



Fair Campaign Practices Commission

## AGENDA FOR FAIR CAMPAIGN PRACTICES COMMISSION

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) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Civic Center  
2180 Milvia St.  
Cypress Room (1<sup>st</sup> Floor)

Regular Meeting  
**April 18, 2019**  
**7:00 p.m.**

Secretary: Emmanuelle Soichet, 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 Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
5. Approval of minutes for the March 21, 2019 regular meeting.
6. Information report from City Clerk – Review of Public Financing Program in the 2018 Election Cycle.
7. Proposed amendments to the Berkeley Election Reform Act (BERA) and FCPC regulations for the 2020 election cycle; discussion and possible action.
8. Request to reconsider June 21, 2018 dismissal of alleged violations of the Berkeley Reform Act by *Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016* Submitted by Z. Running Wolf and Request to Reconsider August 16, 2018 Approval of the Stipulation Resolving *In the Matter of Arreguin for Mayor 2016*; discussion and possible action.
9. Referral from the City Clerk's Office regarding potential violation of the Berkeley Election Reform Act by *Lacey for Council 2018*; discussion and possible action.
10. Staff report and draft negotiated stipulation with *Droste for City Council 2018*; discussion and possible action.
11. Referral from the City Clerk's Office regarding potential violation of the Berkeley Election Reform Act by *Greg Magofna for Berkeley City Council 2018*; discussion and possible action.
12. Commission 2019 work plan; discussion and possible action.

13. Adjournment.

**Communications**

- Letter from MapLight regarding Fair Elections program (Agenda Items 6 and 7)
- Email from Thomas Hodgman regarding RunningWolf request to reconsider (Agenda Item 8) and attached article
- Email from Mary Kay Lacey regarding agenda packet (Agenda Item 9) and response by FCPC staff

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., 4<sup>th</sup> Fl., Berkeley, CA.



Fair Campaign Practices Commission

## DRAFT MINUTES

Civic Center  
2180 Milvia Street  
Cypress Room (1<sup>st</sup> Floor)

Regular Meeting  
**March 21, 2019**

Members Present: Dean Metzger (Chair), Jessica Blome, Greg Harper, Mark McLean, Matthew Napoli, Patrick O'Donnell, Daniel Saver, Brad Smith, Brian Tsui

Members Absent: None

Also Present: Emmanuelle Soichet, Staff Secretary/Deputy City Attorney  
Mariam Morley, Counsel, Renne Public Law Group

### 1. Call to Order

Chair called the meeting to order at 7:00 p.m.

### 2. Roll Call

Roll call taken.

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

No public comment on matters not on agenda. One member of the public in attendance.

– Commissioner Saver arrived at 7:03 p.m. –

### 4. Reports

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

Staff discussed cancelations of prior meetings, staffing transition in City Attorney's Office, and status of ongoing matters before commission. Staff also noted the presence of outside counsel from the law firm Renne Public Law Group.

### 5. Approval of Minutes for the November 28, 2018 Special Meeting

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

*Motion to approve minutes (M/S/C: Smith/Metzger; Ayes: Harper, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: Blome, Napoli; Absent: McClean (unexcused)).*

– Commissioner McLean arrived at 7:07 p.m. –

6. **Complaint of alleged violation of the Berkeley Election Reform Act by Droste for City Council 2018 submitted by H. Steel; discussion and possible action**

- a. Public comment: None.
- b. Commission discussion and action.

*Motion to request staff to engage in settlement negotiations with respondents for a stipulation that admits a violation and assesses a monetary penalty in the amount of the market rate value of the rental space used (M/S/C: Saver/McLean; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Abstain: None).*

7. **Report from the Ad Hoc Subcommittee on Independent Expenditures; discussion and possible action**

- a. Public comment: one speaker.
- b. Commission discussion and action.

*Motion to request staff to provide recommended implementation of proposals one and two, and develop staff report with recommendation for guidance to post to website regarding implementing the spirit of proposal three by Commission's May 2019 meeting (M/S/C: Blome/Tsui; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: None).*

————— Meeting temporarily adjourned at 7:59 p.m., reconvened at 9:17 p.m. —————

8. **Annual election of Chair and Vice Chair; discussion and possible action**

- a. Public comment: None.
- b. Commission discussion and action.

*Motion to adopt slate elected (to Open Government Commission) (M/S/C: Harper/McLean; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: None).*

9. **Commission 2019 regular meeting schedule; discussion and possible action**

- c. Public comment: five speakers.
- d. Commission discussion and action.

*Motion to adopt schedule proposed by staff (M/S/C: Metzger/O'Donnell; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: None).*

10. **Information report regarding new abridged Commissioners' Manual**

- e. Public comment: No speakers.
- f. Commission discussion and action.

*No action taken.*

11. **Adjournment**

(M/S/C: Saver/Smith; Ayes: Blome, Harper, Napoli, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: None).

The meeting adjourned at 9:31 p.m.



City Clerk Department

April 11, 2019

To: Members, Fair Campaign Practices Commission  
From: Mark Numainville, City Clerk  
Subject: Review of Public Financing Program in the 2018 Election Cycle

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In November 2016, Berkeley voters approved MeasureX1 to create the Fair Elections Fund and create a public financing program that provides public matching funds for candidates for Mayor and City Council who agree to abide by certain additional restrictions. The November 2018 election cycle was the initial election cycle for the Public Financing Program.

Participation

Ten candidates participated. Seven out of the ten were running for Council for the first time; one candidate had previously run for Mayor and for the same Council seat; two were sitting City Council members. One candidate filed an application for participation but did not submit a qualifying request.

The two incumbents were among the earliest to receive the maximum of \$40,000 in matching funds. Both continued to fundraise after receiving the maximum in matching public funds, albeit at the \$50 limit.

Committee (listed in order of votes received)	Office Sought	Matching Funds Received	Total Amount Raised	Amounts Returned
Kesarwani for City Council 2018^	District 1	\$ 40,000	\$ 54,972	\$ -
Igor Trgub for Berkeley City Council 2018	District 1	\$ -	\$ 50,520	\$ -
Schueler for City Council 2018	District 1	\$ 29,490	\$ 37,030	\$ 14,510.75
Mary Behm-Steinberg for Council District 1 2018	District 1	\$ -	\$ 530	\$ -
Kate Harrison for City Council 2018*^	District 4	\$ 40,000	\$ 55,537	\$ 3.00
Ben Gould for Council 2018	District 4	\$ 40,000	\$ 48,122	\$ 4,535.80
Greg Magofna for City Council 2018	District 4	\$ 30,269	\$ 38,397	\$ 706.88
Robinson for City Council 2018^	District 7	\$ 18,474	\$ 26,395	\$ 183.15
Committee to Elect Ces Rosales for Berkeley City Council 2018	District 7	\$ 22,068	\$ 27,882	\$ 1,077.00
Aidan Hill 4 Berkeley Council 2018	District 7	\$ -	\$ 1,138	\$ -
Droste for City Council 2018*^	District 8	\$ 40,000	\$ 63,958	\$ 0.95
Lacey for City Council 2018	District 8	\$ 39,450	\$ 49,654	\$ 609.13
Alfred Twu for Berkeley City Council 2018	District 8	\$ 17,164	\$ 20,495	\$ 2.95
Russ Tilleman for City Council 2018	District 8	\$ -	\$ 932	\$ -
	Totals	\$ 316,915	\$ 475,562.00	\$ 21,626.66

\* Incumbent

^ Winner

### Staff and Commission Resources

It is difficult to estimate the amount of staff time dedicated toward public financing in 2018. The implementation effort required a significant amount of staff resources. In addition, throughout the election, the time needed to provide special assistance to public financing candidates and treasurers is far greater than the time spent with non-participating candidates. The additional layer of regulations results in the need for additional education and assistance by City Clerk and City Attorney staff. It is estimated that City Clerk staff reviewed approximately 1,100 separate and distinct public financing transactions and all the associated supporting documentation. With increased participation likely in the 2020 mayoral election, the demand on staff time will increase.

In addition to staff demands, the FCPC added additional meetings to approve matching funds distributions in August and October.

### Compliance

Despite occasional errors in submitting documentation, all participants worked closely with City Clerk staff to achieve compliance with program requirements. If clerical errors were discovered, most worked quickly to remedy them and provide amendments.

Minor violations

(1) Return of unspent funds

Several candidates had outstanding accounting issues and were unable to return their funds by the January 5, 2019 deadline.

(2) Loan violation

In order to open a bank account, a contributor made a \$50 loan to a committee in addition to \$50 contribution, exceeding contribution limit and in violation of loan prohibition.

(3) Improper use of funds

One candidate produced a mailer that included endorsements for other candidates. When alerted to the violation, the candidate halted distribution of the mailer and was refunded the production cost.

(4) Improper contribution

One candidate improperly reported non-monetary contributions related to campaign event. The contributions were properly changed to an expenditure and disclosed in an amended filing.

Major violations

None

Status of the Fair Elections Fund

FY 2018 Annual Allocation:	\$500,000
FY 2018 Admin Allocation:	(\$62,500)
FY 2019 Annual Allocation:	\$500,000
FY 2019 Admin Allocation:	(\$62,500)
Matching Funds Distributed:	(\$316,915)
Unspent Funds Returned:	\$21,630.00
Fines Deposited:	\$930
Balance after close of 2018 Election Cycle:	\$580,645

2019 Allocation:	\$507,645
Admin Allocation:	(\$64,907)

2020 Allocation:	\$507,645
Admin Allocation:	(\$64,907)

Estimated Fund Balance at the beginning of 2020: \$1,466,121



Improving the Program

In working with treasurers and candidates during the recent election cycle, the City Clerk and City Attorney's offices have identified several amendments to BERA that may provide more expanded access to the program and clarify several passages where the intent is not clear. (See accompanying Proposed Amendments to BERA memo)

One potential barrier to participation is the difficulty of providing campaign account start-up costs without exceeding the \$50 contribution limit. At least one candidate inadvertently excluded himself from participation by providing the \$100 needed by his bank to open an account. Proposed changes include allowing the candidate to contribute up to \$250 in non-matching funds to cover these costs.

Other proposed amendments include a clearer definition of what constitutes a violation of the program rules, and what actions might be deemed substantial, or potentially disqualifying violations. It is notable that in order to participate in the first place, candidates must certify that they have complied with the restrictions of the chapter during the election cycle to date and have received no ineligible contributions, and cannot participate if they have done so. Should they receive such contributions during the course of their campaign it would constitute a violation, but the contribution may be returned without disqualifying the candidate.

Providing campaigns with timely distributions is an important goal in the administration of the program and verifying the eligibility of matching funds requests is a time consuming and labor intensive process. One possible solution is to change the requirement for the FCPC to approve all requests for matching funds to an administrative approval. This change would reduce the timeline from submission to payment from 17 days to 7 days as well as easing the requirement for the commission to hold additional meetings solely to approve funds requests.



City Clerk Department

## Agenda Item 7

April 11, 2019

To: Members, Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2020 Election Cycle

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In the November 2018 election cycle the public financing program was used for the first time. The lessons learned from the initial implementation of the public financing program and other campaign finance issues have surfaced the need for amendments to BERA and to the FCPC Regulations. City staff consulted with representatives from MapLight, the original sponsors of the Fair Elections Act of 2016, regarding the types of changes staff identified. In these discussions, many of the amendments identified by staff were similar to the issues raised by MapLight and campaign committees that provided feedback on the program. These proposed amendments are summarized below.

Pursuant to Berkeley Municipal Code Section 2.12.051, the Berkeley Election Reform Act 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.

The 2020 election cycle is already underway. A candidate for Mayor or City Council in the 2020 election could start participation in public financing at any time. The goal for staff is to have the amendments adopted by both the FCPC and the Council by November 2019, which is before most campaign committees will form for the 2020 election.

The FCPC Regulations may be adopted by a majority vote of the Commission.

Proposed Amendments to BERA

**1. Violations prior to statement of participation**

In the 2018 election, multiple candidates experienced difficulty with starting up their committee and opening their checking account. The \$50 limit resulted in several inadvertent minor violations of the public financing regulations and actually resulted in one candidate being barred from participation in the program. Many candidates start by opening a checking account first, and some banks require a minimum initial deposit of \$100.

Proposed Remedy: Amend BERA 2.12.500.A.6 to allow candidates to contribute up to \$250 to their own campaign committee with certain limitations.

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

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 or as a monetary or non-monetary contribution of \$250 or less. If a participating candidate receives matching funds for a qualified contribution to his or her own committee, the participating candidate shall not exceed the \$50 contribution limit. 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);

**2. Remove requirement for FCPC to approve matching funds – administrative process and approval only.**

This change is subject to the desire of the FCPC. Moving to administrative approval would further the purposes of the public financing program by reducing the timeline from submission to payment from 17 days to 7 days.

No payments were denied by the commission in 2018. The review and verification of the hundreds of individual contributions that are eligible for matching funds is a time-consuming administrative process that would be infeasible for the commission to perform. Faster distribution of matching funds will benefit participating candidates. This change will also eliminate the occurrence of delayed payments due the cancellation of a FCPC meeting, as was the case in November 2018 during the wildfires.

Staff would process matching requests and distribute the funds according to the distribution schedule adopted by the FCPC and continue to provide the

commission with detailed summaries of all public financing requests and itemized reports of the matching funds submissions and their status. The Commission would maintain its authority to approve candidates' initial applications to participate in the public financing program.

In addition, if additional distribution deadlines are added in August and September as requested by campaign committees, additional meetings must be added in these months if FCPC approval is retained.

Proposed Remedy: Amend Section 2.12.505, Paragraphs D, E, and G

D. The ~~Commission-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 ~~Commission-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.

G. The ~~Commission-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.

### **3. Change 2.12.530.B.2 to clarify the prohibited uses of public matching funds.**

The changes to this section arise, in part, from a difficult question from a candidate regarding a mailer that they planned to send that included voting recommendations on other candidates and measures. The proposed "direct personal benefit" language is from FPPC State Manual 2, and the reference to BERA's definition of an independent expenditure is for additional clarification.

Proposed Remedy: Amend section 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) The candidate's personal support or compensation to the candidate or the candidate's family;~~
    - ba) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
    - eb) 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;
    - ec) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
    - ed) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;
    - fe) 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](#).

#### 4. Timing of requests submitted, especially at qualifying period deadline.

When a candidate participates in the public financing program, a sentence is added to his or her candidate statement (published in ballot materials) indicating this participation. In 2018, a candidate submitted an application for participation by the qualification deadline and thus had the sentence stating their participation included with their candidate statement. However, they subsequently decided not to participate in program and did not submit an initial qualifying request. By the time the City was aware that the candidate would not participate, it was too late to remove the participation sentence from their candidate statement.

Proposed Remedy: Amend BERA 2.12.500.A.3

- 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).

## 5. Amendment to prohibit all loans.

This change is needed for consistency and clarity. The definition of a Qualified Contribution excludes loans, however, no similar restriction is made on a contribution from a non-resident.

Proposed Remedy: Add BERA 2.12.500.A.9

9) Not accept loans from any source.

## 6. Discretion for FCPC on Disqualifying Violations

Related to the issues that were raised regarding startup problems and inadvertent, minor disqualifying actions by campaign committees, it may be warranted to grant the FCPC some discretion in enforcement of certain Public Financing requirements.

Proposed Remedy: Add Paragraph (9) to Section 2.12.500 (Eligibility for Fair Elections campaign funding)

(9) The Commission has the authority to approve a candidate's application for public financing, despite violations by the candidate related to participation and qualification in the public financing program, if said violations are 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.

Proposed Amendments for the FCPC Regulations

**1. Regulation for 2.12.555 to define “substantial violation”**

The public financing law directs that a regulation be adopted. The current wording of the code is below.

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

The proposed wording for the regulation is based on the factors used by the state FPPC in determining the amounts of fines in enforcement cases.

Regulation R2.12.555

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 was deliberate, negligent, or inadvertent
4. whether the Respondent demonstrated good faith in consulting with Commission staff
5. whether there was a pattern of violations

**2. Filing Requirement for Late Contribution Reports**

Modify the existing regulation to conform with state law. This will simplify the requirement and also increase the speed of public disclosure in the final days before the election.

*R2.12.295 Late Contributions*

(a) A late contribution means any contribution as defined in BMC Section 2.12.145 and received before the election at which the candidate or measure for which the contribution is intended is to be voted on.

(b) For the purposes of this section, if the deadline to file the late contribution report falls on a Saturday, Sunday or holiday, except for the final Saturday and Sunday before Election Day, a report received by the City Clerk no later than the next business day shall be deemed timely filed.

### 3. Redesignation of Campaign Funds

This amendment to the regulation is needed to make the timing for redesignation of a campaign committee consistent with state law. There is no compelling public interest served by the earlier redesignation deadline in Regulation R2.12.250 and the December 31 deadline is often a difficult deadline for committees to meet and does not allow for adequate time to determine future plans for the candidate and committee.

#### *R2.12.250 Redesignation of Campaign Funds for Future Elections*

##### (a) Defeated Candidates, Individuals Leaving Office

A defeated candidate or individual leaving office and planning to redesignate campaign funds for a future election shall do so before such funds become surplus. Funds will become surplus ~~at the end of the post-election reporting period following the defeat of a candidate for elective office, or upon an individual leaving office, upon the 90th day after leaving an elective office, or the 90th day following the end of the postelection reporting period following the defeat of a candidate for elective office,~~ whichever occurs last. (Govt. Code Section 89519[a])

##### (b) Redesignation to the Same Elective Office

The treasurer shall certify that to his or her knowledge there remains no further outstanding indebtedness in connection with the campaign. A defeated candidate or individual leaving office shall redesignate campaign funds for a future election to the same elective office by filing an amended State Form No. 410 (Statement of Organization) to include the new election year, and an initial State Form No. 501 (Candidate Intention). The defeated candidate or individual leaving office shall also file a statement with the Commission that campaign account funds have been redesignated.

##### (c) Redesignation to a Different Elective Office

The treasurer shall certify that to his or her knowledge there remains no further outstanding indebtedness in connection with the campaign. A defeated candidate or individual leaving office shall redesignate campaign funds for a future election to a different elective office by closing the existing campaign bank account and opening a new campaign bank account for the new elective office, and shall file initial State Forms No. 410 and 501.

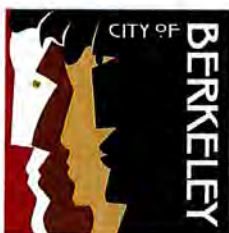
### 4. More Frequent Distributions in August and September

In response to feedback from campaign committees, the need for additional distribution deadlines in August and September appears to be justified. Increasing the number of distributions in August and September will provide campaign committees with adequate funds for campaign expenses during a critical phase of the campaign. Adding one additional submission and payment cycle in each month is supported by City staff. If



the FCPC retains approval authority, additional commission meetings will need to be held in August and September.

Adding distribution deadlines does not require a regulation change or BERA amendment, but is mentioned here as it is a significant change. The FCPC may add the distribution deadlines when the public financing calendar is adopted for 2020.



Fair Campaign Practices Commission

**DATE:** April 11, 2019

**TO:** FAIR CAMPAIGN PRACTICES COMMISSION

**FROM:** MARIAM MORLEY, Renne Public Law Group,  
on behalf of Farimah Brown, City Attorney<sup>1</sup>

**SUBJECT:** Staff Report Regarding Request to Reconsider FCPC's June 21, 2018 Dismissal of the Complaint of Alleged Violations of BERA by Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, & Tregub, Soto-Vigil & Simon-Weisberg for Rent Board 2016 submitted by Z. RunningWolf and Request to Reconsider FCPC's August 16, 2018 Approval of the Stipulation Resolving *In the Matter of Arreguin for Mayor 2016*

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## Introduction

On October 18, 2018 Mr. RunningWolf sent an email to the FCPC "lodging a complaint over the dismissal" of his complaint, originally filed on January 18, 2018, against *Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, & Tregub, Soto-Vigil & Simon-Weisberg for Rent Board 2016* ("the RunningWolf Complaint"). (A copy of Mr. RunningWolf's 10/18/2018 email is attached to this memorandum as **Attachment A**.)

On November 8, 2018 Thomas Hodgman, identifying himself as the RunningWolf Campaign Manager, sent an email to the former Commission Secretary requesting that the Commission reopen both the RunningWolf Complaint and a second matter, *In the Matter of Arreguin 2016* ("the Arreguin Matter"). (A copy of Mr. Hodgman's 11/8/2018 email is attached to this memorandum as **Attachment B**.) Included in Mr. Hodgman's November 8 email was a document entitled Declaration to Berkeley's Fair Campaign

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<sup>1</sup> Because Deputy City Attorney Emma Soichet, the new Secretary to the FCPC, was a member of the FCPC when it made the decisions that are the subject of these requests for reconsideration, the City Attorney, in an abundance of caution and to avoid confusion, has asked Renne Public Law Group to assist the FCPC with these matters.

Practices Commission Regarding Its Handling of Election Violations in Berkeley's 2016 Mayoral Election ("the Declaration"), which argues that the Commission acted improperly when it dismissed the RunningWolf Complaint and when it approved the stipulation resolving the Arreguin Matter. (A copy of the Declaration is attached to this memorandum as **Attachment C.**)

The RunningWolf Complaint alleged that independent expenditures of \$22,888.08 made by Berkeley Working Families in support of candidate Arreguin constituted contributions to the candidate-controlled committee *Arreguin for Mayor 2016* and therefore violated BERA's \$250 contribution limit. (Berkeley Municipal Code ("BMC") Section 2.12.415.) It also alleged that the expenditures violated the prohibition on labor union contributions to a candidate or committee supporting a candidate. (BMC Section 2.12.440.) (A copy of the June 21, 2018 staff report on the RunningWolf Complaint, with attachments, is attached to this memorandum as **Attachment D.**) The Arreguin Matter involved eighteen instances in which the campaign treasurer for *Arreguin for Mayor 2016*, who had already made a \$250 monetary contribution to the campaign, made campaign expenditures from her personal funds that were not reimbursed within 45-days from the dates of the expenditures. Therefore, each expenditure became a nonmonetary contribution to the campaign that exceeded the \$250 contribution cap of BMC Section 2.12.415. (See Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations Section 18526(d). (A copy of the August 16, 2018 staff report on the proposed stipulation resolving the Arreguin Matter, with attachments, is attached to this memorandum as **Attachment E.**)

## Discussion

The Procedures for the Fair Campaign Practices Commission govern requests to reconsider actions taken by the Commission. Section VII.G of those Procedures provides as follows:

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 the Commission action, provided that the requesting party also shows good cause why such evidence could not have been presented earlier.

Thus, a request for reconsideration of the dismissal of a complaint or the approval of a stipulated agreement must: 1) be brought with 60 days of the dismissal or approval; and 2) be supported by new evidence that could not have been presented earlier. These two requests for reconsideration meet neither of these requirements.

First, both of the requests for reconsideration are untimely under Section VII.G because neither was made within sixty days of the challenged action. The Commission dismissed the RunningWolf Complaint on June 21, 2018. (A copy of the minutes of the June 21 meeting is attached to this memorandum as **Attachment F**.) The deadline for filing a request to reconsider that decision was August 20, 2018. At the earliest, Mr. RunningWolf made his request for reconsideration of the dismissal in his October 18, 2018 email to the Commission.

