliation.

C. The local governmental lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

D. Local governmental lobbyists shall amend any information submitted to the Open Government Commission through registration and quarterly disclosures within five business days of the changed circumstances that require correction or updating of such information.

E. ~~At the time of~~Within ten business days of initial registration, and ~~during~~ each annual registration, each local governmental lobbyist shall pay a non-refundable fee of \$500.

F. Failure to pay the annual fee shall ~~constitute a termination of~~invalidate a local governmental lobbyist's registration with the Open Government Commission. The Open Government Commission is also authorized to establish additional processes for the termination of a local governmental lobbyist's registration.

G. The City Clerk shall waive all registration fees for any employee, officer or director of a tax-exempt organization presenting proof of the organization's tax-exempt status under 26 U.S.C. Sections 501(c)(3), or 501(c)(4), or 501(c)(6) so long as they are acting in that capacity. Proof of an organization's tax-exempt status shall include an Internal Revenue Service determination letter or other documentation deemed sufficient by the City Clerk.

H. The City Clerk shall deposit all fees collected pursuant to this Section in the General Fund of the City of Berkeley.

I. A local governmental lobbyist's registration and fee are not transferrable to any other local governmental lobbyist.

Section 2.09.070 Cessation of ~~employment~~Lobbying Activities.

A local governmental lobbyist who has terminated all activities requiring registration shall ~~notify the City Clerk of that fact~~ file a final disclosure report no later than the date required by Section 2.09.140 along with a final registration form indicating that all lobbying

activities have terminated, and thereupon shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

Section 2.09.080 Lobbyist training.

A. Each local governmental lobbyist must complete a lobbyist training session offered by the Open Government Commission, through the Office of the Clerk, within 30 days of the local governmental lobbyist's initial registration. Thereafter, local governmental lobbyists shall engage in additional training sessions as required by the Open Government Commission, at its discretion.

B. The Open Government Commission shall make local governmental lobbyist training sessions available on its website.

C. On or before the deadline for completing any required local governmental lobbyist training session, a local governmental lobbyist must file a signed declaration with the Open Government Commission stating, under penalty of perjury, that the local governmental lobbyist has completed the required training session.

D. Failure to file the signed declaration required by this section within 30 days of the local governmental lobbyist's initial registration shall constitute a violation of this Act. The Open Government Commission may invalidate a registration for failure to comply with this section.

Section 2.09.090 Exceptions.

The provisions of this Act shall not apply:

A. To a public official acting in his or her official capacity.

B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.

C. To a person specifically invited by the City Council or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the City charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation.

D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act.

E. To designated representatives of a recognized employee organization whose activities are limited to communicating with elected or appointed City officials or their representatives regarding (1) wages, hours and other terms and conditions of employment pursuant to the procedures set forth in Government Code Sections 3500—3510, or (2) the administration, implementation or interpretation of an existing employment agreement.

F. To persons whose only activity is to (1) submit a bid on a competitively bid contract, (2) respond to a request for proposal or qualifications, or (3) apply for grant funding or (4) negotiate the terms of a written contract or grant if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award or terms of a contract or grant with any elected or appointed official, unless their attempts are limited to speaking during public comment at a publicly noticed meeting.

G. To any individuals serving in their professional capacity (e.g. attorneys, architects,

or engineers), who are employed by a local government lobbyist, and whose attempts to influence governmental action are limited to:

(1) Publicly appearing at a public meeting, public hearing, or other official proceeding open to the public to represent or testify on behalf of a proposed development;

(2) Preparing or submitting documents or writings in connection with the proposed development for use at a public meeting, public hearing, or other official proceeding open to the public; and

(3) Contacting city employees or agents working under the direction of the city manager directly relating to (1) and (2) above, or contacting elected or appointed City officials directly relating to (1) and (2) above.

H. ~~To P~~persons ~~appearing or acting on behalf of~~employed by, ~~or a member of~~, a labor union ~~of which they are an employee or member~~.

