

## ORDINANCE NO. 7,564–N.S.

AMENDING SECTIONS 2.12.032, 2.12.167, 2.12.231, 2.12.250, 2.12.320, 2.12.500, 2.12.505, 2.12.530, AND 2.12.545 TO IMPLEMENT THE BERKELEY FAIR ELECTIONS ACT OF 2016

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

Section 1. That the Council of the City of Berkeley hereby:

- A. Finds that the amendments further the purposes of the Berkeley Election Reform Act by making changes to implement the Berkeley Fair Elections Act of 2016; and
- B. Authorizes the City Clerk to administratively make certain general formatting changes, including revising spelling, grammar, punctuation, and capitalization, to improve consistency throughout Chapter 2.12 of the Berkeley Municipal Code.

Section 2. That Berkeley Municipal Code Section 2.12.032 is amended to read as follows:

**2.12.032 Requirement to file statements and reports electronically.**

A. The following elected officers, candidates, committees, or other persons required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section 84100), are required to submit all reports or statements as an electronic filing:

1. A Participating Candidate, as defined in 2.12.158, and any Participating Candidate's campaign committee, regardless of the monetary amount of contributions received or expenditures made;

2. An elected officer, candidate, committee, or other person who receives contributions totaling one thousand dollars (\$1,000) or more, or makes expenditures totaling one thousand dollars (\$1,000) or more, in a calendar year.

B. Once an elected officer, candidate, committee, or other person is required to submit reports or statements as an electronic filing, that elected officer, candidate, committee, or other person shall continue to use electronic filing until the committee has officially terminated or the elected officer, candidate or other person has no further filing obligations.

C. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but is not a Participating Candidate or such a candidate's campaign committee as set forth in subsection A.1 and has not met the \$1,000 threshold in subsection A.2, may submit required reports or statements as an electronic filing or in paper format.

D. In any instance in which the original report, statement, or other document is required to be filed with the Secretary of State and a copy of that report, statement, or other document is required to be filed with the City of Berkeley, the copy may be submitted as an electronic filing.

Section 3. That Berkeley Municipal Code Section 2.12.167 is amended to read as follows:

**2.12.167 Qualified contribution.**

"Qualified Contribution" means a monetary contribution, excluding loans, made directly in aid of the nomination or election of one or more candidates not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley.

Section 4. That Berkeley Municipal Code Section 2.12.231 is amended to read as follows:

**2.12.231 Violation--Penalties.**

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

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

Section 5. That Berkeley Municipal Code Section 2.12.250.D is amended to read as follows:

**2.12.250 Campaign expenditure and contribution account--Establishment required-- Procedure for use.**

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly.

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall liquidate the contribution checking account consistent with California Government Code Section 89510 et seq., and applicable state regulations, before terminating the campaign committee.

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. Participating candidates or their controlled committees shall not accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars (\$50) and must retain an itemized receipt or voucher for all non-monetary contributions. The campaign

treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. Participating Candidates or their controlled committees shall not accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars (\$50) and must retain an itemized receipt or voucher for all non-monetary contributions. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

F. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

G. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section 2.12.230 of this chapter shall apply.

H. All requests from Participating Candidates for Fair Elections funds must be submitted within thirty (30) days after the date of the election in order to be eligible for distribution of Fair Elections funds in that election cycle. Any request for matching Fair Elections funds received more than thirty (30) days after the election will not be eligible for disbursement for Fair Elections funds.

Section 6. That Berkeley Municipal Code Section 2.12.320 is amended to read as follows:

**2.12.320 Anonymous contributions--Restrictions--Payment to City required when.**

No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totaling more than fifty dollars in a calendar year. An anonymous contribution of more than fifty dollars shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the Fair Elections - Fund of the City.

Section 7. That Berkeley Municipal Code Section 2.12.500.A is amended to read as follows:

**2.12.500 Eligibility for Fair Elections campaign funding.**

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

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

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

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

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

2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;

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

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

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

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

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

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified contribution to his or her controlled committee. A Participating Candidate may make non-monetary contributions to his or her controlled committee. However, the aggregate amount of a Participating Candidate's monetary and non-monetary contributions to his or her controlled committee must not be greater than fifty dollars (\$50);

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

8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions,

contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

Section 8. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

**2.12.505 Fair Elections Fund payments.**

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

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

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

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

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

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

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

E. The Commission shall make an initial payment of Fair Elections funds within seven business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment

request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.

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

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

Section 9. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

**2.12.530 Use of Fair Elections funds.**

A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.

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

1) Costs of legal defense in any campaign law enforcement proceeding under this Act;

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

a) The candidate's personal support or compensation to the candidate or the candidate's family;

b) Clothing and other items related to the candidate's personal appearance;

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

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

e) An independent expenditure;

f) Any payment or transfer for which compensating value is not received.

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

Section 10. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

**2.12.545 Cost of living adjustments.**

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.2.c for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Section 2.12.505.B.

Section 11. These amendments will be effective on September 1, 2017.

Section 12. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

At a regular meeting of the Council of the City of Berkeley held on July 11, 2017, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Maio, Wengraf, Worthington and Arreguin.

Noes: None.

Absent: None.