The Commission adopted the stipulation resolving the Arreguin Matter on August 16, 2018. (A copy of the minutes of the Commission's August 16 meeting is attached to this memorandum as **Attachment G**.) The deadline for filing a request to reconsider that action was October 15, 2018. Mr. Hodgman filed his request to reconsider that action on behalf of the RunningWolf campaign in his November 8, 2018 email.

Second, the Declaration presented in support of the requests for reconsideration does not assert that there is new evidence relevant to either the RunningWolf Complaint or the Arreguin Matter, and consequently does not show good cause why any such evidence could not have been submitted earlier. Instead, the Declaration argues that reconsideration is necessary due to "un-addressed conflicts of interest, [lack of] impartiality in procedure, a failure to uphold the purpose and statutes of BERA, and a lack of legally necessary investigations." (Declaration at p.2)

The Declaration contends that Chairperson Metzger should not have participated in either of these matters because, as Mayor Arreguin's appointee to the Commission, he had a conflict of interest. It also argues that the Commission did not conduct adequate investigations in these matters. With respect to the Arreguin Matter, the Declaration asserts that the Commission deferred to Mayor Arreguin by repeatedly delaying the proceedings for his benefit. It complains that the penalty imposed by stipulation in the Arreguin Matter was too lenient in light of the fact that: 1) the City Attorney's Office had previously warned the Arreguin campaign that campaign expenditures made from personal funds would become campaign contributions if not timely reimbursed; 2) failure to make timely reimbursement was a "structural consequence" of the campaign's management of its finances; and 3) the number of violations (18) and their scope (\$3,388.82) was unprecedented. With respect to the Running Wolf Complaint, the Declaration argues that dismissal was improper because the independent expenditures made by Berkeley Working Families were, in fact, contributions made by a labor union in violation of BMC Section 2.12.440.

These arguments reflect disagreement with the manner in which the Commission conducts its investigations and deliberations, the Commission's interpretation of relevant law, and the Commission's exercise of discretion in determining appropriate penalties. These arguments also question the Commission's commitment to vigorous enforcement of BERA. But these arguments do not constitute an offer of newly discovered, admissible evidence that could serve as a ground for reconsidering the Commission's decisions. In fact, the Declaration states at several points that "these

facts” were all brought to the Commission’s attention during the course of the proceedings at issue. (Declaration at p. 5.)

**Attachments**

- A. Copy of Mr. RunningWolf’s 10/18/2018 email to FCPC.
- B. Copy of Mr. Hodgman’s 11/8/2018 email to former FCPC Secretary Jessica Mar.
- C. Copy of Declaration to Berkeley’s Fair Campaign Practices Commission Regarding Its Handling of Election Violations in Berkeley’s 2016 Mayoral Election submitted by Mr. Hodgman.
- D. Copy of the June 21, 2018 staff report regarding the RunningWolf Complaint.
- E. Copy of the August 16, 2018 staff report regarding stipulation resolving the Arreguin Matter.
- F. Copy of the minutes of the FCPC’s Meeting of June 21, 2018.
- G. Copy of the minutes of the FCPC’s Meeting of August 16, 2018.

Attachment A -  
Agenda Item 8

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**From:** Runningwolf Campaign <runningwolf4mayor@gmail.com>  
**Sent:** Thursday, October 18, 2018 5:20 PM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Subject:** Official Protest over dismissal of \$8400 SEIU/Arreguin Charge

To all members of the FCPC whom it concerns,

I am officially lodging a complaint over the dismissal of the \$8400 illegal donation by SEIU to Arreguin's PAC as it was done without any investigation conducted, and no reason was given for the dismissal when announced orally let alone in writing.

Sincerely,  
Zachary RunningWolf  
Indigenous Elder of the Blackfeet Nation and Ohlone Bay Area

Attachment B -  
Agenda Item 8

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**From:** Runningwolf Campaign <runningwolf4mayor@gmail.com>  
**Sent:** Tuesday, January 08, 2019 3:39 PM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Subject:** Fwd: Declaration to Berkeley's Fair Campaign Practices Commission Regarding Its Handling of Election Violations in Berkeley's 2016 Mayoral Election  
**Attachments:** FCPC 11-15-18 Declaration.docx

Dear FCPC Representative,

I am re-forwarding this communication to you now more than 7 days ahead of the upcoming meeting, which shows that I have been trying for several months now to ensure that the attached declaration is included in the packet and on the Agenda for the FCPC to address, as per the request of the FCPC. There are several important legal issues raised which concern whether the FCPC has fulfilled its statutory obligations to uphold BERA and enforce Berkeley's Election Law with regard to the 18 campaign finance convictions against Jesse Arreguin.

Please let me know if you have any questions. I just left an message with Ms. Brown's voice mail as I have not received any responses by email for several months now from the FCPC concerning this matter.

Thanks,  
Thomas Hodgman  
RunningWolf Campaign Manager

----- Forwarded message -----

**From:** Runningwolf Campaign <runningwolf4mayor@gmail.com>  
**Date:** Fri, Nov 9, 2018 at 6:17 PM  
**Subject:** Fwd: Declaration to Berkeley's Fair Campaign Practices Commission Regarding Its Handling of Election Violations in Berkeley's 2016 Mayoral Election  
**To:** FCPC (Fair Campaign Practices Commission) <FCPC@cityofberkeley.info>

Please be advised that I am forwarding to you below the email I sent to Jessica Mar yesterday, as I had been in communication with her for several months concerning the aforementioned subjects in her position as Secretary of the FCPC, and had previously sent material to her to ensure its inclusion in the packet.

It was not until today when I sent a second follow-up email - even though I had emailed Ms. Mar yesterday - that I received an automatic email informing me that she was no longer with the City of Berkeley. And thus, I presume, she is no longer the Secretary of the FCPC. I had no way of knowing this, as even still the FCPC's website still lists Ms. Mar as its Secretary.

The submission in question (attached to this forwarded email) was emailed more than 7 days in advance of this month's meeting, within the required time frame. Since I had no way of knowing Ms. Mar was no longer with the FCPC, and the FCPC specifically requested and invited the submission of this document submitted on Zachary RunningWolf's behalf, the packet should be updated to include this submission and include an item on the agenda to deliberate and take action on the issues raised in its contents. Releasing revised packets has already been done for almost half of the FCPC's uploads this year, and is clearly warranted in this case due to all of the above reasons and the importance of what is discussed in the declaration, which concerns the integrity of the FCPC as a whole and its legal duty to uphold BERA.

Please inform me of any updates concerning this material and/or the inclusion of this material in the packet and on the agenda at your earliest convenience.

Thanks,  
Thomas Hodgman  
RunningWolf Campaign Manager

----- Forwarded message -----

From: **Runningwolf Campaign** <[runningwolf4mayor@gmail.com](mailto:runningwolf4mayor@gmail.com)>

Date: Thu, Nov 8, 2018 at 2:39 PM

Subject: Declaration to Berkeley's Fair Campaign Practices Commission Regarding Its Handling of Election Violations in Berkeley's 2016 Mayoral Election

To: Mar, Jessica E. <[JMar@cityofberkeley.info](mailto:JMar@cityofberkeley.info)>

Dear Ms. Mar,

It is my understanding that at last month's FCPC meeting, Zachary RunningWolf was invited to submit a statement to the FCPC regarding the decisions reached and procedures followed in the FCPC's investigation of Jesse Arreguin's 19 campaign finance violations (the 18 violations totaling \$3,388 and the SEIU violation totaling over \$8,000).

On behalf of Zachary RunningWolf's campaign, I have attached a document to this email detailing the various issues which require addressing concerning the aforementioned decisions reached and procedures followed. This is not a new complaint, but a reason that both of the prior complaints need to be re-opened as neither the decisions reached nor the procedures followed were in accordance with BERA or the facts at hand.

This needs to be addressed as soon as possible and placed on this month's agenda under both of the items in question. Both cases must be immediately re-opened and the facts presented therein as well as the statutes of BERA must be adequately addressed and incorporated into revised decisions which do not neglect the FCPC's duty to uphold BERA.

If this result is not speedily forthcoming, we will be pursuing a judicial review of the FCPC's handling of both cases as well as the decision to appoint Dean Metzger as the Chair of the Commission despite his refusal to recuse himself due to his conflict of interest. Please advise me as to how I can initiate such a judicial review if this material is not included in this month's agenda or if the FCPC does not take sufficient action to address all of the legal issues raised therein.

Sincerely,  
Thomas Hodgman  
RunningWolf Campaign Manager



# **DECLARATION TO BERKELEY'S FAIR CAMPAIGN PRACTICES COMMISSION REGARDING ITS HANDLING OF ELECTION VIOLATIONS IN BERKELEY'S 2016 MAYORAL ELECTION**

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## 1. Introduction

It has now been one year since the FCPC determined that Jesse Arreguín committed 18 campaign finance violations during Berkeley's 2016 Mayoral Race. In the past year, the FCPC has unfortunately failed to uphold its duty under BERA to ensure Berkeley's Elections are conducted fairly and in accordance with the law.

The numerous issues which have arisen include un-addressed conflicts of interest, impartiality in procedure, a failure to uphold the purpose and statutes of BERA, and a lack of legally necessary investigations. These issues are compounded through their effect of allowing unprecedented violations of Berkeley's election laws.

All that is required is for this Commission to operate impartially and carry out its obligation to uphold BERA. Failing to do so would constitute both the obstruction of justice and a gross neglect of duty and will become subject to judicial review.

## 2. Improper Procedural Conduct of FCPC

Since the FCPC's *unanimous determination* that 18 violations had been committed, the committee has prioritized deference to a *unanimously determined serial violator* of BERA (Jesse Arreguín) over its duty to the public and its own integrity as a commission. It was not until the July 2018 FCPC meeting – after four additional meetings had already taken place since November 2017's – that the public was informed that the FCPC's proceedings to determine the penalty for the aforementioned 18 violations were delayed and scheduled at the request of Arreguín.

### A. Deference to Arreguín Prioritized over Public Service

Unlike Jesse Arreguín, less wealthy and institutionally privileged members of the public repeatedly attended every single FCPC meeting from November through July, presenting reasons for why the seriousness of Arreguín's serial violations necessitated his removal from office, while highlighting the provisions of BERA which show this is not only within the FCPC's authority, but also a requirement for it to uphold its duty.

Despite this demonstrated concern for the integrity of Berkeley's elections shown by these members of the public, the FCPC repeatedly delayed the proceedings month after month, without ever divulging ahead of time to the public when they would take place or why they were being delayed. Furthermore, despite having created an additional six months through these delays at the request of Arreguín, the FCPC never found it necessary to even address the claims brought by the public concerning BERA and Arreguín's violations in its determination, let alone conduct an investigation to determine the truth of these claims.

In so doing, the FCPC has not upheld its stated purpose in BERA, to

- a. Ensure "vigorous enforcement" of electoral law, as the full strength of enforcement necessitated the conduct of investigations which never happened (2.12.015)
- b. Fulfill BERA's purpose of ensuring that "local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth." (2.12.010)  
This was also seen in the additional time given to Arreguín's Campaign Manager

Jacquelyn McCormick but not Complainant Zachary RunningWolf when speaking on the items in question.

**B. Deference to Arreguín Prioritized over the Commission's Integrity**

To make matters worse, the FCPC fundamentally compromised its integrity by showing this deference to Jesse Arreguín. As the FCPC was informed by members of the public on numerous occasions, Jesse Arreguín was specifically warned by Deputy City Attorney Savith Iyengar about the issue of lapsed campaign purchases becoming illegal donations in 2016, immediately prior to his committing this exact crime eighteen times.[1] He had already repeatedly committed the same offense in 2014, meaning that he had no excuse for not having ensured that these laws were not broken again – let alone eighteen more times.

Given these circumstances, the FCPC's deference to Arreguín is doubly problematic because he acted in 2016 – with full knowledge that failing to reimburse purchases within 45 days broke election laws – without any regard for the integrity of election law. These facts were repeatedly brought to the FCPC's attention, yet received no consideration in its reports and prompted no additional investigation. Despite the clear evidence that Arreguín did not respect the integrity of BERA – which it is the purpose of the FCPC to uphold – the FCPC nevertheless allowed Arreguín himself to determine the timing (and thus scope) of its investigation into Arreguín.

**C. Unresolved Conflict of Interest**

And finally, to make matters even worse, Arreguín's appointee to the Commission - Dean Metzger – served as the FCPC's chair for the majority of the time in question. This conflict of interest is much more severe than the one for which Commissioner Harper excused himself for the complaint brought forward by Zachary RunningWolf, as Metzger literally owed his position on the FCPC to the very person he was supposed to direct the investigation into, *and* because he was acting as chair. This would be like allowing Donald Trump to appoint his own, hand-picked special investigator to determine whether the election interference charges against him were valid.

For all of these reasons, in its procedural handling of Arreguín's case, the FCPC has failed to uphold its duty to enforce BERA and has acted counter to the explicitly stated purpose which the Commission's legal duty is to uphold.

**3. Failure to uphold BERA For 18 Convictions**

Section 2 outlined the reasons the FCPC failed to uphold BERA procedurally through its consistent deference to Jesse Arreguín, compromising the process by which the FCPC is supposed to come up with an adequate remedy for the harm done by the violations in question. In this Section, the evidence that the conclusion reached by the FCPC did not meet the legally established duty of the FCPC as stipulated under BERA is presented.

**A. No Grounds for Leniency**

The FCPC's decision to proceed as though Arreguín's claim to have committed no intentional violation was self-evidently true was made without any investigation, recognition, or discussion of the evidence to the contrary which was repeatedly presented to the commission, that

- a. Arreguín was not only warned shortly ahead of time by the Deputy City Attorney not to commit the precise violation he went on to commit so eighteen times, he had already committed that very same violation in 2014 during his campaign as a candidate for City Council.[1] Yet these facts were never referenced in any report or taken into consideration in the FCPC's process for determining the appropriate violation.
- b. Furthermore, Arreguín's inability to repay McCormick's campaign purchases within the legally allowable timeframe was not inadvertent, but a structural consequence of his management of campaign finances. As the financial documents submitted by his campaign (and in the FCPC's possession) establish, Arreguín ended his campaign \$10,000 in debt to a political consultancy firm he hired to help run his campaign. As the campaign needed to pay off this debt, the records also show that this was prioritized (and indeed enabled) by not reimbursing McCormick in the legally allowed timeframe.

There is an additional reason to not grant Jesse Arreguín undeserved leniency – he should be held to the standard he campaigned on. During his Mayoral Campaign, Jesse Arreguín loudly championed the “progressive” character of his platform, and in particular displayed the endorsement he received from Bernie Sanders all over the city and at the top of his website. Yet Bernie Sanders identified campaign finance reform as the single most important issue facing the electorate today. In Sanders' words: “A few wealthy individuals and corporations have bought up our private sector and now they're buying up the government. Campaign finance reform is the most important issue facing us today, because it impacts all the others.”

It is thus extremely ironic that Jesse Arreguín's campaign manager Jacquelyn McCormick - who made the illegal contributions in question - is a former Vice President for the Bank of America. She is now one of the most influential members of Arreguín's administration, and was put in charge of authoring the administration's white paper on homeless policy - despite living in a mansion in the hills, and having no prior experience with homeless policy or social work. The illegal contributions made by McCormick totaled more than the entire sum of money raised by several less wealthy candidates (including complainant Zachary RunningWolf), clearly demonstrating the unfair advantage which Arreguín's violations gave him in the 2016 Mayoral Election.

For all of the above reasons, this case is a textbook example in which leniency is NOT justified – as what has transpired is in fact the precise reason that BERA was written into law, and harms have been committed which an extremely lenient penalty has in no way remedied. As stipulated in BERA 2.12.010:

“A. Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.

B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.”

B. No Justification for Minor Penalty

The FCPC's decision to penalize Jesse Arreguín with nothing more than a relatively minor fine and a “commitment to avoid any such violations in the future” was not justified or explicated in terms of the FCPC's duty to uphold BERA, but instead relied on demonstrably false premises:

- a. No precedent – Although precedent was appealed to in this case, the violations at stake were both of unprecedented quantity (18) and scope (\$3,388).
- b. Repeat offender – In the 2014 city council race, Jesse Arreguín repeatedly failed to reimburse people in a timely manner, and was thus warned by Deputy City Attorney Savith Iyengar to avoid any such violations in the 2016 race.[1] Had Jesse not been warned, seeking a commitment to avoid such violations in the future might have made sense. But seeing as he was *already* asked to “acknowledge... that a violation had occurred and commit... to avoid any such violations in the future” – this clause in the FCPC’s penalty was insufficient, redundant, and inapplicable to the facts of the case.

Thus, the FCPC’s designated penalty of a fine and a warning have failed to uphold BERA’s requirement – **defined as its very purpose** in 2.12.015 – that it should be “vigorously enforced.” *Vigorous* enforcement would require a much more serious penalty, given the unprecedented quality and scope of the violations and the warning *already given* to the candidate due to his past history of failing to reimburse contributors in a timely manner.

Once again, all of these facts were brought to the committee’s attention, and they were never contested, investigated, or even deliberated upon. So too was the “vigorous enforcement” clause’s centrality to the very purpose of BERA highlighted by the public for the Committee’s benefit. The FCPC’s minor penalty given is thus entirely without justification, as it is not rooted in BERA, ignores the facts of the case, and required the sustained and repeated neglect of all of these facts in order to be formulated as such.

Therefore, the FCPC’s enforcement was not “vigorous” i.e. “powerful in action or effect,” but entirely ineffectual. The FCPC is setting the precedent that you can repeatedly violate BERA, be warned in the next election not to do it again, go on to do it 18 times, manage your campaign finances to be \$10,000 in debt and rely on thousands of dollars in illegal campaign funds to keep your campaign afloat, appoint that donor to be your most important assistant, and get away with it with no more than a warning and a fine. **The FCPC’s decision – as it currently stands – is functionally equivalent to letting Arreguín & McCormick buy the election.**

#### C. Purpose of BERA Grossly Neglected

Yet the very purpose of BERA was to ensure that excessive wealth would not influence the outcome of an election or the subsequent administration of the elected government and the policies it adopts. As mentioned in the previous sections, both 2.12.010 and 2.12.015 outline that this was the very reason BERA was adopted. While a monetary fine might be appropriate for certain logistical violations such as failing to file a statement on time or not doing so electronically, it is uniquely unsuited for dealing with the prohibition on campaign finance violations. It is tantamount to setting a price at which excess wealth is allowed to buy an election, and decreeing that the solution to excessive wealth in politics is requiring politicians to be wealthy enough to pay a fine. In other words, the monetary penalty given does not just fail to uphold BERA’s purpose of “vigorously enforcing” election law, it compounds the problem by reinforcing the unfair influence created by excessive money in politics, treating the problem as though it were the solution.

Despite being alerted by the public of all of these facts surrounding Arreguín’s case as well as the relevant passages of BERA pertaining to the FCPC’s duty to vigorously enforce election law, month after

month the FCPC neglected its duty to investigate the evidence and explore the alternative remedies presented to it which would have enabled it to meet its duty under BERA. In particular, the penalty which is stipulated in 2.12.470 is that:

“If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this chapter, the office of such candidate shall be forfeited and such office shall become vacant immediately thereupon”

Logically, and especially given the number and extent of violations in question combined with a warning having already been issued, such a penalty is the only way of remedying the unfair influence excessive wealth and illegal donations had on 2016 Mayoral campaign which was discussed above. Such a final judgment of conviction has already been reached by the FCPC, yet no justification for ignoring this passage has ever been cited by any member of the FCPC or referenced in any FCPC report. As long as Arreguín remains in office, the unfair and illegal influence which brought him to power continues to corrupt the City of Berkeley.

#### **4. Improper Dismissal of SEIU Violation**

In addition to the FCPC's failure to uphold BERA for the 18 convictions against Jesse Arreguín, the FCPC also improperly dismissed the SEIU violation brought against Jesse Arreguín, his Campaign, and the PAC supporting him.

##### **A. BERA Rejected for Citizens United**

When the FCPC first considered the \$8,300 SEIU violation brought forward against Arreguín et al in April, Vice Chair Emma Soichet verbally admitted that to dismiss the violation would be tantamount to solidifying a loophole within Berkeley's election laws, and cited the Supreme Court's decision in *Citizens United* as justification for the FCPC to legitimize this loophole rather than remedy the problems created by its existence. The importance of this admission only increased as Commissioner Soichet was the Acting Chair when the FCPC voted to dismiss the complaint in June. Yet in rejecting BERA for *Citizens United*, the FCPC once again failed to uphold its legal duty on several counts:

- a. BERA mandates Liberal Construction – BERA is not silent on how its laws should be interpreted. As the Commission was notified on several occasions by the public, Sec 2.12.020 requires that “This chapter should be liberally construed to accomplish its purposes.” And these purposes, as described in Sec 2.12.010 and 2.12.015, are to prevent the “disproportionate influence” enabled by large contributions from wealthy donors, such as the SEIU. This means that the Commission is required to employ interpretative flexibility to uphold the purpose of BERA, and thus it is the Commission's duty to look for ways to remedy loopholes which undermine BERA's purpose rather than implicitly support violators' exploitation of these loopholes.
- b. The FCPC's duty is to uphold BERA – As stated in Sec 2.12.010 and 2.12.015, BERA was enacted by the people of Berkeley – in whose name and for whose benefit the FCPC operates – to prevent excessive wealth (especially through campaign donations) from giving individuals or organizations disproportionate influence over elections and elected officials. It was explicitly enacted because of the inadequacy of local laws to this effect at the time, and as the Commission has recognized the *Citizens United* ruling is comparably inadequate in being precisely the kind of law which BERA was enacted to prevent. Throughout U.S. history, local

courts and governments have interpreted objectionable Supreme Court rulings narrowly[2][3], which shows that the FCPC's decision to defer to *Citizens United* in allowing this loophole is a choice, and one which runs directly counter to its legal duty to uphold BERA.

- c. Deference to Arreguín Privileged above BERA – As in the above stated examples, the FCPC has effectively chosen to fight Arreguín's legal battles for him, by straying from its legal duty to uphold BERA by interpreting *Citizens United* as allowing Arreguín to benefit from more than \$8,000 in prohibited donations through an admitted loophole the FCPC is obligated to contest. In so doing, the FCPC is acting counter to its purpose to serve as a check on excessive wealth in the political process, and unjustly shielding Arreguín from legal and ethical accountability.

#### B. No Investigation Conducted

Despite having five months from the time of its initial receipt of RunningWolf's complaint against Arreguín et al prior to its February Meeting and the June Meeting at which the complaint was dismissed, the FCPC never conducted an investigation into the facts of the case to determine whether Arreguín's defense was valid or if he was telling the truth about the absence of coordination. This is the case, despite the fact that:

- a. The FCPC had evidence of coordination – Both Arreguín's campaign and the PAC receiving the SEIU's \$8,300 donation endorsed one of Arreguín's rival candidates for mayor, Kriss Worthington. In fact, Arreguín went so far as to publicly suggest, in debates and on his campaign's promotional materials that his supporters vote for Worthington as well. Furthermore, both Arreguín's campaign and the PAC endorsed the "CALI" Rent Board Slate, consisting of four candidates in all. Altogether, this means that 6 of the 8 candidates endorsed by the PAC were also supported by Arreguín's campaign, as a part of its campaign strategy. These political alignments do not appear out of nowhere, but reflect a decision amongst each party (the CALI slate to run together, Arreguín & Worthington to support each other, the PAC to endorse them all) to support one another as part of a larger political strategy. This is more than enough evidence to warrant a deeper investigation of coordination.
- b. Deference to Arreguín privileged above BERA - Despite being obligated to investigate possible violations under Sections 2.12.200 and 2.12.225 of BERA, the FCPC did not take any measures to investigate whether Arreguín's denial of coordination was in fact an accurate representation of what transpired. Despite having the authority and duty to call for the testimony of all the parties involved (2.12.227) – including at a minimum Kriss Worthington, the CALI slate, and representatives of Arreguín's PAC, Campaign, and the SEIU – the FCPC instead took Arreguín's truthfulness for granted, without any evidence that his assertion was actually true. Once again, in so doing the FCPC failed to conduct its investigatory duties in compliance with its legal duty to "vigorously enforce" (2.12.015) BERA, which is legally defined as central to its very purpose.