I. To an attorney who communicates with a City official or employee regarding representation of a party or potential party to pending or actual litigation, or to a pending or actual administrative enforcement proceeding, brought by or against the City or City agent, officer or employee.

Section 2.09.100 Failure to Register.

If the Open Government Commission determines that a person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the City Council or other board or commission at a noticed public meeting. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

Section 2.09.110 Availability of information.

All registration information shall be retained by the City Clerk for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

Section 2.09.120 Filing under penalty of perjury.

All information required by this Act shall be filed with the City Clerk on forms prescribed by the Open Government Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury. In the case of an in-house local governmental lobbyist, the lobbyist employer, or agent thereof, may complete and file any declaration required by this section.

Section 2.09.130 Records.

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this Chapter.

Article 4. Disclosure of Lobbying Activities and Audits

Section 2.09.140 Quarterly/~~Annual~~ disclosure.

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the City Clerk, unless the local

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governmental lobbyist is a sole proprietorship, is an in-house local governmental lobbyist who lobbies solely on behalf of a lobbyist employer with four or fewer employees, or works for a lobbying firm with four or fewer employees, in which case they shall file annually. The reports shall be due no later than thirty (30) days after the end of the reporting period. The report shall contain the following information:

A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.

B. For each item of governmental action sought to be influenced, the name and title of each City employee, or elected or appointed City official with whom the local governmental lobbyist specifically met or communicated.

C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.

D. If any local governmental lobbyist, or a registered client at the behest of a local governmental lobbyist, employs or requests, recommends or causes a client of the local governmental lobbyist to employ, and such client does employ, any City employee, or elected or appointed City official, in any capacity whatsoever, or a member of the immediate family of one of these individuals, the local governmental lobbyist shall disclose (1) the name of the person employed or hired, (2) a description of the services actually performed, and (3) the total payments made to the City employee or elected or appointed City official during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

E. If any elected City officeholder or candidate for elected City office employs or hires a local governmental lobbyist to provide compensated services to the officeholder or candidate, the local governmental lobbyist shall disclose (1) the name of the person who employed or hired the local governmental lobbyist, (2) a description of the services actually performed, and (3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.

F. If a local governmental lobbyist solicits any person to make a contribution to an elected City officeholder, candidate for City office or to any committee or campaign fund controlled by such officeholder or candidate, the local governmental lobbyist shall disclose the names of the persons whom the local governmental lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made:

1. in a mass mailing sent to members of the public;
2. in response to a specific request for a recommendation;
3. to a gathering which members of the public may attend; or
4. in a newspaper, on radio or television, or in any other mass media.

A local governmental lobbyist does not "solicit" solely because his or her name is printed with other names on stationery or a letterhead used to request contributions. If a local governmental lobbyist sources a donation from more than fifty individual members or employees of a corporation, union or other association that is a registered client of the local governmental lobbyist, or if the local governmental lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client of the local governmental lobbyist, the local governmental lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually

solicited.

Section 2.09.150 Registration and filing of disclosures by organizations.

A lobbyist employer, or agent thereof, may complete and submit any registration or local governmental lobbyist disclosure on behalf of any in-house local governmental lobbyist it employs. The Open Government Commission is authorized to establish procedures to permit the registration and filing of local governmental lobbyist disclosures by a business, firm, or organization on behalf of the in-house local governmental~~individual local-governmental~~ lobbyists employed by those businesses, firms, or organizations.

Section 2.09.160 Audits.

At least once every year, the Open Government Commission shall initiate audits of at least 5% of registered local governmental lobbyists, at minimum one local governmental lobbyist, selected at random. At the request of the Open Government Commission, the City Clerk may assist in conducting these audits. This requirement shall not restrict the authority of the Open Government Commission or the City Clerk to undertake any other audits or investigations of a local governmental lobbyist authorized by law or regulation. Within ten business days of a request by the Open Government Commission or City Clerk, a local governmental lobbyist or anyone required to register as a local governmental lobbyist shall provide the requested documents required to be retained under this Chapter. (Ord. 7629-NS § 1 (part), 2018)

Article 5. Prohibitions

Section 2.09.170 No unregistered employment or activity.

