

## ORDINANCE NO. 7,691-N.S.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT RELATED TO  
PUBLIC FINANCING FOR CAMPAIGNS

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

Section 1. 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. This dollar amount may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

Section 2. That Berkeley Municipal Code Section 2.12.500 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 and submit 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). These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

- 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 monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.
- 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.
- 9) Not accept loans from any source.
- 10) The Commission 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 adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

Section 3. 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.

These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

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 City 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 City 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 City 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 4. 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, or penalties arising from violations of any local, state, or federal campaign laws;
- 2) The candidate's personal support or compensation to the candidate or the candidate's family;
- 3) Indirect campaign purposes, including but not limited to:

- a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
- b) 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;
- c) A contribution or loan to the campaign committee of another candidate or to a party

committee or other political committee;

d) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;

e) 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.

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

Section 5. 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.3.b 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 6. 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.

At a regular meeting of the Council of the City of Berkeley held on February 4, 2020, this Ordinance was passed to print and ordered published by posting by the following vote:

Ayes: Bartlett, Davila, Droste, Hahn, Harrison, Kesarwani, Robinson, Wengraf, and Arreguin.

Noes: None.

Absent: None.