#### C. Prohibition of BERA Explicitly Rejected

Finally, even without reference to whether *Citizens United* creates a loophole and the FCPC's obligation to investigate possible violations in compliance with its duty to ensure "vigorous enforcement," the FCPC's dismissal of this violation explicitly contradicted BERA. Once again, the FCPC

was alerted to this statute of BERA and yet no reference to the relevant clause or definitions was made at all in its decision to dismiss the violation.

Section 2.12.440 – which prohibits contributions from Labor Unions such as SEIU, does *NOT* specify that “independent expenditures” are exempt from its prohibition – which was the key argument made by both Arreguín and the FCPC Secretary. The statute states that:

**No** proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or **labor union shall make a contribution to any candidate or committee (supporting or opposing any candidate) directly or indirectly**

*Berkeley Working Families* is a Political Action **Committee**; even Arreguín’s argument recognized that it is a **Committee**; so too does the FCPC’s manual define an “independent expenditure committee” as a category of **Committee** on page 5. [4] And again, on page 30, the FCPC manual defines a Committee as such:

Committee: Any person or combination of persons including ongoing membership organizations, which receives contributions or makes expenditures of \$250 or more in a calendar year for the purpose of influencing votes in support of or in opposition to any ballot measure or candidate for Berkeley office

As *Berkeley Working Families* is a combination of persons which received contributions and made expenditures of \$250 or more... for the purpose of influencing votes in support of any Candidate for Berkeley office, it clearly qualifies as a **Committee**. This means that under Section 2.12.440, the SEIU’s donation to the Berkeley Working Families Political Action **Committee** violated the statute prohibiting labor unions from making “a contribution to any... **Committee** (supporting or opposing any candidate). ***Berkeley Working Families* receipt of over \$8,000 from SEIU was thus ILLEGAL under BERA, Section 2.12.440.**

## 5. Conclusion

As the analysis and facts presented above demonstrate, the FCPC failed to uphold BERA in its procedures and findings with respect to all 19 violations brought against Jesse Arreguín, including 18 counts of conviction. Both cases must be immediately reopened, and corrective action must be taken to ensure that all of the relevant facts and statutes of BERA mentioned above are incorporated in revised decisions on these items, in order to fulfill the FCPC’s legal duty to *vigorously enforce* BERA’s statutes and prevent excessive wealth from corrupting the elections and governance of Berkeley.

## 6. Citations

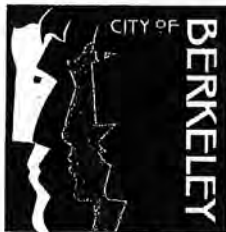
[1] <https://www.berkeleyside.com/2017/11/16/commission-investigate-whether-berkeley-mayor-violated-election-law>

[2] [https://www.washingtonpost.com/news/made-by-history/wp/2018/07/06/how-to-resist-bad-supreme-court-rulings/?noredirect=on&utm\\_term=.ac800e08988f](https://www.washingtonpost.com/news/made-by-history/wp/2018/07/06/how-to-resist-bad-supreme-court-rulings/?noredirect=on&utm_term=.ac800e08988f)

[3] <http://www.scotusblog.com/2016/10/legal-scholarship-highlight-when-lower-courts-dont-follow-supreme-court-precedent/>

[4] <https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/fcpcmanual0806%5B1%5D.pdf>





Fair Campaign Practices Commission

**DATE:** June 21, 2018

**TO:** FAIR CAMPAIGN PRACTICES COMMISSION

**FROM:** JESSICA MAR, Commission Secretary JM 6/14/18

**SUBJECT:** Staff Report regarding requested action related to complaint of alleged BERA Violations by Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016 submitted by Z. Running Wolf

At the Commission's April 19, 2018 meeting, staff presented a report regarding the alleged violations of the Berkeley Election Reform Act by *Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016* submitted by Z. Running Wolf. A copy of the report is attached and is also available on the Commission's website, the report starts on page 51 of the pdf:

[https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission on Fair Campaign Practices/4%2019%2018%20Packet.pdf](https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission%20on%20Fair%20Campaign%20Practices/4%2019%2018%20Packet.pdf)

The Commission took the following action on this item:

*Motion to invite the treasurer of Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016 to come to a future meeting of the Commission. (M/S/C: O'Donnell/Soichet; Ayes: Metzger, Callahan, McLean, O'Donnell, Soichet, Tsui; Noes: None; Abstain: Smith; Absent: None).*

On May 31, 2018, staff sent a letter to Peter Albert, the Treasurer/Principal Officer for *Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016*, extending the Commission's invitation to attend the June 21, 2018 meeting. An email was sent on June 13, 2018. A copy of the FCPC agenda and will be distributed to the respondents in this matter at the same time that it is distributed to the commissioners.

FCPC

June 21, 2018

Page 2 Re: Staff Report re requested action related to complaint of alleged BERA Violations  
by *Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families*

Attachments:

1. Staff report on alleged violations of the Berkeley Election Reform Act by *Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016* submitted by Z. Running Wolf, dated April 19, 2018.



**Fair Campaign Practices Commission**

**DATE:** April 19, 2018

**TO:** FAIR CAMPAIGN PRACTICES COMMISSION

**FROM:** JESSICA MAR, Commission Secretary/Deputy City Attorney JM 4/13/18

**SUBJECT:** Staff Report Regarding Complaint of Alleged BERA Violations by Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016 submitted by Zachary Running Wolf

**Introduction**

On January 18, 2018, the FCPC received a complaint submitted by Zachary Running Wolf (“Complainant”). Staff was informed that the Complainant planned to amend his complaint. The Complainant subsequently amended his complaint. The operative signed version of his revised complaint (“Complaint”) was submitted on April 2, 2018.<sup>1</sup> (Att. 1).

The Service Employee International Union (“SEIU”) Local 1021 donated money to the *Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016* (“*Berkeley Working Families Committee*”) in 2016. The *Berkeley Working Families Committee* made independent expenditures in support of candidate Jesse Arreguin in the 2016 mayoral race.

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<sup>1</sup> The Complainant submitted multiple versions of his complaint in order to make revisions necessary to comply with the filing requirements set forth in Section V of the FCPC Procedures. The complete version of the operative Complaint was submitted to the Secretary on April 2, 2018. Pursuant to Section V.B.1 of the FCPC Procedures, the Complaint was deemed received on January 18, 2018, the first regular Commission meeting following receipt of the complaint. The Complaint was noticed and agendized for the Commission’s next general meeting on January 18, 2018. The Commission held the matter until its next regular meeting on February 15, 2018. The Complainant subsequently submitted partially revised versions of his complaint on February 7, 2018 and March 29, 2018 and a signed version of a revised complaint April 2, 2018.

The Complaint alleges that the independent expenditures by *Berkeley Working Families Committee* made in support of candidate Arreguin constituted contributions to the candidate-controlled committee *Arreguin for Mayor 2016* and violated the Berkeley Election Reform Act by receiving contributions in excess of the \$250 contribution limit. See Berkeley Municipal Code (“BMC”) 2.12.415. The Complaint further alleges that this violated the prohibition on labor union contributions to a candidate or committee supporting any candidate. BMC § 2.12.440.

In accordance with Sections V.B. and D of the FCPC Procedures, the Secretary reviewed the documentation submitted with the Complaint, provided the Complaint and requested responses from Mr. Arreguin, *Arreguin for Mayor 2016*, and *Berkeley Working Families*, and reviewed the campaign disclosure statements of *Berkeley Working Families* leading up to the 2016 election.

Independent expenditures and contributions are distinct under California and Berkeley election law. Staff’s investigation determined that Complaint did not provide and the investigation did not uncover evidence that the expenditures made by *Berkeley Working Families Committee* were made in consultation, cooperation, or coordination with the Mr. Arreguin or *Arreguin for Mayor 2016*, and thus did not constitute contributions.

Because there is no evidence that the expenditures made by the committee *Berkeley Working Families*, were contributions to *Arreguin for Mayor 2016*, there is no evidence that they violated the contribution limit in BMC § 2.12.415 or the source prohibition on contributions in BMC § 2.12.440.

Pursuant to the Commission’s Procedures, after the presentation of the Secretary’s report, the Commission may move to dismiss the matter by majority vote and proceed no further, or make a determination that probable cause exists to believe that BERA has been violated. Procedures section VI.B.

Because there is not sufficient evidence of a violation of BERA, the Secretary recommends a dismissal of the Complaint pursuant to the FCPC Procedures section VI.B.1.

### **Summary of Evidence**

On October 13, 2016, the *Berkeley Working Families Committee*, sponsored by SEIU 1021, California Nurses Association, and UNITE HERE Local 2850, filed a Form 410. (Att. 2). It was formed primarily to support a number of Berkeley candidates, including Mr. Arreguin in the mayoral race. (Atts. 2, 3).

During the 2016 election cycle, *Berkeley Working Families* made \$22,888.08 in independent expenditures in support of Mr. Arreguin, which were disclosed on the committee’s Form 460s. (Atts. 3, 4 at p. 6).

In support of his allegations that these expenditures were contributions, the Complainant cites to a Berkeleyside article<sup>2</sup> that states “An independent expenditure group backed by one of

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<sup>2</sup> Frances Dinkelspiel, *As election nears, contributions and complaints mount*, Berkeleyside (Oct.

Berkeley's largest unions has poured \$8,112 into Jesse Arreguin's mayoral campaign, spending the funds on a website and literature that promote his views." (Att. 1). The Complaint also claims "political coordination between Arreguin, his campaign, and his PAC can be clearly seen through Arreguin's endorsement of the CALI rent board slate as well as Kriss Worthington (all of whom were supported by the PAC, which directly received money from SEIU." *Id.*

Mr. Arreguin has provided a letter to the Commission stating that "[t]he expenditures made by the *Berkeley Working Families Committee* were **not** made in "cooperation, consultation, coordination or in concert with" *Arreguin for Mayor 2016*. Neither I nor anyone working with or for my Committee ever discussed the creation of web content, mailers or any expenditures made by the *Berkeley Working Families Committee*. None of the expenditures or actions taken by this independent committee was made at my campaign's "request or suggestion". I had no knowledge of the actions of this committee and only became aware of these independent expenditures after they were made, either by visiting Facebook or receiving mailers in my mailbox." (Att. 5).

*Berkeley Working Families Committee* has provided a letter stating that it "made independent expenditures supporting Arreguin for Mayor 2016. These independent expenditures were made in compliance with BERA and state law, and were disclosed by Berkeley Working Families." (Att. 4).

## **Discussion**

### **1. Applicable Law: Distinction Between Independent Expenditures and Contributions**

Under BERA, an "independent expenditure" is defined as "an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election **but which is not made to or at the behest of the affected candidate or committee.**" BMC § 2.12.142.

A "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 in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. BMC § 2.12.100.

When a communication is coordinated with or "made at the behest of" the candidate or committee, the communication will qualify as a contribution. An expenditure is independent if it is not made in consultation, cooperation or coordination with the affected candidate or committee.

This is consistent with state law guidance, which states that an independent expenditure committee cannot coordinate the communication with the affected candidate or committee.

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26, 2016). Attached to Complaint (Att. 1).

When a communication is coordinated with or “made at the behest of” the candidate or committee, the communication will qualify as a contribution. See 2 Cal. Code of Regs. § 18225.7. (Att. 6).

Both the \$250 contribution limit in BMC § 2.12.415 and the prohibition on labor union contributions to a candidate or committee supporting any candidate in BMC § 2.12.440 apply to *contributions* and do not prohibit independent expenditures.

## 2. Analysis

The Complaint makes two assertions in support of its allegations that these expenditures were contributions to *Arreguin for Mayor 2016*: 1) a citation to the Berkeleyside article<sup>3</sup> that states “An independent expenditure group backed by one of Berkeley’s largest unions has poured \$8,112 into Jesse Arreguin’s mayoral campaign, spending the funds on a website and literature that promote his views”; and 2) a claim that “political coordination between Arreguin, his campaign, and his PAC can be clearly seen through Arreguin’s endorsement of the CALI rent board slate as well as Kriss Worthington (all of whom were supported by the PAC, which directly received money from SEIU.” (Att. 1).

First, the Berkeleyside article characterizes the *Berkeley Working Families Committee* as an independent expenditure group and does not present any evidence that it did not function as such or that its expenditures were not independent expenditures. The Complaint’s cited language from the article is consistent with a permissible independent expenditure.

Second, the fact that Mr. Arreguin endorsed certain candidates who were also supported by *Berkeley Working Families Committee*, without more, does not show evidence of coordination or collusion in *Berkeley Working Families Committee*’s expenditures.

The Complaint does not allege that *Berkeley Working Families Committee* made a direct contribution to *Arreguin for Mayor 2016*. (Att. 1). Both Mr. Arreguin and *Berkeley Working Families* confirm that no such direct contribution to *Arreguin for Mayor 2016* was made. (Atts. 3, 5).

The Complaint has not put forth any evidence that the expenditures by the *Berkeley Working Families Committee* were not allowable independent expenditures. Specifically, the Complaint did not put forth any evidence that the expenditures were made in coordination or cooperation with Mr. Arreguin or *Arreguin for Mayor 2016*, such that they should be properly characterized as contributions and not independent expenditures.

Mr. Arreguin confirmed that neither he nor anyone working with or for *Arreguin for Mayor 2016* cooperated or coordinated with *Berkeley Working Families Committee* and that “[n]either I nor anyone working with or for my Committee ever discussed the creation of web content, mailers or any expenditures made by the *Berkeley Working Families Committee*. None of the expenditures or actions taken by this independent committee was [sic] made at my campaign’s “request or

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<sup>3</sup> Frances Dinkelspiel, *As election nears, contributions and complaints mount*, Berkeleyside (Oct. 26, 2016). Attached to Complaint.

*suggestion.*” I had no knowledge of the actions of this committee and only became aware of these independent expenditures after they were made, either by visiting Facebook or receiving mailers in my mailbox.” (Att. 5).

Because there is no evidence that the mailers, web content or other expenditures made by *Berkeley Working Families Committee* in support of Mr. Arreguin’s mayor campaign were made in coordination with Mr. Arreguin or *Arreguin for Mayor 2016*, there is no evidence that the expenditures were not independent expenditures under BMC § 2.12.142 and should be viewed as contributions under BMC § 2.12.100.

Because BERA’s \$250 contribution limit in BMC § 2.12.415 and prohibition on labor union contributions to a candidate or committee supporting any candidate under BMC § 2.12.440 only apply to contributions and not independent expenditures, there is not evidence to support a violation of either of these provisions of BERA.

### **Conclusion**

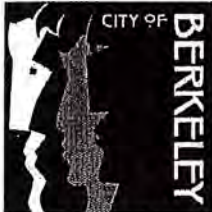
For the reasons set forth above, there does not appear to be sufficient evidence of a violation of BERA. The Secretary recommends a dismissal of the Complaint consistent with FCPC Procedures section VI.B.1, which states, “[t]he Commission may dismiss the matter (by majority vote) and proceed no further 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.”

### **Attachments**

1. Copy of Complaint submitted by Zachary Running Wolf, received April 2, 2018
2. Copy of Form 410 Statement of Organization *Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016*, filed October 13, 2016
3. Letter from *Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016*, received March 19, 2018
4. Copy of Form 460 for *Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016*, covering Oct. 23-Dec. 31, 2016, filed January 30, 2017.
5. Letter from Jesse Arreguin, received April 11, 2018 (including attached photographs)
6. Regulations of the Fair Political Practices Commission, 2 Cal. Code of Regs. § 18225.7

APR 02 2018

City Attorney,



Fair Campaign Practices Commission

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

Full Name: Zachary RunningWolf Brown
Date: 3/29/2018
Address:
E-mail (optional but suggested): runningwolf4mayor@gmail.com
Phone (optional but suggested):

Party or parties alleged to have committed or are about to commit a violation of BERA:
Jesse Arreguin; Arreguin for Mayor 2016; Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If additional space is needed, you may attach additional pages:

As Berkeleyside notes, "An independent expenditure group backed by one of Berkeley's largest unions has poured \$8,112 into Jesse Arreguin's mayoral campaign, spending the funds on a website and literature that promote his views." This group referenced is the committee Berkeley Working Families... 2016, and the campaign referenced is the committee Arreguin for Mayor 2016. As the mayoral candidate, Jesse Arreguin was both responsible for the conduct of his campaign committee and the primary beneficiary of its actions.

As Berkeleyside notes, the source of the funds was SEIU Local 1021 - a labor union - which donated \$24,000 this election cycle in total. Yet Sec 2.12.440 of BERA clearly outlines that "no... labor union shall make a contribution to any candidate or committee (supporting or opposing a candidate) directly or indirectly." This clearly and strongly prohibits - in an especially broad way - the contribution which was made by SEIU 1021 to Arreguin's PAC and funneled to Arreguin's campaign.

In addition to these financial ties, political coordination between Arreguin, his campaign, and his PAC can be clearly seen through Arreguin's endorsement of the CALI rent board slate as well as Kriss Worthington (all of whom were supported by the PAC, which directly received money from SEIU).

Documents: Attach any documentation supporting the facts alleged.

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

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

Signature

[Handwritten signature of Zachary RunningWolf Brown]

Date

4/2/18

3/29/2018

\*Use this "Complaint of Noncompliance" form to allege a violation of BERA pursuant to Berkeley Municipal Code Section 2.12.225 and the Procedures of the Fair Campaign Practices Commission.



## **Arreguín/SEIU Complaint – Additional Documentation**

Sec 2.12.010 declares that BERA was enacted because "Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth" and that this is impeded by "large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions." It notes that prior to BERA currently existing laws and their enforcement were inadequate. Thus the purpose of BERA as outlined in 2.12.015 is to ensure vigorous enforcement. 2.12.020 further outlines that this chapter should be liberally construed to accomplish its purposes, meaning that it should be broadly, rather than narrowly applied, in accordance with the goal stated above of prohibiting large contributions from persons and/or organizations.

As Berkeleyside notes, "An independent expenditure group backed by one of Berkeley's largest unions has poured \$8,112 into Jesse Arreguín's mayoral campaign, spending the funds on a website and literature that promote his views." [1] This group referenced is the committee Berkeley Working Families supporting Arreguín & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016, and the campaign referenced is the committee Arreguín for Mayor 2016. As the mayoral candidate, Jesse Arreguín was both responsible for the conduct of his campaign committee and the primary beneficiary of its actions.

And as Berkeleyside notes, the source of the funds was SEIU Local 1021 - a labor union - which donated \$24,000 this election cycle in total. [1] Yet Sec 2.12.440 of BERA clearly outlines that "no... labor union shall make a contribution to any candidate or committee (supporting or opposing a candidate) directly or indirectly." This clearly and strongly prohibits - in an especially broad way - the contribution which was made by SEIU 1021 to Arreguín's PAC and funneled to Arreguín's campaign. As this sum of money - \$8,112 in all - is well above the \$250 campaign contribution limit as outlined in Sec 2.12.415 it was - by orders of magnitude - a large contribution, doubly problematic as it was made by an organization prohibited from making direct or indirect contributions. Arreguín, his Campaign, and his PAC are violating both the letter and the purpose of the law on both counts.

In addition to these financial ties, political coordination between Arreguín, his campaign, and his PAC can be clearly seen through Arreguín's endorsement of the CALI rent board slate as well as Kriss Worthington for Mayor (all of whom were supported by the PAC, which directly received money from SEIU). [2][3] That the PAC supported "Arreguín and Worthington for mayor" while Arreguín also endorsed rival candidate Worthington for mayor shows how integral this coordination was to his mayoral campaign.

For all of these reasons, it is the Berkeley Fair Campaign Practices Commission's duty to hold Arreguín and his campaign accountable for this major violation of Berkeley's election laws and execute its mandate under Section 2.12.470 of BERA to ensure that "If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this chapter, the office of such candidate shall be forfeited and such office shall become vacant." Only by doing so can BERA be vigorously enforced, and its purpose of preventing wealthy individuals and/or organizations from disproportionately influencing governmental decisions be upheld.

[1] Berkeleyside, 10/26/16, "As election nears, contributions and complaints mount," by Frances Dinkelspiel

[2] Berkeleyside, 10/19/16, "6 candidates compete for 4 slots on Berkeley Rent Board," by Max Cherney

[3] Oakland Magazine, 9/28/16, "The Team Vs. Mr. Housing," by Robert Gammon

by this committee and  $\$250 \times 4 = \$1,000$ ). Ms. Jones could choose, however, to contribute \$400 to the XYZ Committee (thereby automatically contributing \$100 to each of the four candidates XYZ supports) and \$150 to Friends of Jane Doe (thereby reaching the \$250 contribution limit for candidate Jane Doe).

Alternatively, Ms. Jones may designate in writing that she does not wish any of her \$400 contribution to XYZ Committee to go to Jane Doe. Ms. Jones would then be free to contribute \$250 to Jane Doe the candidate or to Friends of Jane Doe.

B. Candidate Contributions From Certain Organizations And Business Entities Prohibited

**Direct or indirect contributions from a proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation (including non-profit corporations) or labor union to a candidate or a committee to support or oppose a candidate for Berkeley municipal office are prohibited. (See BERA § 2.12.440.)**

REMEMBER:

1. The prohibition on contributions from the listed organization and business entities applies only to contributions to a candidate or a committee to support or oppose a candidate in a Berkeley municipal election. The limitation does not apply to ballot measures, with the exception of a ballot measure that recalls a candidate.
2. The prohibition on contributions from the listed organizations and business entities applies to direct as well as indirect contributions. If the contribution did not come from a prohibited source but can be traced to a prohibited source, it is a prohibited contribution. (FCPC Reg. R2.12.440.)

Example:

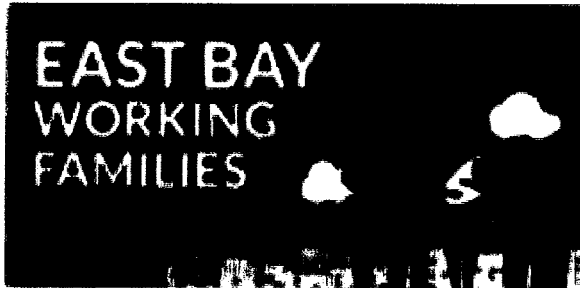
The Committee for Jane Doe, candidate for the Berkeley City Council, received a contribution from the California Women's Political Action Committee. The PAC receives contributions from Corporation F and from labor union #123 (and does not keep them separate from the contributions it receives from individuals). The PAC is prohibited from making the contribution and the Committee for Jane Doe may not accept the contribution. However, if the PAC keeps its corporate and labor union contributions separate from other contributions it receives, then the Committee of Jane Doe may accept a contribution from the PAC's non-corporate account.