A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such local governmental lobbyist is registered and has listed such client with the City Clerk. A local governmental lobbyist shall submit an amended registration form indicating the addition of a new client before lobbying on behalf of that client.

B. No person shall accept compensation for acting as a local governmental lobbyist except upon condition that he or she forthwith register as required by this Act.

Section 2.09.180 Personal obligation of City officials prohibited.

Local governmental lobbyists, or clients shall abstain from carrying out any act with the express purpose and intent of placing any elected or appointed City official or City employee under personal obligation to such local governmental lobbyist, client, contractor or person.

Section 2.09.190 Deception prohibited.

No local governmental lobbyist or client shall deceive or attempt to deceive a City employee, or elected or appointed City official as to any material fact pertinent to any pending or proposed governmental action.

Section 2.09.200 False appearances prohibited.

No local governmental lobbyist or client shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city employee in the name of any fictitious person or in the

name of any real person without the real person's consent.

Section 2.09.210 Prohibited representations.

No local governmental lobbyist or client shall represent, either directly or indirectly, orally or in writing that such person can control or obtain the vote or action of any City employee, or elected or appointed City official.

Section 2.09.220 Restrictions on payments and expenses benefiting local public officials.

A. No local government lobbyist or a registered client shall make any payment or incur any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year. This \$240 limit may be adjusted every four years by the OGC to account for inflation. The payments and expenses specified in subsections 2.09.220(A)-(D) include gifts, honoraria and any other form of compensation but do not include:

1. gifts of food or refreshment worth \$25 or less per occasion, if the local governmental lobbyist is a 501 (c)(3) nonprofit organization, the gift of food or refreshment is offered in connection with a public event held by the 501 (c)(3) nonprofit organization, and the same gift of food or refreshment is made available to all attendees of the public event;
2. payments or expenses that, within thirty (30) days after receipt, are returned unused or are reimbursed;
3. gifts of food or beverage worth \$25 or less per occasion, if said gift is provided in the home of an individual local governmental lobbyist or individual local governmental lobbyist's registered client when the individual or member of the individual's family is present;
4. a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code;
5. informational material;
6. campaign contributions not to exceed the limit imposed by the Berkeley Election Reform Act or state law, as applicable; and
7. salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

For purposes of the gift limits imposed by subsections (A)-(C), gifts shall be aggregated set forth in California Code of Regulations, Title 2, Section 18945.1, as it may hereafter be amended.

B. No lobbyist or a lobbyist's registered client shall make any payment to a third-party for the purpose of making any payment or incurring any expense, including any gift of travel, that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals.

C. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from

any lobbyist for the individual's personal benefit or for the personal benefit of a member of the immediate family of one of these individuals.

D. No elected city officeholder, candidate for elected city office, or designated employee may accept or solicit any payment or expense, including any gift of travel, from a third-party if the officer knows or has reason to know that the third-party is providing the payment or expense on behalf of a lobbyist.

Section 2.09.230 Restriction on campaign consultants lobbying current and former clients.

A. No campaign consultant, individual who has an ownership interest in the campaign consulting business, or employee of the campaign consultant shall lobby any elected or appointed City official of the city who is a current or former client of the campaign consultant.

B. This prohibition shall not apply to:

1. an employee of a campaign consultant whose sole duties are clerical; or
2. an employee of a campaign consultant who did not personally provide campaign consulting services to the officer of the city with whom the employee seeks to communicate in order to influence local legislative or administrative action.

C. The exceptions in Subsection (B) shall not apply to any person who communicates with an officer of the city in his or her capacity as an employee of the campaign consultant who is prohibited by Subsection (A) from making the communication.