3. It is the treasurer's responsibility to make sure a particular contribution is not from a prohibited source. The treasurer should keep all records of deposits and disbursements and should be able to demonstrate by a reasonable accounting method that these contributions are not from a prohibited source. (FCPC Reg. R2.12.440(b).)
4. A campaign treasurer for a candidate or a committee in support of or in opposition to a candidate in receipt of a contribution from a potentially prohibited source

# Berkeleyside

## As election nears, contributions and complaints mount

By Frances Dinkelspiel, Oct. 26, 2016, 2:30 p.m.



SEIU Local 1021 has donated \$24,000 this election cycle to help candidates it supports. Its funds went into an independent expenditure committee that paid for this website

An independent expenditure group backed by one of Berkeley's largest unions has poured \$8,112 into Jesse Arreguín's mayoral campaign, spending the funds on a website and literature that promote his views.

The independent expenditure group is named the "Berkeley Working Families Supporting Arreguín and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016."

SEIU Local 1021, which represents Berkeley's library workers, clerical workers, maintenance staff, recreational staff and health workers has put in \$24,000, according to campaign finance reports.

The group has also spent about \$163 each on a number of candidates, including Kriss Worthington, who is running for mayor, Darryl Moore and Ben Bartlett, who are running for City Council, and Alejandro Soto-Vigil, Christina Murphy, Igor Tregub, and Leah Simon-Weisberg, who are running for rent board.

Thursday at midnight is another campaign finance deadline that might show where the rest of the funds have been spent.

SEIU Local 1021 was part of a coalition that helped to place a citizen's measure on the ballot that raised the minimum wage to \$15 by 2017. Arreguín and Worthington supported that time frame but Laurie Capitellim who is also running for mayor, favored raising the minimum wage to \$15 by 2019.

In August, the City Council adopted a compromise measure to raise the minimum wage to \$15 by October 2018. Now all sides are urging voters to vote no on Measure BB and Measure CC so the compromise can take effect.

The Berkeley Coalition for Working Families has set up a website called East Bay Working Families that promotes candidates in Berkeley, Richmond, and Oakland.



Election 2016 campaign lawn signs. Photo: Kelly Owen

In other election news, UC Berkeley's Progressive Student Alliance has filed a number of complaints

with the Fair Political Practices Commission. The group contends that the "Committee for Real Affordable Housing – Yes on Measure DD, No on Measure U1, Sponsored by Berkeley Property Owners Association," violated campaign finance laws. The group will also be filing a complaint with Berkeley's Fair Campaign Practices Commission, said Matthew Lewis, the group's vice-president.

PSA contends that the Berkeley Property Owners' Association listed donations for the Yes on Measure DD and no on Measure U1 campaigns as coming from various LLCs and properties rather than individuals.

For example, the largest donor to the Yes on Measure DD efforts comes from Vero Properties, which is listed as having donated \$60,625. Vero Properties is owned by Jay Lakireddy, but his name is not on the campaign disclosure form, said Lewis.

Dozens of other LLCs with addresses as names also donated to the campaigns but very few individuals are listed. The major donors include Durant Berkeley Partners (Oakland, \$28,697), KASA Properties (Berkeley, \$25,000), and KLS Associates (Berkeley, \$21,567).

Real-estate groups have spent more than \$786,000 in the last few months to defeat the measures, according to campaign finance reports.

"It's hiding the fact that the donations are much bigger than they are," said Lewis. "Big donations mean big special interests who don't have the interests of the little guy in mind."



Election 2016 campaign lawn signs. Photo: Kelly Owen

The PSA also filed complaints alleging that the "Committee for Real Affordable Housing – Yes on Measure DD, No on Measure U1, Sponsored by Berkeley Property Owners Association," did not disclose that it paid for mailers that were sent out or online ads posted to the Daily Californian website.

In the weeks leading up to an election, various groups file numerous complaints with the FPPC but that does not mean the complaints are necessarily valid, said Jay Wierenga, the communications director for the FPPC. He was checking on the status of the PSA complaint on Wednesday but said: "It's a busy time here... there are hundreds that pour in during the run-up to an election."

Krista Gulbransen, the executive director of the Berkeley Rental Housing Coalition, which is the political branch of the property owners, said Tuesday that no one had heard from the FPPC.

"Pretty much anyone can file a complaint," said Gulbransen. "It's only something when the FPPC says 'yes, there is something here and we are going to conduct an investigation'" that it matters.

"We have done everything on the up and up and have no worries," said Gulbransen.

The city of Berkeley and the Berkeley Property Owners' Association have placed (one by voting, one by collecting signatures) competing measures on the Nov. 8 ballot. Both Measure U1 and

Measure DD would raise the business tax rate on rents but at different rates: The city measure, U1, would raise the tax rate from 1.081 percent to 2.88 percent. The landlord-backed measure, Measure DD, would raise the tax rate from 1.081 percent to 1.5 percent.

**Related:**

Real estate interests spend \$92K to help elect Berkeley candidates (10.17.16)

Real estate interests spend big to defend rental tax hike (10.12.16)

With 28 days until the election, fundraising gap widens between mayoral candidates (10.11.16)

Berkeley mayoral candidates square off about budget, homelessness (10.05.16)

With Bernie Sanders, Robert Reich endorsements, mayor's race goes national (09.15.16)

The mayor's race is off and running: Where do campaign coffers stand? (08.04.16)

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# Berkeleyside

## 6 candidates compete for 4 slots on Berkeley Rent Board

By Max Cherney, Oct. 19, 2016, 2:30 p.m.



Berkeley Rent Board candidates (clockwise from upper left): Nate Wollman, Alejandro Soto-Vigil, Leah Simon-Weisberg, Christina Murphy, Igor Tregub and Judy Hunt. Photos: Courtesy of the candidates

Six candidates are vying for four open seats on Berkeley's Rent Stabilization Board, in a race that has seen one slate of decidedly pro-tenant candidates boast numerous endorsements and a large war chest, while their landlord-leaning opponents lag — both in terms of endorsements and cash.

It's an important, if not widely covered race: Established in 1980, the Rent Board controls a \$4.5 million budget, and is composed of nine elected commissioners, which each draw a monthly salary of between \$50 and \$500. The Board is responsible for the day to day oversight and management of the city's rent control ordinance, and moreover, those elected this election cycle will likely have a substantial influence the appointment of a new executive director, among other policy initiatives.

One of the four members of the tenant-leaning, self-dubbed CALI ticket — an acronym made from

the first names of the candidates — is an incumbent, Alejandro Soto-Vigil. The others, Igor Tregub, Leah Simon-Weisberg and Christina Murphy, are newcomers, though not to housing as an issue. Simon-Weisberg helped write two other rent control measures on the ballot in the Bay Area, Murphy has been involved in South Berkeley community housing for years, and former Rent Board Commissioner Tregub is on the city's Zoning Adjustment Board.

On the other side, Nate Wollman and incumbent Judy Hunt have adopted Fairness Accountability Integrity and Respect (FAIR) to describe their bid. Wollman is a property manager, who says that his experience in the industry gives him an edge over “career political candidates who are vetting for any positions they can get their hands on.” And for her part Hunt, an incumbent, touts her experience helming a non-profit and small property owner.

### **Read Berkeleyside's spotlight on Rent Board candidates.**

Of the ballot measures that are on the table, The CALI bloc is in favor of Measure U1 — in opposition to the competing DD, which is backed by landlords, they say. The logic is simple Soto-Vigil said at a recent candidate panel: after crunching the numbers U1 would create eight new affordable units a year, whereas DD would generate three.

Both Hunt and Wollman supported Measure DD, the competing measure backed by landlords. Hunt called Measure U1 deceptive, referring to a court

challenge, and praised the citizen advisory panel proposed by Measure DD.

On Measure AA, which seeks to increase the required payout for an owner move-in, and prevent such move-ins during the school year for families with children, the candidates were also split. The CALI ticket supports the measure. The FAIR ticket opposes the measure because, as Wollman put it, "If it's your house, you should be able to move home."

## **Political scientist: Voters rely more on group attachments than policy positions**

But despite public panels and lively discussion over policy, counter-intuitively, candidates' actual policy positions are not what most voters base a decision on. According to San Francisco State University professor of political science Jason McDaniel, despite the focus on policy issues in campaign materials and public forums, most voters actually use another calculus to determine a person's vote: group attachments.

Group attachments, McDaniel says, are social criteria such as ethnicity, race, or sexual orientation. Voters pick up on those factors as a kind of code for the candidate's perceived ideology — renters, for example, being perceived as more favorable on renter issues. Endorsements are included, he says.

"I don't think candidates are necessarily aware," McDaniel told Berkeleyside in a phone interview. "They would probably be surprised how little their messaging content influences voters."

The self-titled "CALI Slate" has more than 40 endorsements listed on its website, ranging from a BART Board Director, several Berkeley elected officials, and a swath of organizations associated with tenant and labor issues. And the coalition has also trumpeted a nod from Senator Bernie Sanders (D-Vt.). Berkeleyside was not able to reach Sanders for comment.

City councilman and candidate for mayor Jesse Arreguin told Berkeleyside that the CALI slate was, "the most qualified to serve on the Rent Stabilization Board. Each brings many years of experience not only serving tenants but also working on rent control policy."

Councilman Max Anderson echoed Arreguin's sentiment — that the CALI ticket has experience with administrating the Board with tenants and landlords in mind.

Though not listed on the CALI ticket website, Councilman Darryl Moore told Berkeleyside he is endorsing Murphy. "She seems like a very good advocate for the people she works with ... with homeless, with people who have trouble finding housing in Berkeley."

Moore also says he is backing Tregub because he did well during his prior stint on the board.

On the FAIR ticket, Moore is backing Hunt because he's liked her work on the Rent Board in the past, and says that diversity and experience as a small property owner are important.

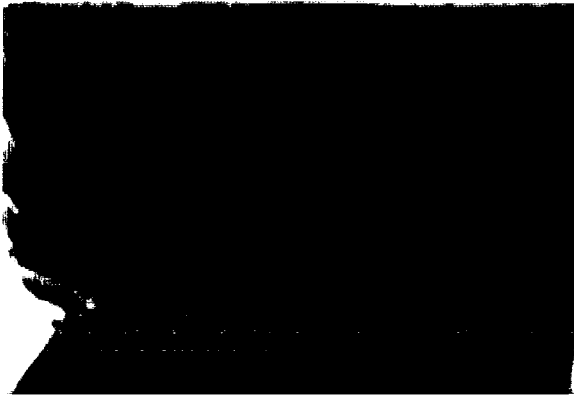
The FAIR ticket of Hunt and Wollman lists just over 10 endorsements on its campaign site, including endorsements from three sitting City Council members: Moore, Councilwoman Susan Wengraf and Councilman Laurie Capitelli. FAIR is also endorsed by the Berkeley Democratic Club. (As noted above, Moore is only endorsing one member of that slate.)

Wengraf supports both Hunt and Wollman but says that she endorses people, not tickets.

Unlike some of the other contests that have seen, for example, national real estate interests backing candidates with tens of thousands of dollars in soft money, the race for the rent board has been a relatively inexpensive one. Thus far, no interest groups have filed documents with the city declaring cash support for any candidate vying for a rent board seat.

This is in sharp contrast to 2012 when landlord-backed groups spent \$42,500 to mail out five campaign flyers in support of a slate of candidates.

As a result, it's been a relatively inexpensive race: the self-proclaimed progressive bloc has raised the largest combined war chest of \$15,090, according to campaign documents filed with the city. Their opponents Hunt and Wollman have raised a combined total of \$4,925. Murphy and Simon-Weisberg, from the progressive bloc, have been spending the most aggressively with about \$2,400 each, according to filings that cover activities through Sept. 24.



Berkeley's "monster" ballot. Photo: Citizen reporter

But, even though the war chests are small, the race is not without mudslinging.

Wollman took issue with the progressive block using [berkeleyrentboard.org](http://berkeleyrentboard.org) as its campaign web address, telling Berkeleyside that it unfairly made it appear as though the group was some kind of official city-backed group. And he openly speculated on the tactics used by the progressive

bloc to gain the much-trumpeted endorsement of Bernie Sanders.

In a telephone interview, Soto-Vigil cast a shadow over Capitelli's endorsement of Hunt and Wollman, suggesting the now-mayoral candidate had said years ago he favored abolishing rent control.

Capitelli said — after publication — he has never been in favor of abolishing rent control.

"20 years ago...with Steve Barton (Berkeley's former housing director), we mused about the idea of a means-tested rent control program," said Capitelli. "We tried but couldn't figure out how to make it work. I never supported the abolition of rent control."

Capitelli has said he favors amending the Costa-Hawkins Rental Housing Act, which exempts buildings constructed after 1980 from rent control. It also allows landlords to raise rents to the market rate on rent-controlled units once tenants move out. Arreguín has said he wants to repeal Costa-Hawkins. It would take a vote of the legislature to do that.

*Update, Oct. 24: This article has been updated to include a statement from Capitelli in which he says, contrary to Soto-Vigil's assertion, he never favored abolishing rent control.*

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## The Team Vs. Mr. Housing

In the last two Berkeley mayoral elections, the primary issue has been smart growth—whether to build dense housing in downtown and along the city's major transit corridors. And in both 2008 and 2012, Mayor Tom Bates, an early and ardent supporter of smart growth as the most effective way to curb sprawl and reduce greenhouse gas emissions, won in a landslide.

In the past few years, urban growth has taken on a heightened urgency—not just in Berkeley, but throughout the inner East Bay—as the extreme lack of housing has sent prices to record levels while displacing many low- and middle-income residents from the region.

But as the months went by this year, the most pressing issue in Berkeley shifted: By mid-August, it looked as if this year's mayor's race would center instead on a fight over raising the city's minimum wage. At the time, there were two competing ballot measures: Organized labor and mayoral candidates Jesse Arreguín and Kriss Worthington backed one that would have raised the minimum wage to \$15 an hour next year, while the council majority and mayoral candidate Laurie Capitelli—Bates' choice to succeed him—supported a measure that would have waited until 2019 to reach \$15.

But then Councilmember Capitelli hammered out a compromise with organized labor that effectively took the minimum wage issue off the table: They agreed to raise the wage to \$15 an hour in 2018. The Berkeley City Council, including Arreguín and Worthington, quickly approved the compromise plan. The two other minimum wage measures are still on the ballot, but all sides are now campaigning against them.

And so the top issue in the 2016 mayor's race is once again housing—but with a twist. In recent months, Arreguín and Worthington have started running as a sort of team in ranked-choice voting. The two longtime allies and friends are telling their supporters to pick the other second on their ballots. "We are encouraging voters to rank both of us," Arreguín said. They hope the strategy will propel one of them to victory.

Either way, the return of housing as the top issue is exactly what Capitelli wanted—considering the outcome of the last two mayoral races. Like Bates, Capitelli is a strong backer of smart growth, also known as transit-oriented development. "The fact of the matter is: We need to build more transit-oriented development," he said in a recent interview. "That's where it's at."

Although Capitelli's two main competitors, Arreguín and Worthington, are not members of Berkeley's passionate anti-growth contingent, anti-growth activists are nonetheless supporting one or both of them for mayor this year. That's because Arreguín and Worthington have sometimes voted against growth proposals in the city, usually because they contend that the project in question doesn't include enough affordable housing or is missing some other attribute they believe is essential.



Pro-growth perfect the restrictions housing for Arreguin as  
For his part and that he has evolved  
As for what interests of argument  
For his part Shirley Dean points in the McCormick points to Be McCormick even to publi

advocates, like Bates, have argued that Arreguín and Worthington too often make the enemy of the good: that requiring too much affordable housing or placing too many on growth makes housing projects financially infeasible—which means that no s built at all. That’s exactly what anti-growth activists want, and it’s why they back id Worthington.

, Arreguín said his position on growth has changed as the housing crisis has deepened’s less willing now to side with those opposed to more growth. “I think my perspective over the years,” he said.

he thinks of Capitelli, that has hasn’t changed. “His main interest is representing the the real estate lobby,” Arreguín charged. Worthington made much the same saying Capitelli represents “big landlords and the chamber of commerce.”

, Capitelli doesn’t believe Arreguín has evolved on housing. He noted that ex-Mayor n, a leader among Berkeley’s anti-growth activists who was trounced by Bates by 25 a 2008 mayoral election, is now one of Arreguín’s top supporters. And Jacquelyn , who fought against Berkeley’s plan for a dense downtown (and lost by more than 40 tes in 2012), is Arreguín’s campaign manager. “That’s not progressive,” said Capitelli. also was a driving force behind an unsuccessful ballot measure in 2012 that sought to ic employee salaries and benefits.

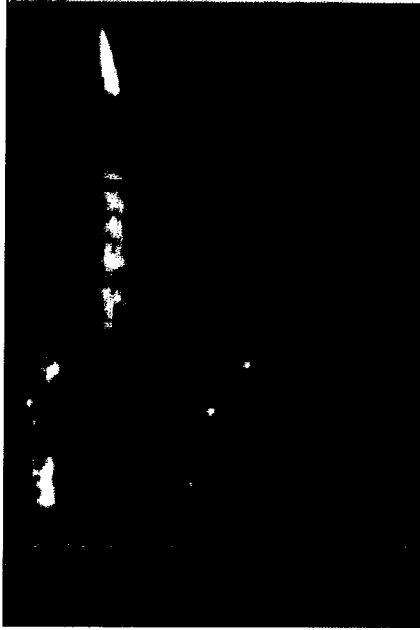
**Laurie Capitelli.**

Arreguín responded that he’d take support wherever he can get it and that McCormick is volunteering on his campaign. And it’s true that he is more progressive than Capitelli on some issues, like tenants’ rights and advocating for the needs of homeless people. He also has widespread support from the East Bay labor community and picked up a major progressive endorsement in early September when former Democratic presidential candidate Bernie Sanders announced that he is backing Arreguín for mayor. He also has been endorsed by the Alameda County Democratic Party and the Sierra Club.

But Capitelli’s list of endorsers is also impressive: In addition to Bates, Skinner, and a majority of the council, he’s backed by state Sen. Loni Hancock, former U.S. Labor Secretary Robert Reich, and Oakland Mayor Libby Schaaf.

Worthington, meanwhile, has been a running a low-key campaign. By mid-September, he had launched a no-frills website that included no listings of endorsements. In an interview, he said he plans to operate on a low budget—much like he did when he ran for mayor against Bates in 2012. In that race, he finished a distant second, ahead of McCormick.

Worthington said one of the issues he plans to highlight this fall is his commitment to fiscal responsibility. “I’ve pushed for more fiscal restraint—for raising the city’s reserves,” he said. In 2014, the then-*Oakland Tribune* endorsed Worthington because of his call for more transparency concerning city employee pension liabilities.



Ben Gould.

In all, there are eight people running for mayor, but besides the top three, the only other candidate who seems to be gaining traction is Ben Gould, a pro-housing, pro-smart growth graduate student at UC Berkeley. In an interview, Gould said he shares many of Capitelli's values on housing affordability and sustainability, but argues that he doesn't think Capitelli "would be aggressive enough" in attracting dense housing projects to Berkeley if he were to become mayor. Gould noted the extreme housing shortage for Cal students in the city and pointed out that much of North Berkeley, which is in Capitelli's council district, is still mostly zoned for single-family homes, rather than for multi-unit housing. "It's time to stop imagining that Berkeley will always be a haven for single-family houses," he said.

But Gould saves his strongest criticism for Arreguín, arguing that the councilmember too often opposes new dense housing and student housing projects in the city. "He uses environmental policy to obstruct housing," Gould said. In 2014, Arreguín and McCormick backed a controversial ballot initiative—Measure R—that sought to place strict environmental requirements on new dense housing in downtown, near campus. Many environmentalists noted that Measure R's mandates were unnecessary, because smart growth is, by definition, green since it discourages long commutes and helps reduce greenhouse gas emissions. Berkeley voters overwhelmingly rejected Measure R, 74 percent to 26 percent.

As for Bates, he thinks the race will come down to Capitelli vs. Arreguín and believes the outcome will determine whether Berkeley will continue his legacy of housing growth or become more like Palo Alto—a place that only the wealthy can afford. The mayor also scoffs at Arreguín's assertion that he has "evolved" on housing and contends that if Arreguín is elected, the city's progress on housing will halt. "When Arreguín was on the planning commission," Bates said, "he voted against everything."

Published online on Sept. 28, 2016 at 9:00 a.m.

### Events

Events

Calendar

People's Park Garden Workday!

Birthdays

Discover

Past

Create Event



APR 7 People's Park Garden Workday! Public · Hosted by SQUAD by Direct Action Everywhere

Going Share

Saturday at 1 PM - 4 PM 5 days from now · 48-61° Rain

People's Park (Berkeley) 2556 Haste Street, Berkeley, California 94704 Show Map

Invited by Corey John

About Discussion

Write Post Add Photo/Video Create Poll

Write something...

9 Going · 29 Interested See All



Corey and Aliya are going

Share

#### Details

Come out and support the ongoing revival of the garden at People's Park! You will have the opportunity to learn about the 50+ plant species found in this historic green space and get your hands dirty while helping with various tasks such as weeding, planting, and watering!

SQUAD is an unofficial group organized by members of DxE SF-Bay aiming to normalize nonviolent social justice activism within our community and beyond.

DxE is a direct action network of ordinary people, formed using the model of grassroots networks in the history of social justice -- ACT UP, the Student Nonviolent Coordinating Committee, the Women's Social and Political Union, and the Antislavery Society.

Causes Kid Friendly Vegetarian +2

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CONTACTS

Candy Crush Saga The sweetest game ever! +13

- Sabrina Baum
Corey John 3h
Jean Jeanie 2m
Michael Smith
Tobias Barton
J Michael Reagan
Alex Escalante
Alexandros Acedo
Stephan von Pohl
Christina Murphy
Laura Borealis
Maria Mustacheo
GROUP CONVERSATIONS
Dan, Corey, Aliya
Alex, Terry, Christoph...

MORE CONTACTS (30)

Attachment 2

Statement of Organization Recipient Committee

1391637

Statement Type [X] Initial Not yet qualified [ ] or

10 / 11 / 2016 Date qualified as committee

[ ] Amendment List I.D. number # [ ] Termination - See Part 5 List I.D. number # Date qualified as committee (if applicable) Date of Termination

RECEIVED AND FILED in the office of the Secretary of State of the State of California OCT 13 2016 Hand Delivered, Sacramento CALIFORNIA FORM 410 For Official Use Only

1. Committee Information

NAME OF COMMITTEE: Berkeley Working Families supporting Acraguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016
STREET ADDRESS (NO P.O. BOX)
CITY STATE ZIP CODE AREA CODE/PHONE
Oakland CA 94607 (916)442-2952
MAILING ADDRESS (IF DIFFERENT) Sacramento, CA 95814
FAX / E-MAIL ADDRESS (916)442-1280 / info@olsonhagel.com
COUNTY OF DOMICILE JURISDICTION WHERE COMMITTEE IS ACTIVE
Alameda City of Berkeley

2. Treasurer and Other Principal Officers

NAME OF TREASURER Peter Albert
STREET ADDRESS (NO P.O. BOX)
CITY STATE ZIP CODE AREA CODE/PHONE
Oakland CA 94602 (510)530-8324
NAME OF ASSISTANT TREASURER, IF ANY
STREET ADDRESS (NO P.O. BOX)
CITY STATE ZIP CODE AREA CODE/PHONE
NAME OF PRINCIPAL OFFICER(S) Peter Albert, Principal Officer
STREET ADDRESS (NO P.O. BOX)
CITY STATE ZIP CODE AREA CODE/PHONE
Oakland CA 94602 (510)530-8324

Attach additional information on appropriately labeled continuation sheets.

3. Verification

I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on Oct 13, 2016 By Peter H. Albert SIGNATURE OF TREASURER OR ASSISTANT TREASURER
Executed on Oct 13, 2016 By Peter H. Albert SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT
Executed on DATE By SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT
Executed on DATE By SIGNATURE OF CONTROLLING OFFICEHOLDER, CANDIDATE, OR STATE MEASURE PROPONENT

**Statement of Organization  
Recipient Committee**

INSTRUCTIONS ON REVERSE

COMMITTEE NAME  
Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

I.D. NUMBER

**2a. Additional Officers / Assistant Treasurers**

NAME  
Ty Hudson, Principal Officer

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94612	(510)893-3181

NAME

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE

NAME  
Gabriel Haaland, Principal Officer

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94609	(510)350-9811

NAME

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE

NAME

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE

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CITY	STATE	ZIP CODE	AREA CODE/PHONE

**Statement of Organization  
Recipient Committee**

INSTRUCTIONS ON REVERSE

COMMITTEE NAME  
Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

- All committees must list the financial institution where the campaign bank account is located.

NAME OF FINANCIAL INSTITUTION Wells Fargo Bank	AREA CODE/PHONE (516) 440-4205	BANK ACCOUNT NUMBER	
ADDRESS	CITY Sacramento	STATE CA	ZIP CODE 95814

**4. Type of Committee** Complete the applicable sections.

**Controlled Committee**

- List the name of each controlling officeholder, candidate, or state measure proponent. If candidate or officeholder controlled, also list the elective office sought or held, and district number, if any, and the year of the election.
- List the political party with which each officeholder or candidate is affiliated or check "nonpartisan."
- If this committee acts jointly with another controlled committee, list the name and identification number of the other controlled committee.

NAME OF CANDIDATE/OFFICEHOLDER/STATE MEASURE PROPONENT	ELECTIVE OFFICE SOUGHT OR HELD (INCLUDE DISTRICT NUMBER IF APPLICABLE)	YEAR OF ELECTION	PARTY
			<input type="checkbox"/> Nonpartisan
			<input type="checkbox"/> Nonpartisan

**Primarily Formed Committee** Primarily formed to support or oppose specific candidates or measures in a single election. List below:

CANDIDATE(S) NAME OR MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTER)	CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) JURISDICTION (INCLUDE DISTRICT NO., CITY OR COUNTY, AS APPLICABLE)	CHECK ONE	
		SUPPORT	OPPOSE
Jesse Arreguin	Mayor: City of Berkeley	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Kris Worthington	Mayor: City of Berkeley	<input checked="" type="checkbox"/>	<input type="checkbox"/>

**Statement of Organization  
Recipient Committee**

**CALIFORNIA  
FORM 410**

INSTRUCTIONS ON REVERSE

COMMITTEE NAME

Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil  
Rent Board 2016

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I.D. NUMBER

Murphy, & Simon-Weisberg for

**Primarily Formed Committee**

Primarily formed to support or oppose specific candidates or measures in a single election. List below

CANDIDATE(S) NAME OR MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTER)	CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) JURISDICTION (INCLUDE DISTRICT NO., CITY OR COUNTY, AS APPLICABLE)	CHECK ONE	
		SUPPORT	OPPOSE
Darryl Moore	City Council Member: City of Berkeley District 2	X	
Ben Bartlett	City Council Member: City of Berkeley District 3	X	
Igor Tregub	Rent Stabilization Board Member: City of Berkeley	X	
Alejandro Soto-Vigil	Rent Stabilization Board Member: City of Berkeley	X	
Christina Murphy	Rent Stabilization Board Member: City of Berkeley	X	
Lean Simon-Weisberg	Rent Stabilization Board Member: City of Berkeley	X	



**Statement of Organization  
Recipient Committee**

**CALIFORNIA  
FORM 410**

INSTRUCTIONS ON REVERSE

COMMITTEE NAME  
Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

Page 5 of 7

I.D. NUMBER

**4. Type of Committee** (Continued)

**General Purpose Committee** Not formed to support or oppose specific candidates or measures in a single election. Check only one box:

CITY Committee  COUNTY Committee  STATE Committee

PROVIDE BRIEF DESCRIPTION OF ACTIVITY

**Sponsored Committee** List additional sponsors on an attachment.

NAME OF SPONSOR		INDUSTRY GROUP OR AFFILIATION OF SPONSOR		
Service Employees International Union 1021		Labor Organization		
STREET ADDRESS	NO. AND STREET	CITY	STATE	ZIP CODE
		Oakland	CA	94609

**Small Contributor Committee**  \_\_\_\_\_  
Date qualified

**5. Termination Requirements** By signing the verification, the treasurer, assistant treasurer and/or candidate, officeholder, or proponent certify that all of the following conditions have been met:

- This committee has ceased to receive contributions and make expenditures;
  - This committee does not anticipate receiving contributions or making expenditures in the future;
  - This committee has eliminated or has no intention or ability to discharge all debts, loans received, and other obligations;
  - This committee has no surplus funds; and
  - This committee has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.
- There are restrictions on the disposition of surplus campaign funds held by elected officers who are leaving office and by defeated candidates. Refer to Government Code Section 89519.
- Leftover funds of ballot measure committees may be used for political, legislative or governmental purposes under Government Code Sections 89511 - 89518, and are subject to Elections Code Section 18680 and FPPC Regulation 18521.5.

**Statement of Organization  
Recipient Committee**

<b>CALIFORNIA FORM</b>	410
Page <u>6</u> of <u>7</u>	
I.D. NUMBER	

INSTRUCTIONS ON REVERSE

COMMITTEE NAME  
Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

**Sponsored Committee** List additional sponsors on an attachment.

NAME OF SPONSOR California Nurses Association	INDUSTRY GROUP OR AFFILIATION OF SPONSOR Nurses Organization
MAILING ADDRESS	NO. AND STREET
	CITY
	STATE
	ZIP CODE
	Oakland CA 94612
NAME OF SPONSOR UNITE HERE Local 2850	INDUSTRY GROUP OR AFFILIATION OF SPONSOR Labor Organization
MAILING ADDRESS	NO. AND STREET
	CITY
	STATE
	ZIP CODE
	Oakland CA 94612
NAME OF SPONSOR	INDUSTRY GROUP OR AFFILIATION OF SPONSOR
MAILING ADDRESS	NO. AND STREET
	CITY
	STATE
	ZIP CODE
NAME OF SPONSOR	INDUSTRY GROUP OR AFFILIATION OF SPONSOR
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	CITY
	STATE
	ZIP CODE
NAME OF SPONSOR	INDUSTRY GROUP OR AFFILIATION OF SPONSOR
MAILING ADDRESS	NO. AND STREET
	CITY
	STATE
	ZIP CODE

**Additional Comments  
For Form 410**

ADDITIONAL COMMENTS

**CALIFORNIA  
FORM 410**

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COMMITTEE NAME Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

I.D. NUMBER

Full committee name: Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, and Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016, a coalition of nurses, hotel employees, and service employees organizations

# OLSON HAGEL & FISHBURN, LLP

Date: 10-13-16

Secretary of State  
Political Reform Division  
1500 - 11th Street, Room 495  
Sacramento CA 95814

## Re: BERKELEY WORKING FAMILIES

ID No.

Period: \_\_\_\_\_ through \_\_\_\_\_

Enclosed are the original and two copies

Enclosed is one copy

of the following for the above referenced committee:

Form 410

Please endorse one copy of the enclosed report as proof of receipt

Please endorse this transmittal letter as proof of receipt and return to us

via messenger

in the enclosed addressed, stamped envelope.

Please contact Tom Howard at 916-442-2952 if you have any questions regarding this filing.

Very truly yours,

**OLSON HAGEL & FISHBURN LLP**

CAMPAIGN REPORT DIVISION

cc: Berkeley City Clerk ✓

Client No.: 40696.01 / GAL

9414 8149 0149 0384 0053 50

Assoc: \_\_\_\_\_  
Mgr: \_\_\_\_\_

City Attorney  
MAR 19 2018  
Received

March 14, 2018

VIA ELECTRONIC MAIL

Fair Campaign Practices Commission  
City of Berkeley  
2180 Milvia St., 4<sup>th</sup> Floor  
Berkeley, CA 94704

**RE:** Notice of Complaint filed with Berkeley Fair Campaign Practices Commission

Dear Commissioners:

I write on behalf of our client, Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016 ("Berkeley Working Families"), in response to the complaint filed with the Fair Campaign Practices Commission by Zachary RunningWolf on November 18, 2017. As discussed in more detail below, it is clear that our client did not violate the law by making impermissible contributions to Berkeley candidates. Rather, the committee made permissible and publicly disclosed independent expenditures supporting these candidates. For these reasons, the complaint should be dismissed with no further action or prejudice to our client.

Background

Berkeley Working Families was a committee sponsored by Service Employees International Union 1021, California Nurses Association, and UNITE HERE Local 2850. It was primarily formed to support a number of Berkeley city candidates. Berkeley Working Families made independent expenditures in support of these candidates during the 2016 election cycle, including \$22,888.08 in independent expenditures supporting Jesse Arreguin for Mayor.

Analysis

The complaint alleges that "Jesse Arreguin's Campaign received \$8,112 from SEIU Local 1021...through the campaign's PAC" and further alleges that this contribution was made in violation of the Berkeley Election Reform Act of 1974 (Berkeley Municipal Code 2.12.005, hereinafter "BERA"). The complaint also cites an October 26, 2016 news article from Berkeleyside, an electronic publication, in support of this allegation.

There are a number of factual and legal inaccuracies in these allegations. First, Arreguin for Mayor 2016 did not receive contributions from SEIU Local 1021 or from Berkeley Working Families. As described above, Berkeley Working

Law Offices of

OLSON

HAGEL &

FISHBURN

LLP

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Richard C. Miadich  
Richard R. Rios  
Lacey E. Keys

Bruce J. Hagel  
of counsel  
Jane M. Fishburn (Ret.)

Deborah B. Caplan  
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Erika M. Boyd

Kelly Liang

Varoon Modak

Northern California  
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Suite 400  
Sacramento, CA  
95814-4602

Tel: (916) 442-2952  
Fax: (916) 442-1280

Southern California  
3605 Long Beach Blvd  
Suite 426  
Long Beach, CA  
90807-6010

Tel: (562) 427-2100  
Fax: (562) 427-2237

Families made independent expenditures supporting Arreguin for Mayor 2016. These independent expenditures were made in compliance with BERA and state law, and were disclosed by Berkeley Working Families in compliance with all state and local requirements.

Second, the complaint appears to be characterizing contributions from SEIU Local 1021 to Berkeley Working Families, as well as independent expenditures made by Berkeley Working Families, as contributions made from SEIU Local 1021 to Arreguin for Mayor 2016. To the extent that the complaint is alleging direct contributions of any kind to have been made, the allegation is factually inaccurate.

Third, independent expenditures are by definition not contributions. BERA specifically provides for the formation of independent expenditure committees and for the making of independent expenditures by those committees (BERA 2.12.140, 2.12.142). There is no legal basis for characterizing independent expenditures made in compliance with BERA and state law as contributions.

Finally, the article cited in the complaint – which is apparently the sole basis for the complaint and the only evidence provided by the complainant - explicitly notes no less than three times that Berkeley Working Families was an independent expenditure group, noting that SEIU Local 1021's "funds went into an independent expenditure committee that paid for" the independent expenditures in question. As such, the only evidence cited by the complaint in support of its allegations itself clearly indicates that Berkeley Working Families was fully in compliance with BERA.

#### Revised Complaint

Mr. RunningWolf subsequently filed a revised complaint in connection with this matter. While it is not clear to what extent the specific allegations in the original complaint are being rescinded, the revised allegations appear to be that 1) the contribution from SEIU Local 1021 to the committee was prohibited by Sec 2.12.440 ("Sec 2.12.440 of BERA clearly outlines that 'no... labor union shall make a contribution to any candidate or committee (supporting or opposing a candidate) directly or indirectly.' This clearly and strongly prohibits - in an especially broad way - the contribution which was made by SEIU 1021 to Arreguin's PAC and funneled to Arreguin's campaign"), and 2) that even if the contribution were not prohibited, it would violate contribution limits defined by Sec 2.12.415 ("[the Committee] violated Sec 2.12.440 for accepting funding from SEIU1021 - a labor union, which is prohibited, and in an amount well exceeding \$250, which is also prohibited under Sec 2.12.415.").

#### Analysis of Revised Complaint

These revised allegations reiterate the factual and legal inaccuracies found in the original complaint. The crux of the revised complaint appears to be that BERA's prohibition on contributions from labor organizations to candidates applies to contributions to

independent expenditure committees, and alternatively that BERA's contribution limit applies to contributions to independent expenditure committees or even to independent expenditures themselves.

However, this argument once again elides the distinction between contributions and independent expenditures. Both state law and BERA recognize the existence of this distinction; the fact that the code defines contribution and independent expenditure separately (See BERA Sec. 2.12.100, Section 1.12.142) is proof that BERA does not contemplate conflating the two; nor does BERA provide any support for the notion that restrictions which apply to contributions should also apply to independent expenditures. On the contrary, even the City's own campaign finance manual refers to BERA "limiting *contributions to local candidates* to \$250 during an election cycle and prohibiting *contributions to local candidates* by labor unions." City of Berkeley Campaign Finance Manual at 1 (emphasis added). Similarly, the manual notes that "BERA prohibits contributions from proprietorships, firms, partnerships, joint ventures, syndicates, business trusts, companies, corporations (including non-profits) and labor unions *to candidates, candidate-controlled committees, and ballot measure committees* formed to support or oppose the recall of a local officeholder." Id. at 25 (emphasis added).

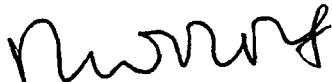
As noted above, there is no legal basis for conflating independent expenditures made in compliance with BERA and state law with contributions.

#### Conclusion

The complaint filed by Mr. RunningWolf inaccurately states that Berkeley Working Families violated the law by making in-kind contributions to city candidates, and that SEIU Local 1021 violated the law by making impermissible contributions to an independent expenditure committee. Neither SEIU Local 1021 nor the committee did any such thing. SEIU Local 1021's contributions and Berkeley Working Families' independent expenditures were in compliance with all relevant sections of BERA and state law. The complaint fails to provide a legal or factual basis supporting legal violations. For these reasons, we request that the Commission close this matter with no further action.

Sincerely,

**OLSON HAGEL & FISHBURN LLP**



RICHARD R. RIOS

RRR/vvm

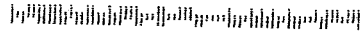
Los Angeles  
OLSON  
HAGEL &  
FISHBURN  
LLP

555 Capitol Mall, Suite 400  
Sacramento, CA 95814-4602

CERTIFIED MAIL  
SACRAMENTO CA 95814-4602  
15 MAR 2018  
\$ 005.42  
41 MAR 15 2018  
9414 8149 0149 0384 0105 21

Jessica Mar  
Berkeley Fair Campaign Practices Commission  
2160 Milvia St. 4th Floor  
Berkeley, CA 94704

94704-119399





**Recipient Committee  
Campaign Statement  
Cover Page**

(Government Code Sections 84200-84216.5)

**Attachment 4**

COVER PAGE

Date Stamp	<div style="border: 2px solid red; padding: 5px; color: red; font-weight: bold;">                 E-Filed 01/30/2017 14:33:19  Filing ID: 163020441             </div>	<b>CALIFORNIA FORM 460</b>
		Page <u>1</u> of <u>9</u>
For Official Use Only		

Statement covers period from <u>10/23/2016</u>  through <u>12/31/2016</u>	Date of election if applicable: (Month, Day, Year)  _____
--	--

SEE INSTRUCTIONS ON REVERSE

**1. Type of Recipient Committee:** All Committees – Complete Parts 1, 2, 3, and 4.

- |   |  |
|---|--|
| <input type="checkbox"/> Officeholder, Candidate Controlled Committee<br><input type="radio"/> State Candidate Election Committee<br><input type="radio"/> Recall<br><small>(Also Complete Part 5)</small><br><br><input type="checkbox"/> General Purpose Committee<br><input type="radio"/> Sponsored<br><input type="radio"/> Small Contributor Committee<br><input type="radio"/> Political Party/Central Committee | <input type="checkbox"/> Primarily Formed Ballot Measure Committee<br><input type="radio"/> Controlled<br><input type="radio"/> Sponsored<br><small>(Also Complete Part 6)</small><br><br><input checked="" type="checkbox"/> Primarily Formed Candidate/Officeholder Committee<br><small>(Also Complete Part 7)</small> |
|---|--|

**2. Type of Statement:**

- |   |   |
|---|---|
| <input type="checkbox"/> Preelection Statement  | <input type="checkbox"/> Quarterly Statement                                  |
| <input checked="" type="checkbox"/> Semi-annual Statement   | <input type="checkbox"/> Special Odd-Year Report                              |
| <input type="checkbox"/> Termination Statement<br><small>(Also file a Form 410 Termination)</small> | <input type="checkbox"/> Supplemental Preelection Statement - Attach Form 495 |
| <input type="checkbox"/> Amendment (Explain below)  | _____   |

**3. Committee Information**

I.D. NUMBER  
1391637

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)  
 Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94607	(916)442-2952

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Sacramento	CA	95814	

OPTIONAL: FAX / E-MAIL ADDRESS  
 (916)442-1280 / info@olsonhagel.com

**Treasurer(s)**

NAME OF TREASURER

Peter Albert

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
Oakland	CA	94602	(510)530-8324

NAME OF ASSISTANT TREASURER, IF ANY

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
------	-------	----------	-----------------

OPTIONAL: FAX / E-MAIL ADDRESS

**4. Verification**

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 01/12/2017  
Date

Executed on 01/12/2017  
Date

Executed on \_\_\_\_\_  
Date

Executed on \_\_\_\_\_  
Date

By Peter Albert  
Signature of Treasurer or Assistant Treasurer

By Peter Albert  
Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor

By \_\_\_\_\_  
Signature of Controlling Officeholder, Candidate, State Measure Proponent

By \_\_\_\_\_  
Signature of Controlling Officeholder, Candidate, State Measure Proponent

**Recipient Committee  
Campaign Statement  
Cover Page — Part 2**

COVER PAGE - PART 2

<b>CALIFORNIA FORM 460</b>
Page <u>2</u> of <u>9</u>

**5. Officeholder or Candidate Controlled Committee**

NAME OF OFFICEHOLDER OR CANDIDATE \_\_\_\_\_

OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE) \_\_\_\_\_

RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP \_\_\_\_\_

**Related Committees Not Included in this Statement:** *List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.*

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? <input type="checkbox"/> YES <input type="checkbox"/> NO
COMMITTEE ADDRESS	STREET ADDRESS (NO P.O. BOX)
CITY	STATE ZIP CODE AREA CODE/PHONE

COMMITTEE NAME	I.D. NUMBER
NAME OF TREASURER	CONTROLLED COMMITTEE? <input type="checkbox"/> YES <input type="checkbox"/> NO
COMMITTEE ADDRESS	STREET ADDRESS (NO P.O. BOX)
CITY	STATE ZIP CODE AREA CODE/PHONE

**6. Primarily Formed Ballot Measure Committee**

NAME OF BALLOT MEASURE \_\_\_\_\_

BALLOT NO. OR LETTER	JURISDICTION	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
----------------------	--------------	---

Identify the controlling officeholder, candidate, or state measure proponent, if any.

NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT \_\_\_\_\_

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY
-----------------------	---------------------

**7. Primarily Formed Candidate/Officeholder Committee** *List names of officeholder(s) or candidate(s) for which this committee is primarily formed.*

NAME OF OFFICEHOLDER OR CANDIDATE Jesse Arreguin	OFFICE SOUGHT OR HELD Mayor	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE Kris Worthington	OFFICE SOUGHT OR HELD Mayor	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE Darryl Moore	OFFICE SOUGHT OR HELD City Council Member	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE Ben Bartlett	OFFICE SOUGHT OR HELD City Council Member	<input checked="" type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE

Attach continuation sheets if necessary

**Recipient Committee  
Campaign Statement  
7. Primarily Formed Candidate/Officeholder Committee (Continued)**

CALIFORNIA **460**  
FORM

Page 3 of 9

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	SUPPORT/OPPOSE
Igor Tregub	Rent Stabilization Board Member	Support
Alejandro Soto-Vigil	Rent Stabilization Board Member	Support
Christina Murphy	Rent Stabilization Board Member	Support
Leah Simon-Weisberg	Rent Stabilization Board Member	Support

**Campaign Disclosure Statement  
Summary Page**

Amounts may be rounded  
to whole dollars.

SUMMARY PAGE

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	10/23/2016	
through	12/31/2016	Page 4 of 9

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

I.D. NUMBER  
1391637

**Contributions Received**

	Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions ..... Schedule A, Line 3	\$ 11,331.24	\$ 35,331.24
2. Loans Received ..... Schedule B, Line 3	0.00	0.00
3. SUBTOTAL CASH CONTRIBUTIONS ..... Add Lines 1 + 2	\$ 11,331.24	\$ 35,331.24
4. Nonmonetary Contributions ..... Schedule C, Line 3	0.00	0.00
5. TOTAL CONTRIBUTIONS RECEIVED ..... Add Lines 3 + 4	\$ 11,331.24	\$ 35,331.24

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

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

**Expenditures Made**

	Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
6. Payments Made ..... Schedule E, Line 4	\$ 25,751.94	\$ 33,701.00
7. Loans Made ..... Schedule H, Line 3	0.00	0.00
8. SUBTOTAL CASH PAYMENTS ..... Add Lines 6 + 7	\$ 25,751.94	\$ 33,701.00
9. Accrued Expenses (Unpaid Bills) ..... Schedule F, Line 3	-12,000.00	1,140.42
10. Nonmonetary Adjustment ..... Schedule C, Line 3	0.00	0.00
11. TOTAL EXPENDITURES MADE ..... Add Lines 8 + 9 + 10	\$ 13,751.94	\$ 34,841.42

**Expenditure Limit Summary for State  
Candidates**

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

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

**Current Cash Statement**

12. Beginning Cash Balance ..... Previous Summary Page, Line 16	\$ 16,050.94
13. Cash Receipts ..... Column A, Line 3 above	11,331.24
14. Miscellaneous Increases to Cash ..... Schedule I, Line 4	0.00
15. Cash Payments ..... Column A, Line 8 above	25,751.94
16. ENDING CASH BALANCE ..... Add Lines 12 + 13 + 14, then subtract Line 15	\$ 1,630.24

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

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

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

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

**Cash Equivalents and Outstanding Debts**

18. Cash Equivalents ..... See instructions on reverse	\$ 0.00
19. Outstanding Debts ..... Add Line 2 + Line 9 in Column B above	\$ 1,140.42

**Schedule A  
Monetary Contributions Received**

Amounts may be rounded  
to whole dollars.