D. Whenever the following words or phrases are used in this Section, they shall be defined as follows:

1. "Current client" shall mean a person for whom the campaign consultant has been contracted to provide campaign consulting services. If such person is a committee as defined by Berkeley Election Reform Act (Berkeley Municipal Code Chapter 2.12), the current client shall be any individual who controls such committee; any candidate that such committee was primarily formed to support; and any proponent or opponent of a ballot measure that the committee is primarily formed to support or oppose.
2. "Employee" shall mean an individual employed by a campaign consultant, but does not include any individual who has an ownership interest in the campaign consultant that employs them.
3. "Former client" shall mean a person for whom the campaign consultant has terminated all campaign consulting services within the past twenty-four (24) months.

Article 6. Enforcement

Section 2.09.240 Rules and regulations.

The Open Government Commission may adopt, amend, and rescind rules, procedures, and regulations to carry out the purposes of this Chapter, and to govern the Commission's procedures to enforce this Chapter.

Section 2.09.250 Complaint, investigative procedures, and probable cause.

A. Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the Open Government Commission. The Open Government

Commission may initiate an investigation of a possible violation of this chapter based on information brought before the commission, including information presented by staff.

B. After receiving a complaint or information regarding a possible violation of this chapter, the Open Government Commission shall decide whether to (1) refer to the secretary to investigate, to the extent the secretary has not done so; (2) dismiss the complaint; or (3) find probable cause that a violation of this chapter has occurred.

Section 2.09.260 Notice and hearing on violations.

After the Open Government Commission determines there is probable cause for believing that a provision of this Chapter has been violated and makes a good faith effort to give reasonable written notice to the person or persons involved in the allegation using the contact information with which they registered, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing.

Section 2.09.270 Violations – commission action.

If the Open Government Commission finds a violation of this Act, the Open Government Commission may:

(1) Find mitigating circumstances and take no further action; (2) issue a public statement or reprimand, (3) impose a civil penalty in accordance with this Act, or (4) take other action as specified in 2.06.190(A)(1).

Section 2.09.280 Civil actions.

If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may also institute action at law or equity to enforce and compel compliance with the provision of this chapter. Any resident of the City who believes that a violation of this chapter has occurred, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter.

Section 2.09.290 Civil penalties.

A. Except as otherwise specified in this Act, the Open Government Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation or, if the violation was a prohibited payment, expense or gift under section 2.09.220, of up to three times the value of each prohibited payment, expense or gift.

B. If any civil penalty imposed by the Open Government Commission is not timely paid, the Open Government Commission shall refer the debt to the appropriate City agency or department for collection.

C. For local government lobbyists found to have repeatedly over more than one quarter, knowingly, or willfully violated the Act, the Open Government Commission may impose penalties of up to twenty-five thousand dollars (\$25,000) for any violation, using factors adopted by the Open Government Commission through its rules, regulations, or

procedures.

Section 2.09.300 Criminal violation.

A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

Section 2.09.310 Joint and several liability.

A. Should two or more persons be responsible for any violation under this Chapter, they may be jointly and severally liable.

B. The client or employer of a local governmental lobbyist shall be jointly and severally liable for all violations of this Chapter committed by the local governmental lobbyist in connection with acts or omissions undertaken on behalf of that client or employer.

C. If a business, firm or organization registers or files local governmental lobbyist disclosures on behalf of its employees pursuant to Section 2.09.150 the business, firm or organization may be held jointly and severally liable for any failure to disclose its employees' lobbying activities.

Section 2.09.320 Effective date.

The effective date of this Act shall be January 1, 2020. The Act may be effective at an earlier date if administratively feasible.

Section 2.09.330 Severability.

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.