SCHEDULE A

Statement covers period from <u>10/23/2016</u> through <u>12/31/2016</u>	<b>CALIFORNIA FORM 460</b>
	Page <u>5</u> of <u>9</u>

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016	I.D. NUMBER 1391637
---	------------------------

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
11/01/2016	California Nurses Association Political Action Committee (CNA PAC) (ID# 780657) Sacramento, CA 95814	<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input checked="" type="checkbox"/> SCC		1,000.00	1,000.00	
11/07/2016	Service Employees International Union Local 1021 Candidate PAC (ID# 1296948) Sacramento, CA 95814	<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input checked="" type="checkbox"/> SCC		8,331.24	33,831.24	
12/28/2016	Service Employees International Union Local 1021 Candidate PAC (ID# 1296948) Sacramento, CA 95814	<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input checked="" type="checkbox"/> SCC		1,500.00	33,831.24	
10/28/2016	UNITE HERE TIP STATE & LOCAL FUND (ID# 810437) New York, NY 10001	<input type="checkbox"/> IND <input checked="" type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		500.00	500.00	
		<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC				

**SUBTOTAL \$** 11,331.24

**Schedule A Summary**

- Amount received this period – itemized monetary contributions.  
(Include all Schedule A subtotals.) ..... \$ 11,331.24
- Amount received this period – unitemized monetary contributions of less than \$100 ..... \$ 0.00
- Total monetary contributions received this period.  
(Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) ..... **TOTAL \$** 11,331.24

\*Contributor Codes  
IND – Individual  
COM – Recipient Committee  
(other than PTY or SCC)  
OTH – Other (e.g., business entity)  
PTY – Political Party  
SCC – Small Contributor Committee

FPPC Form 460 (Jan/2016)  
FPPC Advice: advice@fppc.ca.gov (866/275-3772)  
www.fppc.ca.gov

**Schedule D  
Summary of Expenditures  
Supporting/Opposing Other  
Candidates, Measures and Committees**

Amounts may be rounded to whole dollars.

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	10/23/2016	
through	12/31/2016	Page <u>6</u> of <u>9</u>

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

I.D. NUMBER

1391637

DATE	NAME OF CANDIDATE, OFFICE, AND DISTRICT, OR MEASURE NUMBER OR LETTER AND JURISDICTION, OR COMMITTEE	TYPE OF PAYMENT	DESCRIPTION (IF REQUIRED)	AMOUNT THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/28/2016	Jesse Arreguin Mayor City of Berkeley	<input type="checkbox"/> Monetary Contribution <input type="checkbox"/> Nonmonetary Contribution <input checked="" type="checkbox"/> Independent Expenditure	Mailer	10,204.68	22,888.08	
	<input checked="" type="checkbox"/> Support <input type="checkbox"/> Oppose					
10/28/2016	Laurie Capitelli Mayor City of Berkeley	<input type="checkbox"/> Monetary Contribution <input type="checkbox"/> Nonmonetary Contribution <input checked="" type="checkbox"/> Independent Expenditure	Mailer	537.09	4,537.09	
	<input type="checkbox"/> Support <input checked="" type="checkbox"/> Oppose					
		<input type="checkbox"/> Monetary Contribution <input type="checkbox"/> Nonmonetary Contribution <input type="checkbox"/> Independent Expenditure				
	<input type="checkbox"/> Support <input type="checkbox"/> Oppose					
<b>SUBTOTAL \$</b>				10,741.77		

**Schedule D Summary**

- Contributions and independent expenditures made this period of \$100 or more. (Include all Schedule D subtotals.) ..... \$ 10,741.77
- Unitemized contributions and independent expenditures made this period of under \$100 ..... \$ 0.00
- Total contributions and independent expenditures made this period. (Add Lines 1 and 2. Do not enter on the Summary Page.) ..... **TOTAL \$** 10,741.77

www.netfile.com

FPPC Form 460 (Jan/2016)  
FPPC Advice: advice@fppc.ca.gov (866/275-3772)  
www.fppc.ca.gov

**Schedule E  
Payments Made**

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 10/23/2016  
through 12/31/2016

SCHEDULE E  
**CALIFORNIA  
FORM 460**  
Page 7 of 9

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

I.D. NUMBER

1391637

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP	campaign paraphernalia/misc.	MBR	member communications	RAD	radio airtime and production costs
CNS	campaign consultants	MTG	meetings and appearances	RFD	returned contributions
CTB	contribution (explain nonmonetary)*	OFC	office expenses	SAL	campaign workers' salaries
CVC	civic donations	PET	petition circulating	TEL	t.v. or cable airtime and production costs
FIL	candidate filing/ballot fees	PHO	phone banks	TRC	candidate travel, lodging, and meals
FND	fundraising events	POL	polling and survey research	TRS	staff/spouse travel, lodging, and meals
IND	independent expenditure supporting/opposing others (explain)*	POS	postage, delivery and messenger services	TSF	transfer between committees of the same candidate/sponsor
LEG	legal defense	PRO	professional services (legal, accounting)	VOT	voter registration
LIT	campaign literature and mailings	PRT	print ads	WEB	information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Olson Hagel & Fishburn LLP Sacramento, CA 95814	PRO		3,010.17
Telegraph LLC Oakland, CA 94612	IND	Online Advertisements/Support/Various Candidates/City of Berkeley	12,000.00
Telegraph LLC Oakland, CA 94612	IND	Mailer/Support/Jesse Arreguin/Mayor/City of Berkeley	10,741.77

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 25,751.94

**Schedule E Summary**

1. Itemized payments made this period. (Include all Schedule E subtotals.) .....	\$	25,751.94
2. Unitemized payments made this period of under \$100 .....	\$	0.00
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) .....	\$	0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) .....	<b>TOTAL \$</b>	25,751.94

FPPC Form 460 (Jan/2016)  
FPPC Toll-Free Helpline: 866/ASK-FPPC (866/275-3772)  
www.fppc.ca.gov

**Schedule F  
Accrued Expenses (Unpaid Bills)**

Amounts may be rounded  
to whole dollars.

Statement covers period from <u>10/23/2016</u> through <u>12/31/2016</u>	<b>CALIFORNIA FORM 460</b>
	Page <u>8</u> of <u>9</u>
	I.D. NUMBER 1391637

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016	I.D. NUMBER 1391637
---	------------------------

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

CMP campaign paraphernalia/misc.	MBR member communications	RAD radio airtime and production costs
CNS campaign consultants	MTG meetings and appearances	RFD returned contributions
CTB contribution (explain nonmonetary)*	OFC office expenses	SAL campaign workers' salaries
CVC civic donations	PET petition circulating	TEL t.v. or cable airtime and production costs
FIL candidate filing/ballot fees	PHO phone banks	TRC candidate travel, lodging, and meals
FND fundraising events	POL polling and survey research	TRS staff/spouse travel, lodging, and meals
IND independent expenditure supporting/opposing others (explain)*	POS postage, delivery and messenger services	TSF transfer between committees of the same candidate/sponsor
LEG legal defense	PRO professional services (legal, accounting)	VOT voter registration
LIT campaign literature and mailings	PRT print ads	WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF CREDITOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE OR DESCRIPTION OF PAYMENT	(a) OUTSTANDING BALANCE BEGINNING OF THIS PERIOD	(b) AMOUNT INCURRED THIS PERIOD	(c) AMOUNT PAID THIS PERIOD (ALSO REPORT ON E)	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD
Telegraph LLC Oakland, CA 94612	IND Website/Support Various Candidates/\$162.91 Each, See Schedule D	1,140.42	0.00	0.00	1,140.42
Telegraph LLC Oakland, CA 94612	IND Online Advertisements/Support /Various Candidates/City of Berkeley	12,000.00	0.00	12,000.00	0.00

* Payments that are contributions or independent expenditures must also be summarized on Schedule D.	<b>SUBTOTALS \$</b>	13,140.42\$	0.00\$	12,000.00\$	1,140.42
--	---------------------	-------------	--------	-------------	----------

**Schedule F Summary**

1. Total accrued expenses incurred this period. (Include all Schedule F, Column (b) subtotals for accrued expenses of \$100 or more, plus total unitemized accrued expenses under \$100.)	<b>INCURRED TOTALS \$</b>	0.00
2. Total accrued expenses paid this period. (Include all Schedule F, Column (c) subtotals for payments on accrued expenses of \$100 or more, plus total unitemized payments on accrued expenses under \$100.)	<b>PAID TOTALS \$</b>	12,000.00
3. Net change this period. (Subtract Line 2 from Line 1. Enter the difference here and on the Summary Page, Column A, Line 9.)	<b>NET \$</b>	-12,000.00 <small>May be a negative number</small>



**Schedule G**  
**Payments Made by an Agent or Independent Contractor (on Behalf of This Committee)**

Amounts may be rounded to whole dollars.

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	10/23/2016	
through	12/31/2016	Page 9 of 9

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER  
 Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board 2016

I.D. NUMBER  
 1391637

NAME OF AGENT OR INDEPENDENT CONTRACTOR  
 Telegraph LLC

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- |   |   |   |
|---|---|---|
| CMP campaign paraphernalia/misc.                                  | MBR member communications                     | RAD radio airtime and production costs                        |
| CNS campaign consultants  | MTG meetings and appearances                  | RFD returned contributions                                    |
| CTB contribution (explain nonmonetary)*                           | OFC office expenses                           | SAL campaign workers' salaries                                |
| CVC civic donations   | PET petition circulating                      | TEL t.v. or cable airtime and production costs                |
| FIL candidate filing/ballot fees                                  | PHO phone banks                               | TRC candidate travel, lodging, and meals                      |
| FND fundraising events  | POL polling and survey research               | TRS staff/spouse travel, lodging, and meals                   |
| IND independent expenditure supporting/opposing others (explain)* | POS postage, delivery and messenger services  | TSF transfer between committees of the same candidate/sponsor |
| LEG legal defense   | PRO professional services (legal, accounting) | VOT voter registration  |
| LIT campaign literature and mailings                              | PRT print ads                                 | WEB information technology costs (internet, e-mail)           |

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

NAME AND ADDRESS OF PAYEE OR CREDITOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
nerstone Printing Inc. Francisco, CA 94133	IND		Printing for Mailer	4,015.76
Timodesigns Oakland, CA 94610	IND		Design for Mailer	850.00
U.S. Postmaster Berkeley, CA 94704	IND		Postage for Mailer	4,015.76

Attach additional information on appropriately labeled continuation sheets.

**TOTAL\* \$ 8,881.52**

\* Do not transfer to any other schedule or to the Summary Page. This total may not equal the amount paid to the agent or independent contractor as reported on Schedule E.

FPPC Form 460 (Jan/2016)  
 FPPC Advice: advice@fppc.ca.gov (866/275-3772)  
 www.fppc.ca.gov

www.netfile.com

**JESSE ARREGUIN**  
1528 Henry Street, Berkeley, CA 94709

April 11, 2018

Jessica Mar  
Secretary, City of Berkeley Fair Campaign Practices Commission  
2180 Milvia Street, 4th Floor  
Berkeley, CA 94704

Received

APR 11 2018

City Attorney

**Re: Amended Complaint Submitted by Zachary Running Wolf against Arreguin for Mayor 2016, Berkeley Working Families Committee (FPPC ID # 1391637), and Rent Board candidates Christina Murphy, Alejandro Soto-Vigil, Leah Simon-Weisberg, and Igor Tregub**

Dear Ms. Mar,

I have reviewed the amended complaint submitted by Zachary Running Wolf alleging violations of the Berkeley Election Reform Act (BERA) by my candidate-controlled committee *Arreguin for Mayor 2016* ("Committee"), and violations by the independent expenditure committee *Berkeley Working Families supporting Arreguin & Worthington for Mayor, Moore & Bartlett for City Council, & Tregub, Soto-Vigil, Murphy, & Simon-Weisberg for Rent Board* and Rent Board candidates Christina Murphy, Alejandro Soto-Vigil, Leah Simon-Weisberg and Igor Tregub.

I am submitting this statement in response to Mr. Running Wolf's complaint. *Arreguin for Mayor 2016* did not violate BERA as Mr. Running Wolf alleges.

The governing law in both BERA and FPPC regulations clearly permit independent committees to make expenditures in support of or in opposition to a candidate or ballot measure. These expenditures if "independent" are exempt from local campaign contribution limits.

The key legal question in determining whether expenditures made by a committee were in fact "independent" is whether there was any coordination with the candidate or their agents.

Berkeley Municipal Code Section 2.12.140 states that an "independent committee" means:

"a committee which is **not controlled either directly or indirectly by a candidate or controlled committee**, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates."

Berkeley Municipal Code Section 2.12.142 defines an "independent expenditure" as:

“an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.”

2 California Code of Regulations Section 182254.7 states that an expenditure is not independent and is subject to contribution limits if it was made “*in cooperation, consultation, coordination, or concert with*” the candidate or their campaign.

The expenditures made by the *Berkeley Working Families Committee* were **not** made in “*cooperation, consultation, coordination or in concert with*” Arreguin for Mayor 2016. Neither I nor anyone working with or for my Committee ever discussed the creation of web content, mailers or any expenditures made by the *Berkeley Working Families Committee*. None of the expenditures or actions taken by this independent committee was made at my campaign’s “*request or suggestion*”. I had no knowledge of the actions of this committee and only became aware of these independent expenditures after they were made, either by visiting Facebook or receiving mailers in my mailbox. Therefore, they constitute an “Independent Expenditure” and are exempt from BERA’s limits on individual contributions to a candidate.

In reviewing the City of Berkeley’s campaign filing records, the *Berkeley Working Families Committee* was established on October 11, 2016, and was primarily formed to support Jesse Arreguin and Kriss Worthington for Berkeley Mayor, Ben Bartlett and Darryl Moore for City Council, and Christina Murphy, Alejandro Soto-Vigil, Leah Simon-Weisberg and Igor Tregub for Rent Stabilization Board Commissioner. The committee was sponsored by SEIU Local 1021, the California Nurses Association and UNITE HERE Local 2850.

Nowhere in Mr. Running Wolf’s complaint did he provide any evidence to support his allegations. Instead Mr. Running Wolf makes a number of unsupported and outlandish claims. In his complaint, Mr. Running Wolf refers to an October 26, 2016 *Berkeleyside* article. However that article clearly acknowledges that the expenditures were made by an “independent expenditure committee”.

He claims that “*as the mayoral candidate, Jesse Arreguin was both responsible for the conduct of his campaign committee and the primary beneficiary of its actions*”. However as noted, the actions taken by the *Berkeley Working Families Committee* were independent of my campaign, and therefore I had no prior knowledge of any expenditures and have no responsibility over their actions.

In addition, while Berkeley Municipal Code section 2.12.440 prohibits contributions from labor unions directly, FPPC Regulations R2.12.440 states that:

“*a contributor who has received contributions from a “labor union...is not precluded from making contributions to candidates for Berkeley elective office or their campaigns*”

*provided that either (1) the contributor establishes a separate bank account into which monies not contributed by this type of organization are deposited and from which contributions to Berkeley elective office campaigns are made, or (2) the contributor maintains reasonable accounting methods so as to demonstrate that any contributions made to Berkeley elective office campaigns originate from sufficient funds not contributed by this type of organization.*

It is worth noting that SEIU Local 1021 PAC never made an individual contribution to *Arreguin for Mayor 2016*.

Based on my review of public records, it appears that the *Berkeley Working Families Committee* was a separately established Primarily Formed and Sponsored Committee which received contributions from a number of legally acceptable sources (Political Action Committees of SEIU Local 1021, California Nurses Association and UNITE HERE Local 2850) and made expenditures independent of my controlled committee. Independent expenditure committees are permissible under state and local law. Mr. Running Wolf's reading of local and state law is misapplied.

Mr. Running Wolf further claims that "*In addition to these financial ties, political coordination between Arreguin, his campaign and his PAC can be clearly seen through [his] endorsement of the CALI rent board slate as well as Kriss Worthington for Mayor*". Since the actions and expenditures made by Berkeley Working Families were independent of my campaign there are no ties and they do not violate state or local law.

As a candidate and citizen of the United States, I have constitutional rights and can endorse or oppose any person for public office. My personal endorsements of specific candidates have no bearing on the factual determination of whether there was coordination between *Arreguin for Mayor 2016* and the *Berkeley Working Families* independent committee.

While Mr. Running Wolf's complaint makes a number of unproven allegations, he has provided no evidence of any violation. In fact, there is no evidence because no cooperation, consultation or coordination ever took place. His complaint should therefore be dismissed. Further, his request that the FCPC enforce Berkeley Municipal Code Section 2.12.470 allowing a determination that the "*office of such a candidate shall be forfeited*" is moot, as there was no violation of the FCPC.

While not the subject of this specific complaint, it is worth noting that over the past year Mr. Running Wolf has been engaged in a campaign of harassment against me and my staff. He has falsely claimed that I was responsible for his arrest and incarceration for defacement of public property. With no basis, he has alleged that my election as Mayor was fraudulent, despite the fact that over 29,000 voters chose me to be their mayor – approximately 60% of those who voted. The election was certified by the Alameda County Registrar of Voters, the Berkeley City Clerk and the Berkeley City Council. Mr. Running Wolf has also repeatedly defaced public property, posting stickers and spray painting public property with hostile statements about me. Mr. Running Wolf visited the

home of one of my staff members and spray painted her driveway with negative messages, defacing private property and raising concern for her and her neighbors' safety (see attached photos). His behavior has been erratic, hostile, and at times illegal. Sadly, he is now using the FCPC as a venue to further his campaign of intimidation and harassment.

I respect and appreciate your work to fairly enforce our campaign finance laws to ensure an equitable electoral process. I ask that you examine the clear facts in this case and dismiss this unfounded complaint.

Respectfully,

Jesse Arreguin

C.c. Farimah F. Brown, City Attorney

IN BERKELEY  
JESSE (WHO?) is  
NOT the MAYOR  
RUNNINGWOLF

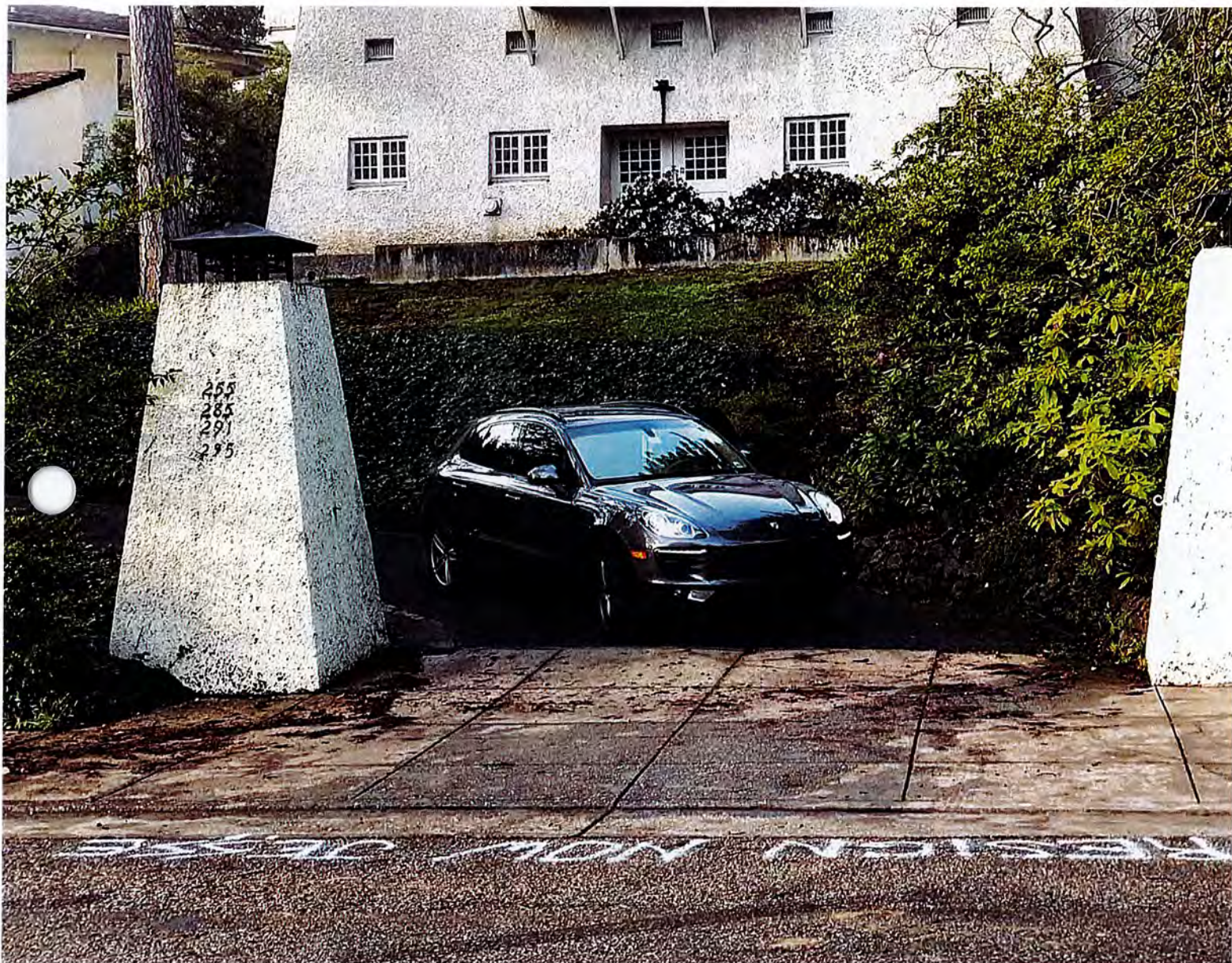


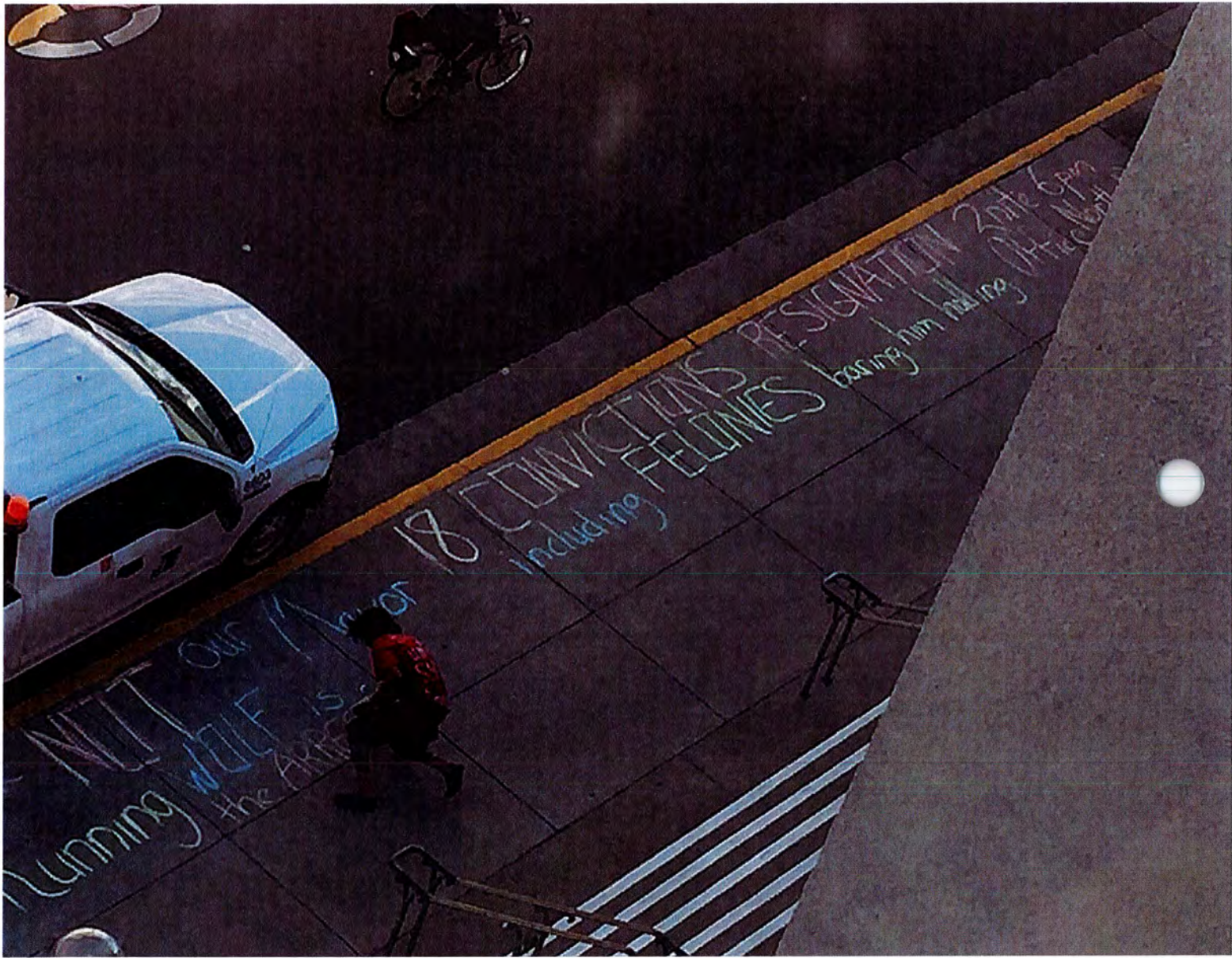
Jay Cortes @ZachRuningWolf · 10/8/17

#Occupy2DeColonize The Race

Contested Mayor Race in Berkeley Heats

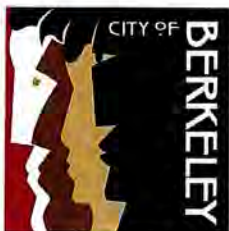
up. He is NOT Our Mayor (Draz) Jesse











Fair Campaign Practices Commission

**DATE:** August 16, 2018  
**TO:** FAIR CAMPAIGN PRACTICES COMMISSION  
**FROM:** JESSICA MAR, Commission Secretary  
**SUBJECT:** Draft negotiated stipulation with Arrequin for Mayor 2016

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On June 21, 2018, the Commission considered the matter of potential BERA violations by candidate-controlled committee *Arrequin for Mayor 2016* and took the following action:

*Motion to request that the Staff Secretary participate in settlement negotiations with the committee Arrequin for Mayor 2016 aiming for a monetary penalty in the range of \$1,000 to \$3,388.82 and to acknowledge the candidate's recognition that a violation occurred and commitment to avoid any such violations in the future (M/S/C: Saver/O'Donnell; Ayes: Soichet, McLean, O'Donnell, Saver; Noes: None; Abstain: Smith; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

Pursuant to the Commission's guidance, the Staff Secretary entered into negotiations with the respondent committee *Arrequin for Mayor 2016*. Negotiations continued through August 14, 2018. The draft negotiated stipulation is attached for the Commission's review and approval as **Attachment 1**.

If the Commission moves to adopt this negotiated stipulation, the Commission can do so, the Commission will retain jurisdiction through receipt of the monetary penalty by the City for deposit in the City's Fair Election Fund.

Attachments: 1. Draft negotiated settlement with respondent committee  
*Arrequin for Mayor 2016*

1 FARIMAH BROWN, City Attorney SBN 201227  
2 JESSICA MAR, Deputy City Attorney SBN 293304  
3 2180 Milvia Street, Fourth Floor  
4 Berkeley, CA 94704  
5 TEL.: (510) 981-6998  
6 FAX: (510) 981-6960

Attorneys for FAIR CAMPAIGN PRACTICES COMMISSION

7 **BEFORE THE FAIR CAMPAIGN PRACTICES COMMISSION**  
8 **CITY OF BERKELEY**

9  
10 In the Matter of:  
11 ARREGUIN FOR MAYOR 2016,  
12 Respondent.

[DRAFT] STIPULATION,  
DECISION AND ORDER

13  
14 This stipulation is entered into by and between the Fair Campaign Practices Commission  
15 (the "Commission" or "FCPC") and Jesse Arreguin and candidate- controlled committee  
16 *Arreguin for Mayor 2016* ("Respondent"), through its controlling candidate Jesse Arreguin and  
17 treasurer Jacquelyn McCormick.<sup>1</sup> The following is a true and accurate summary of the facts in  
18 this matter:

19 1. Ms. McCormick served as volunteer treasurer and campaign manager, as well as  
20 a contributor to Respondent.

21 2. While Ms. McCormick served as treasurer to Respondent, she paid for eighteen  
22 campaign expenditures for the Respondent with her own personal funds. These expenditures  
23 are set forth in the chart below:

24  
25

26 \_\_\_\_\_  
27 <sup>1</sup> Ms. McCormick served as treasurer, campaign manager, and a contributor to the committee. Because  
28 the stipulation includes actions that were taken by Ms. McCormick beyond the scope of the duties of a  
Respondent's treasurer, this stipulation references Ms. McCormick by name, rather than solely as the  
treasurer.

**Schedule F Accrued Expenses (Unpaid Bills)**

<b>Accrued</b>	<b>Amount</b>	<b>Owed To</b>	<b>Description</b>
06/08/16	\$175.69	Jacquelyn McCormick	"PIQ"
06/13/16	\$101.48	Jacquelyn McCormick	"Staples- office supplies"
07/08/16	\$215.68	Jacquelyn McCormick	"Fast Imaging- flyer/handout printing"
07/08/16	\$290.61	Jacquelyn McCormick	"Cricket Wireless- phone and first month fees"
07/12/16	\$60.23	Jacquelyn McCormick	"Fast Imaging- walk sheet printing"
08/12/16	\$105.00	Jacquelyn McCormick	"Cricket Wireless- Office"
08/14/16	\$228.84	Jacquelyn McCormick	"Thank you notes"
08/24/16	\$110.54	Jacquelyn McCormick	"Chavez house party"
09/01/16	\$80.02	Jacquelyn McCormick	"avery labels/stamps"
09/04/16	\$93.75	Jacquelyn McCormick	"Fournee- food for volunteers"
09/08/16	\$273.75	Jacquelyn McCormick	"Fast Imaging- print walk sheets"
09/10/16	\$69.01	Jacquelyn McCormick	"office supplies/paper"
09/12/16	\$105.00	Jacquelyn McCormick	"Cricket Wireless- monthly office phone charges"
09/29/16	\$22.54	Jacquelyn McCormick	"Staples- paper"
10/08/16	\$10.92	Jacquelyn McCormick	"food for volunteers"
10/13/16	\$100.00	Jacquelyn McCormick	"Cricket Wireless- Office phone expenses"
11/04/16	\$1,263.63	Jacquelyn McCormick	"Yard Signs-last minute reprint"
10/23/2016- 12/31/16	\$82.13	Jacquelyn McCormick	"copyworld phone lists"

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3. The mayoral election took place on November 8, 2016. Candidate Jesse Arreguin was elected Mayor of Berkeley.

4. The Respondent’s Form 460 campaign filing covering the period from Jan. 1 - June 30, 2017 (original, filed July 31, 2017), showed that none of these expenditures had been reimbursed as of June 30, 2017.

5. On August 7, 2017, the Respondent reimbursed Ms. McCormick for the purchases she made for the campaign. Reimbursement for these expenditures was fourteen months after the first expenditure and nine months after the election.

6. The Commission received a report regarding these potential violations of the Berkeley Election Reform Act on November 16, 2017. At that meeting, the Commission moved to make a determination of probable cause that the Respondent committed eighteen violations of Berkeley Municipal Code section 2.12.415.

7. At the November 16, 2017 meeting, some commissioners asked for additional information from the Respondent. Staff wrote a letter to the candidate and treasurer sharing the commissioners’ request for information and requesting a response to be included in the Commission’s packet for the April 19, 2018 meeting. On April 10, 2018 the candidate wrote to request an extension of time to provide a response for the information requested. The request was granted and the candidate was told that the item regarding Arreguin for Mayor 2016 would be rescheduled for the next regular FCPC meeting on June 21, 2018.

**VIOLATION OF THE CONTRIBUTION LIMIT (BMC 2.12.415) - 18 Counts**

8. BERA prohibits “contributions,” including gifts, loans, advances, forgiveness of indebtedness, payment of a debt by a third party, or nonmonetary contributions, which exceed \$250 to any candidate-controlled committee by any person other than the candidate himself or herself. BMC §§ 2.12.100, 2.12.415.

9. Ms. McCormick made a \$250.00 monetary contribution to the Respondent on October 22, 2015, and was prohibited from making any additional contributions to the Respondent for that election, which was held on November 8, 2016. BMC § 2.12.415.

1           10.     Subsequently, between June and December 2016, Ms. McCormick made  
2 eighteen expenditures from her personal funds for Respondent's campaign use. These  
3 expenditures totaled \$3,388.82.

4           11.     These eighteen nonmonetary contributions are included within the definition of  
5 "contributions" under Berkeley Municipal Code § 2.12.100 and were all in excess of the  
6 \$250.00 contribution limit under Berkeley Municipal Code § 2.12. 415.

7           12.     Ms. McCormick spent her personal funds for Respondent's campaign purposes  
8 starting in June 2016. She spent \$3,388.82 in personal funds, which functioned as a loan to the  
9 Respondent. The Respondent did not reimburse Ms. McCormick until August 7, 2017.  
10 Reimbursement for these expenditures was fourteen months after the first expenditure and nine  
11 months after the election.

12           13.     Pursuant to Berkeley Municipal Code 2.12.100 loans are contributions subject to  
13 the contribution limit.

14           14.     Pursuant to FCPC Regulation 2.12.100, extensions of credit are a form of  
15 contribution under Berkeley Municipal Code § 2.12.100, unless they fall within the specific  
16 exceptions of R.2.12.100.b. Ms. McCormick's eighteen nonmonetary contributions were not an  
17 extension of credit, because she was not the provider of the goods or services rendered.  
18 Additionally, even if the eighteen expenditures were extensions of credit, they do not meet the  
19 limited exception from qualifying as a contribution under R.2.12.100.b because they were not  
20 paid by December 31, 2016.

21           15.     If a volunteer or paid employee of the candidate's controlled committee makes  
22 expenditures at the behest of a candidate for goods or services, he or she must be reimbursed  
23 within 45 calendar days after he or she pays the expenditures. Regulations of the Fair Political  
24 Practices Commission, Title 2, Division 6, California Code of Regulations § 18526(d). If the  
25 committee does not reimburse these expenses within 45 calendar days, the expenditure becomes  
26 a nonmonetary contribution from that individual on the 45th day after the expenditure was paid  
27 and the committee is required to report the nonmonetary contribution. *Id.* The FPPC Campaign  
28 Disclosure Manual 2 also explains this requirement:

1 If a bank account is required [], the candidate must deposit personal funds in the  
2 campaign bank account and make expenditures from that account instead of  
3 spending personal funds for the campaign and later seeking reimbursement from  
4 campaign funds. However, any other individual (e.g., a volunteer or campaign  
5 worker) may make expenses from personal funds and be reimbursed, so long as  
6 the expenses are incurred for political, legislative, or governmental purposes and  
7 repayment is made within 45 days.

8 FPPC Campaign Disclosure Manual 2, Chapter 5.2.

9 16. Additionally, an individual may not make contributions to a candidate or  
10 committee if the total amount of expenditures and contributions made to the candidate or  
11 committee by that person would exceed the contribution limit:

12 During the period specified for reimbursement, or until reimbursement is paid,  
13 whichever occurs first, the person to be reimbursed shall make no contributions  
14 to the candidate or committee which cause the total amount of expenditures and  
15 contributions made to the candidate or committee by that person to exceed  
16 contribution limits.

17 FPPC Reg. § 18526(e).

18 17. The Respondent did not reimburse Ms. McCormick until August 7, 2017.  
19 Reimbursement for these expenditures was fourteen months after the first expenditure and nine  
20 months after the election.

21 18. Ms. McCormick submitted a statement to the Commission indicating she worked  
22 out an agreement with Candidate Arreguin that she would incur expenses on behalf of the  
23 campaign and be reimbursed. Ms. McCormick made the intentional decision to “put the  
24 campaign cash flow demands before reimbursement” to herself and used her personal funds to  
25 purchase items, including \$1,263.63 worth of yard signs four days prior to the election, that the  
26 Respondent would otherwise have been unable to purchase because Respondent did not have  
27 money in the campaign account.

28 19. Failure to comply with any section of BERA, including Section 2.12.297, may  
generally result in further penalties after a hearing and a finding of violation: “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

1 Chapter; File any reports, statements, or other documents or information required by this  
2 Chapter; C. Pay a monetary penalty of up to \$1,000.00 per violation, or up to the amount or  
3 value of the unlawful or undisclosed contribution or expenditure, whichever is greater, to the  
4 Fair Elections Fund of the City.” BMC §2.12.231.

5 20. When the Respondent did not reimburse Ms. McCormick for each of these  
6 eighteen expenditures within 45 calendar days from the date she paid each of them, they each  
7 became nonmonetary contributions to the Respondent.

8 **FAILURE TO DISCLOSE NONMONETARY CONTRIBUTIONS**

9 21. Respondent did not disclose the nonmonetary contributions made by Ms.  
10 McCormick to the Respondent on any of its Form 460s.

11 22. The Respondent was required to report each expenditure as a nonmonetary  
12 contribution received on the 45<sup>th</sup> day after the expenditure was paid. FPPC Reg. § 18526(d).  
13 The Respondent did not report any of these expenditures as nonmonetary contributions on  
14 Schedule C of its Form 460s during this period. Nor did the Respondent report the expenditures  
15 as accrued expenses of Schedule F of its Form 460s prior to the election.<sup>2</sup>

16 23. As a result of this failure, the public and other candidates in the mayoral race  
17 were not notified of the additional contribution of \$3,388.82 that Ms. McCormick made to  
18 Respondent in advance of the election.

19 **Monetary Payment to the City Fair Elections Fund**

20 24. As part of this Stipulation, Respondent agrees to pay a penalty. The penalty  
21 after a hearing pursuant to BMC Section 2.12.230 could go as high as eighteen thousand dollars  
22 (\$18,000.00). BMC § 2.12.231.

23 25. However, considering prior Commission stipulations and guidance from the  
24 California Fair Political Practices Commission, the fact that the unlawful contributions were not

25 \_\_\_\_\_  
26 <sup>2</sup> Neither the Respondent’s original Form 460 for the period covering July 1, 2016 to September 24, 2016, (filed  
27 Sept. 29, 2016), nor the Respondent’s original Form 460 covering the period of September 25, 2016 to October 22,  
28 2016, (filed Oct. 27, 2016), included any of these expenditures on Schedule F as accrued expenses nor on Schedule  
C as nonmonetary contributions. Information regarding these expenditures was first publically disclosed on  
Respondent’s post-election disclosure covering the period of October 23, 2016 to December 31, 2016, (filed Jan.  
31, 2017) on Form 460 Schedule F and on Respondent’s amended pre-election Form 460 Schedule F for the period



1 disclosed prior to the election, the Commission has agreed to limit the penalty to twenty-three  
2 hundred dollars (\$2,300.00).

3 **ADMISSIONS AND STIPULATIONS**

4 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the  
5 parties as follows:

6 1. Respondent violated BMC Section 2.12.415 as set forth in paragraphs 1 through  
7 17, above, which are a true and accurate summary of the facts in this matter.

8 2. Based on the facts and law detailed above, factors in aggravation and mitigation,  
9 and BMC Section 2.12.231, Respondent agrees to pay the sum of twenty-three hundred dollars  
10 (\$2,300.00) as a monetary penalty, payable to the City of Berkeley for deposit into the City's  
11 Fair Elections Fund, no later than October 1, 2018.

12 3. Respondent agrees to take necessary and prudent precautions to comply with all  
13 provisions of BERA and FCPC regulations in the future. Further, Respondent will seek advice,  
14 as needed, from the City Clerk and FCPC staff on compliance with BERA and FCPC  
15 regulations prior to filing deadlines to aid in future compliance.

16 4. The parties agree to this Stipulation to resolve all factual and legal issues raised  
17 in this matter and to reach a final disposition without having to hold an administrative hearing to  
18 determine the liability of Respondent. Respondent understands and hereby knowingly and  
19 voluntarily waives any and all procedural rights under BERA and the FCPC Procedures in  
20 regards to this matter.

21 5. The FCPC agrees that if Respondent executes this Stipulation, it will forego any  
22 further enforcement action against Respondent as to this matter, and if approved by the FCPC,  
23 this Stipulation will resolve all factual and legal issues raised in this matter and will be the final  
24 disposition of this matter for purposes of BMC Sections 2.12.450 and 2.12.455. Nothing in this  
25 section shall be read to preclude the Commission's consideration of any complaint or other  
26 action for any false statements stemming from any of Respondent's representations in this  
27 Stipulation.

28 covering July 1, 2016 to September 24, 2016 (filed on Jan. 31, 2017).

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

5           7.       Respondent acknowledges that the FCPC retains jurisdiction over this  
6 Stipulation and Order, and is acting under Section VI.C.2.d of the FCPC Procedures, enacted  
7 pursuant to the Commission's authority to enact rules and procedures under BMC Section  
8 2.12.210.

9  
10 Dated: August   , 2018.       \_\_\_\_\_  
11                                    FARIMAH BROWN, City Attorney  
12                                    JESSICA MAR, Deputy City Attorney  
  Attorneys for Fair Campaign Practices Commission

13 Dated: August   , 2018       \_\_\_\_\_  
14                                    JACQUELYN MCCORMICK, Treasurer  
15                                    Respondent Arreguin for Mayor 2016

16 Dated: August   , 2018.       \_\_\_\_\_  
17                                    JESSE ARREGUIN, Candidate and Assistant Treasurer  
18                                    Respondent Arreguin for Mayor 2016

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27                                    **ORDER**

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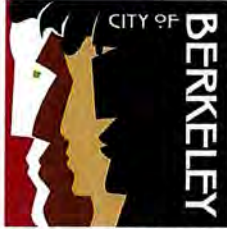
**ORDER**

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

IT IS SO ORDERED.

Dated: August , 2018.

\_\_\_\_\_  
DEAN METZGER, Chairperson  
FAIR CAMPAIGN PRACTICES COMMISSION



Fair Campaign Practices Commission

Attachment F -  
Agenda Item 8

**DRAFT MINUTES**

North Berkeley Senior Center  
1901 Hearst Street  
Classroom C (Upstairs)

Regular Meeting  
**June 21, 2018**

Members Present: Emma Soichet (Acting Chair), Mark McLean, Patrick O'Donnell, Daniel Saver, Brad Smith

Members Absent: Dean Metzger (Chair) (excused), Greg Harper (excused), Brian Tsui (excused)

Also Present: Savith Iyengar, Acting Staff Secretary/Deputy City Attorney  
Mark Numainville, City Clerk  
Leslie Rome, Assistant Management Analyst, City Clerk Department

1. **Call to Order**

Chair called the meeting to order at 7:00 p.m.

2. **Roll Call**

Roll call taken.

– Commissioner McLean arrived at 7:01 p.m. –

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

One public comment on matters not on agenda. Six members of the public in attendance.

4. **Reports**

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

Chair discussed her written report regarding the new Commissioners' Manual and reminders regarding public comment, conduct of meetings, and conflicts of interest. Staff noted the availability of public packets and additional materials received prior to the meeting. Staff also noted the presence of additional staff from the City Clerk Department.

5. **Approval of Minutes for the April 19, 2018 Regular Meeting**

- a. Public comment: one speaker.
- b. Commission discussion and action.

*Motion to approve minutes* (M/S/C: Smith/O'Donnell; Ayes: Soichet, McLean, O'Donnell, Smith; Noes: None; Abstain: Saver; Absent: Metzger (excused), Harper (excused), Tsui (excused)).

6. **Approval of Minutes for the May 22, 2018 Special Meeting**

- a. Public comment: one speaker.
- b. Commission discussion and action.

*Motion to approve minutes (M/S/C: Smith/O'Donnell; Ayes: Soichet, O'Donnell, Smith; Noes: None; Abstain: McLean, Saver; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

7. **Public Campaign Financing Program Certification of Participants and Requests for Matching Funds; Discussion and Possible Action**

- a. Public comment: one speaker.
- b. Commission discussion and action.

*Motion to approve 6:1 public matching funds for candidate **Mary Kay Lacey** in an amount not to exceed **\$9,600** (M/S/C: O'Donnell/Saver; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

*Motion to approve 6:1 public matching funds for candidate **Lori Droste** in an amount not to exceed **\$28,300** (M/S/C: O'Donnell/Smith; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

*Motion to approve 6:1 public matching funds for candidate **Rashi Kesarwani** in an amount not to exceed **\$15,594** (M/S/C: O'Donnell/Smith; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

*Motion to approve 6:1 public matching funds for candidate **Alfred Twu** in an amount not to exceed **\$2,047.20** (M/S/C: O'Donnell/Smith; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

8. **Staff Report Regarding Possible BERA Violations by Candidate-Controlled Committee Arreguin for Mayor 2016 and Information Report Responding to Commission Requests for Information Regarding Matter; Discussion and Possible Action**

- a. Public comment: five speakers.
- b. Commission discussion and action.

*Motion to request that the Staff Secretary participate in settlement negotiations with the committee Arreguin for Mayor 2016 aiming for a monetary penalty in the range of \$1,000 to \$3,388.82 and to acknowledge the candidate's recognition that a violation occurred and commitment to avoid any such violations in the future (M/S/C: Saver/O'Donnell; Ayes: Soichet, McLean, O'Donnell, Saver; Noes: None; Abstain: Smith; Absent: Metzger (excused), Harper (excused), Tsui (excused)).*

———— Meeting temporarily adjourned at 8:03 p.m., reconvened at 8:23 p.m. ————

9. **Staff Report on Alleged Violations of the Berkeley Election Reform Act by Jesse Arreguin, Arreguin for Mayor 2016, and Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016 Submitted by Z. Running Wolf and Information Report on Commission Request to Invite Treasurer of Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016; Discussion and Possible Action**

- a. Public comment: three speakers.
- b. Commission discussion and action.

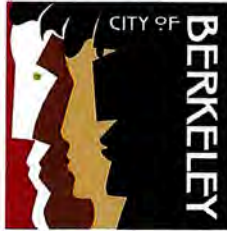
*Motion to dismiss the complaint* (M/S/C: Smith/Saver; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).

*Motion to recommend that the Staff Secretary investigate the use of a Form 460 instead of a Form 461 by the committee Berkeley Working Families supporting Arreguin and Worthington for Mayor, Moore and Bartlett for City Council, Tregub, Soto-Vigil, Murphy, and Simon-Weisberg for Rent Board 2016* (M/S/C: McLean/Saver; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).