COMMUNICATIONS

From: DerekWallace <DerekWallace@protonmail.com>
Sent: Monday, August 03, 2020 10:00 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Berkeley Mayoral Candidate Introduction

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Hello, my name is Derek C. Wallace and I am running for the office of Mayor of Berkeley in the upcoming elections. I wanted to introduce myself, and see where I could plug in to the City's conversation on the topics of Fair Campaigns and Open Government. Here is a link to Daily Cal's article about my candidacy:

<https://www.dailycal.org/2020/06/29/making-berkeley-the-best-it-can-be-derek-wallace-announces-candidacy-for-mayor>

Peace and health,

Derek

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510.290.1643

<http://www.facebook.com/DerekWallace>

<http://www.twitter.com/DerekWallace>

<https://www.instagram.com/DerekWallace>

From: laura@laurababitt.com
Sent: Monday, August 17, 2020 3:26 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Laura Babitt For School Board- Please forward to your commission members
Attachments: Laura Babitt for School Board Postcard.png

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Dear Open Government Commission,

My name is Laura Babitt and I am running for the Berkeley School Board. My endorsers include the Berkeley Federation of Teachers (BFT), Senator Nancy Skinner, Supervisor Keith Carson, Mayor Jesse Arreguin, Current and Former School Board Directors, City Council Members, the Alameda Labor Council, and a host of other Unions, Community Leaders, Parent & Student Leaders, Organizers, Advocates, and Faith Based Organizations.

As leaders of the Berkeley Community, I would also be honored if you would consider me as your candidate for the Berkeley School Board. Here is a brief bit of my experience in Berkeley, and what I plan to do.

My history making change in Berkeley Unified:

I am the parent of three daughters who attend/attended Berkeley schools and a seasoned organizer who understands the inner workings of Berkeley Unified School District.

As a BUSD Oversight Committee Member over the last 10 years, I have championed:

- Support over Discipline
- Social-Emotional Counselors
- Extended Day & Summer Learning Opportunities
- Expanding the Office of Family Engagement & Equity
- Special Education Support/Reform
- Anti-Racism Task Force
- Educational Parenting and Empowerment Workshops
- Young Gifted and Black- Berkeley
- 30 Minutes a Day of Dedicated English Language Learner Support
- Restorative Justice/Welcoming School Climates
- Hiring and Retention of Teachers of Color
- Development of the Berkeley Schools Excellence Program (BSEP) Parcel Tax Measure
- Stopping Budget Cuts for Educators

How will I help BUSD going forward?

Our current Board of Directors is comprised of lawyers, administrators, and educators. I will add my finance and accounting skills to team which will help BUSD successfully navigate the financial crisis brought on by COVID-19. I have successfully led million to billion-dollar entities through two recessions in my 25 year career in finance and accounting.

Combining my professional background with my hands-on BUSD experience, positions me to be of great value and service to Berkeley Students, Families, and Educators.

I am committed to addressing the equity challenges BUSD faces as it reengineers its schools, and continues to strive to overcome the opportunity gap. Through the lens of equity for all Berkeley students, I am committed to:

1. Create **accountability** structures so that our programs and special education services are implemented effectively and with fidelity to its researched based results.
2. Provide **outcome-oriented budgeting**
3. **Cut** red-tape
4. Build **collaborative welcoming** school environments

I understand deeply why BUSD failed to reach its 2020 promise of closing the achievement or opportunity gap. I am also convinced that it is possible to serve all students in BUSD well. I am ready to help make that vision a reality.

Please contact me at laura@laurababitt.com or (925) 238-5239. I would love to meet with your commission board or individual members to further discuss how we can partner together to move Berkeley Schools forward.

Thank you for your time and consideration.

Sincerely,
Laura Babitt
Leadership for Changing Times
www.laurababitt.com
Laura Babitt for School Board- Facebook page
[@laurababitt](#) all social media



ELECT

Laura Babitt

BERKELEY SCHOOL BOARD

Partnership for Changing Times ~ Our Kids Can't Wait

As a Proud Parent & Advocate for Equity, What Will I Do?

- ✓ Out-Come Oriented Budgeting
- ✓ Special Education Reform
- ✓ Support for All Students
- ✓ Welcoming School Environment
- ✓ Accountability
- ✓ Outdoor Classrooms
- ✓ Anti-Blackness/Implicit Bias Training for All

www.laurababitt.com @laurababitt on all social media

Laura Babitt for Berkeley School Board 2020 FPCC #1427037

VOTE LAURA BABITT