10. **Adjournment**

(M/S/C: O'Donnell/Smith; Ayes: Soichet, McLean, O'Donnell, Saver, Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Harper (excused), Tsui (excused)).

The meeting adjourned at 8:49 p.m.



Fair Campaign Practices Commission

## DRAFT MINUTES

North Berkeley Senior Center  
1901 Hearst Avenue  
Classroom C (Upstairs)

Regular Meeting  
August 16, 2018  
7:00 p.m.

Members Present: Brad Smith, Dean Metzger, Greg Harper, Patrick O'Donnell, Mark McLean, Brian Tsui

Members Absent: Emma Soichet (leave of absence), Daniel Saver (leave of absence)

Also Present: Jessica Mar, Secretary/Deputy City Attorney  
Mark Numainville, City Clerk

1. **Call to Order**

Chair called the meeting to order at 7:02 p.m.

2. **Roll Call**

Roll call taken.

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

No public comment on matters not on agenda. 6 members of the public in attendance.

4. **Reports**

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

5. **Approval of minutes for the June 21, 2018 regular meeting**

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

*Motion to approve minutes (M/S/C: McLean/ Smith; Ayes: McLean, Smith, Metzger, O'Donnell; Noes: None; Abstain: Harper, Tsui; Absent: Saver (leave of absence); Soichet (leave of absence).*

6. **Approval of minutes for the July 19, 2018 special meeting**

- c. Public comment: no speakers.
- d. Commission discussion and action.

*Motion to approve minutes (M/S/C: Smith/Harper; Ayes: Harper, Smith, Metzger, O'Donnell; Noes: None; Abstain: McLean, Tsui; Absent: Saver (leave of absence); Soichet (leave of absence))*

7. Public Campaign Financing Program request for matching funds; discussion and possible action.

Public Comment: no comment.  
Commission discussion and action:

*Motion to certify candidate Cecilia Rosales to participate in the Berkeley public campaign financing program. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Cecilia Rosales in an amount not to exceed \$8,604.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to certify candidate Ben Gould to participate in the Berkeley public campaign financing program. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Ben Gould in an amount not to exceed \$27,162.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Gregory Magofna in an amount not to exceed \$6,600.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Rigel Robinson in an amount not to exceed \$2,760.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Margo Schueler in an amount not to exceed \$7,602.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Mary Kay Lacey in an amount not to exceed \$7,200.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*



*Motion to approve 6:1 public matching funds for candidate Alfred Twu in an amount not to exceed \$588.00. (M/S/C: O'Donnell/Tsui; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence)).*

8. Staff report regarding BERA violations by Candidate-Controlled Committee *Arreguin for Mayor 2016* and stipulation for Commission's review and approval; discussion and possible action.

Public Comment: no public comment.  
Commission discussion and action:

*Motion to approve the negotiated stipulation with candidate-controlled committee Arreguin for Mayor 2016. (M/S/C: Smith/O'Donnell; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: Metzger; Absent: Saver (leave of absence); Soichet (leave of absence))*

9. Adjournment.

*Motion to adjourn (M/S/C: O'Donnell/Smith; Ayes: Harper, McLean, Smith, Metzger, O'Donnell, Tsui; Noes: None; Abstain: None; Absent: Saver (leave of absence); Soichet (leave of absence))*

The meeting adjourned at 7:18 p.m.



Fair Campaign Practices Commission

**DATE:** April 11, 2019

**TO:** FAIR CAMPAIGN PRACTICES COMMISSION

**FROM:** MARIAM MORLEY, Renne Public Law Group,  
on behalf of Farimah Brown, City Attorney<sup>1</sup>

**SUBJECT:** Staff Report Referral Regarding Potential Violation of BERA by Lacey for Council 2018 from the City Clerk's Office

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### Introduction

At its meeting of October 18, 2018 the Fair Political Practices Commission (“the Commission”) received a referral from the City Clerk Department regarding a potential violation of the Berkeley Election Reform Act (BERA) by *Lacey for Council 2018* (“the Committee”). The staff report on the referral concluded that there was a reasonable basis to believe that a violation of BERA Section 2.12.500.A.7 had occurred based on a \$50 loan and a subsequent \$50 contribution that the campaign treasurer and candidate’s spouse, Mr. Henry, made to the campaign. The staff report reasoned that as a candidate participating in the public financing program, Ms. Lacey could not accept loans from residents of Berkeley. She could accept only monetary contributions of up to \$50, excluding loans, or nonmonetary contributions with a fair market value of up to \$50. (See Berkeley Municipal Code (“BMC”) Section 2.12.500.A.7, which is attached to this memorandum as **Attachment A.**) In addition, the loan and subsequent monetary contribution, a total contribution of \$100, exceeded the \$50 contribution limit of BMC Section 2.12.500.A.7 for participating candidates. (A copy of the staff report for the October 18 meeting, with attachments, is attached to the memorandum as **Attachment B.**) The Commission adopted a motion “to find probable cause that the Committee committed a violation of BMC 2.12.500.” The Commission also adopted a motion “to continue the discussion of the item to a future regular meeting of the Commission, include training materials provided related to public financing for treasurers and candidates, date of the training, and a timeline of the [Commission’s] Fair Election funds

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<sup>1</sup> Because Deputy City Attorney Emma Soichet, the new Secretary to the FCPC, was a member of the FCPC on October 18, 2018 when it initially considered the referral regarding the potential violation of BERA by *Lacey for City Council 2018*, the City Attorney, in an abundance of caution and to avoid confusion, has asked Renne Public Law Group to assist the FCPC with the Lacey matter.

disbursements to the committee.” (A copy of the minutes of the October 18, 2018 meeting is attached to this memorandum as **Attachment C.**)

By letter of October 22, 2018 staff notified the Committee of the Commission’s October 18 actions. On November 9 Mr. Henry submitted a letter to the former Secretary to the Commission and asked that the letter be made part of the record for the Commission’s next meeting. (A copy of Mr. Henry’s November 9, 2018 letter, with attachments, is attached to this memorandum as **Attachment D.**)<sup>2</sup> On April 8, 2018 staff informed the Committee that this matter will be on the agenda for the Commission’s regular meeting of April 19.

### **Commission’s Request for Information**

#### Date of Training

On July 12, 2018 the City Clerk and the Commission Secretary conducted a training entitled “BERA Information Seminar” that included a discussion of public financing under the Fair Elections Fund Act of 2016 (Berkeley Municipal Code (“BMC”) Sections 2.12.490-2.12.560). Berkeley candidates, committee officers, Fair Campaign Practices commissioners, and members of the public were invited to attend the training. (A copy of staff’s July 19, 2018 memorandum regarding the training is attached to this memorandum as **Attachment E.**)

#### Training Materials

The City Attorney and the City Clerk utilized a PowerPoint presentation at the training. (A copy of that PowerPoint is attached to this Memorandum as **Attachment F.**) The public financing program is discussed at slides 7-8 of the PowerPoint. Slide 7 notes that further information on public financing can be found in the public financing guide. The following is a link to the current version of that guide -- the Public Financing Program’s Supplemental Guide for Participating Candidates (“the Public Financing Guide”): <https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/Supplemental%20Guide%20for%20Public%20Financing%20Program%20Participants%202018.pdf>.<sup>3</sup>

The City Clerk made a change to the Public Financing Guide after the July 12 training that is relevant to the potential violation in this matter. Currently, the fourth question and answer on page 11 of the Guide read as follows:

QUESTION: How much can a candidate contribute to his/her own campaign committee?

**ANSWER: BMC § 2.12.500(6) states that candidates (including their spouse, domestic partner, and dependent children) are limited to contributing a maximum of \$50 to their own committee. This includes non-monetary contributions.**

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<sup>2</sup> The PowerPoint presentation that Mr. Henry appended to his November 9 letter is not included in Attachment C because that PowerPoint is attached separately to this memorandum as Attachment F.

<sup>3</sup> In accordance with the City’s policy on environmental sustainability, this document and other materials referenced in this memorandum are being provided to the Commission electronically due to their length.

On the date of the training, July 12, 2018, that question and answer read as follows:

QUESTION: How much can a candidate contribute to his/her own campaign committee?

**ANSWER: BMC § 2.12.500(6) states that candidates (including their spouse, domestic partner, and dependent children) are limited to contributing a maximum of \$50 to their own committee. This includes non-monetary contributions and loans.** (Emphasis added.)

(A copy of page 11 of the Public Financing Guide as it read on July 12, 2018 is attached to this memorandum as **Attachment G**.)

The City Clerk subsequently corrected the Public Financing Guide in March of 2019 to delete the words “and loans” from the answer to the fourth question because candidates who participate in the public financing program may not make loans to their campaign committees. Participating candidates may make only qualified contributions, or non-monetary contributions worth up to \$50, to their committees. (BMC Section 2.12.500.A.6.) Loans are specifically excluded from the definition of the term “qualified contribution,” which is defined as “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.” (BMC Section 2.12.167, emphasis added. A copy of Section 2.12.167 is attached to this memorandum as **Attachment H**.) A reasonable person reading the original language of page 11 of the Public Financing Guide might mistakenly have concluded that a candidate and their spouse, domestic partner, and dependent children are permitted to make loans of up to \$50 to the candidate’s committee.

In addition to hard copies of the PowerPoint presentation, the City Clerk distributed the following materials to attendees at the July 12 training:

1. BERA, which consists of Sections 2.12.005-2.12.560 of the BMC:  
<https://www.codepublishing.com/CA/Berkeley/>
2. The FCPC Regulations:  
[https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission\\_on\\_Fair\\_Campaign\\_Practices/FCPC%20Regulations%20adopted%20September%202017,%202017.pdf](https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission_on_Fair_Campaign_Practices/FCPC%20Regulations%20adopted%20September%202017,%202017.pdf)
3. The City of Berkeley’s Campaign Financing Manual:  
<https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/FCPC%20Filing%20Manual%202016%20-%20FINAL.pdf>
4. The City of Berkeley’s Campaign Statement Filing Schedule November 6, 2018 General Municipal Election. (A copy of the filing schedule is attached to this memorandum as **Attachment I**.)
5. The FPPC’s Form 410: <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Forms/410.pdf>
6. The City of Berkeley’s Statement of Organization form:

[https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/statement\[1\].pdf](https://www.cityofberkeley.info/uploadedFiles/Clerk/Elections/statement[1].pdf)

7. The FPPC's informational chart on Political Advertising Disclosures:

[http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/Disclaimers\\_1.pdf](http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/CampaignAdvertisementDisclosure/Disclaimers_1.pdf)

Timeline of the Commission's Fair Election Funds Disbursements to the Committee  
The following chart sets out the date and amount of Fair Election Fund disbursements to *Lacey for City Council 2018*:

Fair Elections Funds Disbursed to the Committee:

Lacey for City Council 2018	Date Approved	Invoice #	Amount
	5/17/2018	LAC-1	\$ 14,400.00
	6/21/2018	LAC-2	\$ 9,600.00
	7/19/2018	LAC-3	\$ 6,000.00
	8/16/2018	LAC-4	\$ 7,200.00
	9/20/2018	LAC-5	\$ 2,250.00
		Total	\$ 39,450.00

**Proceedings After a Determination of Probable Cause**

As discussed above, the Commission made a finding of probable cause in this matter on October 18, 2018. The Commission's Procedures dictate the actions the Commission may take after it makes a finding of probable cause that a violation of BERA has occurred. The Commission may:

- a. Dismiss the complaint and take no further action.
- b. Request that the Secretary conduct further investigation.
- c. Require the timely filing of campaign statements and/or amendments to campaign statements.
- d. Invite the respondents to participate in settlement negotiations.
- e. Schedule and conduct a hearing pursuant to Section 2.12.330 of BERA.
- f. Ask the City Attorney or the District Attorney to seek legal remedies.
- g. Seek any other remedy within its authority.

Procedures for the FCPC, Section VI.C.2.

When determining which of these actions would be appropriate, the Commission may consider the following factors:

- 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.

Procedures for the FCPC, Section VI.C.1.

The Commission may want to consider the following with respect to some of the factors listed above:

Factor “a” -- past actions in similar situations.

The Commission has resolved by stipulation two matters that involved contributions that exceeded the \$250 cap on contributions for all candidates set by BMC Section 2.12.415: 1) *In the Matter of George Beier, Shirley Issel, Shirley Issel for School Board* (dated December 2007); and 2) *In the Matter of Soto-Vigil for Council 2014* (dated November 2015). In the Beier matter, Respondent Beier acknowledged that his committee had accepted contributions from a single donor that exceeded the contribution cap of BMC Section 2.12.415 by \$200. Respondent Beier agreed to make a \$200 payment to the City’s general fund from his own monies, and the stipulation did not impose any further monetary penalty on Respondents. In the Soto-Vigil matter, Respondent stipulated to the receipt of contributions from a single contributor that exceeded the maximum permitted contribution amount by \$50 in violation of BMC Section 2.12.415. In light of Respondent’s “diligence and responsiveness to staff inquiries,” the Commission imposed a penalty of \$50 for this violation. The Commission has not entered into any stipulations that resolved complaints or referrals alleging receipt of a contribution that exceeded the \$50 cap on contributions to participating candidates, or receipt of a contribution that would have disqualified the candidate from receiving public funds.

Factor “b” --the candidate’s and treasurer’s experience in campaign reporting, the history of other violations, and good faith efforts to remedy reporting deficiencies.

A search of City records reveals that Ms. Lacey’s 2018 campaign was her first run for elected office in Berkeley. She served as the assistant treasurer to her campaign, but she had no previous experience as a campaign treasurer. Likewise, Mr. Henry, the campaign treasurer, had no previous experience in campaign reporting. Staff has discovered no record that either Ms. Lacey or Mr. Henry were involved in any previous BERA violations. This matter did not involve any reporting deficiencies.

Factor “c” -- an apparent intent to conceal, deceive or mislead.

The former Secretary’s October 18, 2018 staff report, which discusses the Committee’s responses to the investigation, does not present any facts that would indicate the presence of an apparent intent to conceal, deceive or mislead.

Factor “d” -- whether the probable violation appears deliberate, negligent or inadvertent.

The facts cited in the October 18 staff report suggest that the potential violation of the contribution cap was not deliberate. Mr. Henry told the Secretary that he believed that his \$50 loan to the Committee had been repaid by the campaign’s check (made out to his wife and dated May 5, 2018) when he made his second \$50 contribution on May 5.

(See page 3 of Attachment B.) As to the potential violation of BERA's bar to receipt of a loan from the candidate's spouse, Mr. Henry's November 9 letter (Attachment D) states that the July 12 BERA training did not inform the attendees that receipt of a loan might disqualify a candidate from participation in the public financing program. Mr. Henry also cites to the Commission's disbursement of Fair Elections funds to the Committee on two occasions after the Committee disclosed the loan in its July 30, 2018 Form 460 campaign statement. In addition, as discussed above, the City's Public Financing Guide contained erroneous information indicating that a candidate's spouse was permitted to make a loan to the candidate's campaign.

**Attachments**

- A. Copy of BMC Section 2.12.500.A.7.
- B. Copy of the Staff Report Regarding Potential Violation of BERA by *Lacey for Council 2018* from City Clerk's Office, dated October 18, 2018.
- C. Copy of the minutes of the FCPC's October 18, 2018 meeting.
- D. Copy of November 9, 2018 letter from Stephen Henry to former Commission Secretary.
- E. Copy of the July 19, 2018 staff report on the July 12, 2018 BERA Information Seminar.
- F. PowerPoint for July 12, 2018 BERA Information Seminar.
- G. Copy of page 11 of the Public Financing Guide as it read on July 12, 2018.
- H. . Copy of Section BMC 2.12.167.
- I. Copy of the City of Berkeley's Campaign Statement Filing Schedule November 6, 2018 General Municipal Election.

**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. (Ord. 7564-NS § 7, 2017: Ord. 7524-NS § 3.6 (part), 2016)



Fair Campaign Practices Commission

Attachment B -  
Agenda Item 9

**DATE:** October 18, 2018  
**TO:** FAIR CAMPAIGN PRACTICES COMMISSION  
**FROM:** JESSICA MAR, Commission Secretary/Deputy City Attorney *JM 10/18/18*  
**SUBJECT:** Referral Regarding Potential Violation of BERA by  
*Lacey for Council 2018* from the City Clerk's Office

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### INTRODUCTION

By letter dated August 6, 2018, the City Clerk Department informed the committee *Lacey for Council 2018* of items in the committee's filing that appeared to be noncompliant with the Berkeley Election Reform Act (BERA). The letter also referred an item regarding a potential violation of the Berkeley Election Reform Act (BERA) by the committee *Lacey for Council 2018* to the Fair Campaign Practices Commission. The referral is regarding the committee's Form 460 semi-annual campaign statement filed July 30, 2018, covering the period from March 21, 2018 through June 30, 2018, showing aggregate contributions from a single individual of \$100. (**Attachment 1.**) Ms. Lacey is a public financing participating candidate.

By letter dated August 20, 2018, staff reached out to *Lacey for Council 2018* (the "Committee") for any additional information that the Committee wished to provide. (**Attachment 2.**)

Public financing candidates may 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)." BMC § 2.12.500.A.1.7.

The statement lists a loan in Schedule B of \$50.00 made by **Stephen Henry**<sup>1</sup> on March 21, 2018; schedule A lists a contribution of a monetary gift of \$50.00 made by **Stephen Henry** on May 5, 2018. (**Attachment 3.**) The statement lists a repayment of the loan to Mr. Henry on May 5, 2018. A loan qualifies as a contribution under Berkeley Municipal Code section 2.12.100. Therefore, contributions totaling \$100 from a single individual would violate the \$50 contribution limit from a single individual for public financing participating candidates.

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<sup>1</sup> Mr. Stephen Henry is Treasurer of *Lacey for Council 2018* as well as Candidate Lacey's spouse.

In accordance with Sections V.B. and D of the FCPC Procedures, the Secretary reviewed the documentation submitted with the referral, provided the referral and requested responses from *Lacey for Council 2018*, and reviewed the relevant campaign disclosure statements of *Lacey for Council 2018*.

As discussed in more detail below, after the presentation of the Secretary's report, the Commission may move to dismiss the matter by majority vote and proceed no further, or make a determination that probable cause exists to believe that BERA has been violated. FCPC Procedures section VI.B.

Based on the evidence from the Committee's public filings and the information provided by Candidate Lacey and Treasurer Henry there appears to be sufficient evidence to present a reasonable basis on which to believe that a violation of BERA has occurred pursuant to the FCPC Procedures section VI.B.2.

### **SUMMARY OF EVIDENCE**

On March 21, 2018, Stephen Henry made a \$50.00 loan to the committee.<sup>2</sup> (**Attachment 3**, Schedule A).<sup>3</sup> On May 5, 2018, Stephen Henry made a monetary gift contribution of \$50.00 to the Committee. (**Attachment 3**, Schedule A).

Candidate Mary Kay Lacey submitted an application to participate in the City's Public Financing Program, including a candidate certification dated May 7, 2018. (**Attachment 4**). Mr. Henry's May 5, 2018 monetary gift contribution of \$50.00 was submitted as one of Candidate Lacey's initial qualifying contributions.

At its May 22, 2018 meeting, the Commission accepted the application with the following action:  
*Motion to certify candidate Mary Kay Lacey to participate in the Berkeley public campaign financing program* (M/S/C: Soichet/O'Donnell; Ayes: Smith, Metzger, O'Donnell, Soichet; Noes: None; Absent: McLean, Tsui (leave of absence), Harper, Saver).

The Commission also approved Mary Kay Lacey's initial request for Fair Elections Funds with the following action:

*Motion to approve 6:1 public matching funds for candidate Mary Kay Lacey in an amount not to exceed \$14,400.* (M/S/C: Soichet/Smith; Ayes: Smith, Metzger, O'Donnell, Soichet; Noes: None; Absent: McLean, Tsui (leave of absence), Harper, Saver).

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<sup>2</sup> Mr. Henry's first contribution of a loan of \$50.00 to the Committee was first publically disclosed on the committee's Form 460 Campaign statement covering the period from March 21, 2018 through June 30, 2018, which was filed on July 30, 2018. (**Attachment 1**.)

<sup>3</sup> Mr. Henry's second contribution of a monetary gift of \$50.00 to the Committee was included with Candidate Lacey's application for public financing certification as one of the qualifying requests, which the Commission considered at its May 22, 2018 meeting. (**Attachment 5**).

FCPC

October 18, 2018

Page 3 Referral Re Potential Violation of BERA by *Lacey for Council 2018*

The second contribution made by Stephen Henry on May 5, 2018 was submitted with the candidate's initial qualifying request for Fair Elections Funds Payment, which was the basis for the Commission's motion to certify Candidate Lacey to participate in the public financing program and to approve disbursement of 6:1 public matching funds. (**Attachment 3**).

In response to an inquiry from the Secretary reached out to Mr. Henry and Candidate Lacey to confirm facts regarding the contributions from Mr. Henry and to see if there was any additional information that the Committee could provide and provided a copy of the referral from the City Clerk's Office.

Candidate Lacey submitted a statement confirming that Mr. Henry made a \$50.00 loan to the Committee on March 21, 2018 and that on May 5, 2018 he made a \$50.00 monetary gift contribution to the Committee. (**Attachment 6**). Candidate Lacey stated that "on May 5, 2018, a check was written from the Lacey 2018 campaign checking account to repay the loan." (**Attachment 6**).

The Committee did not have a check showing repayment of the \$50.00 loan to Mr. Henry, but instead submitted a check showing a \$50.00 check made out to Candidate Lacey. (**Attachment 6**). The Secretary followed up with the Committee, pointing out the discrepancy and gave the Committee an opportunity to show that the loan to Mr. Henry had been repaid and that the Committee did not have more than \$50.00 in contributions from Mr. Henry at one time.

Mr. Henry confirmed that his May 5, 2018 \$50.00 gift contribution and \$50.00 loan were both deposited in the Committee's bank account at the same time and that the Committee had \$100.00 in its bank account from him at one time. Mr. Henry stated that he believed that his \$50.00 loan to the committee was repaid on May 5, 2018 when the check was written based on his use of a cash, not an accrual, accounting method. Neither Mr. Henry nor Candidate Lacey provided documentation of the \$50.00 loan being repaid to Mr. Henry, but rather provided documentation that the Committee made a \$50.00 payment to Candidate Lacey. (**Attachment 6**).

## **DISCUSSION**

### **1. Applicable Law**

#### **a. Under BERA Loans are Contributions**

Pursuant to Berkeley Municipal Code section 2.12.100, loans are contributions. Specifically, "'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 in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures."

## 2. Public Financing Program Requirements

### a. The Public Financing Contribution Limits: Amount and Type of Acceptable Contributions

Candidates participating in the City's Public Financing Program are subject to a \$50.00 aggregate value of contribution from any one individual. BMC § 2.12. 500. A.7.

Additionally, participating candidates may only accept "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)." *Id.*

Loans are specifically excluded from the definition of a "qualified contribution," which is defined as "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." BMC § 2.12.167.

## 3. Discussion and Analysis

Mr. Henry made two contributions to the Committee: 1) He made a \$50.00 loan contribution on March 21, 2018; and 2) a monetary gift contribution that the Committee used as a qualifying contribution for public matching funds on May 5, 2018. Candidate Lacey and Mr. Henry claim that the \$50.00 loan from Mr. Henry was repaid on May 5, 2018, when the Committee wrote a check to Candidate Lacey. (**Attachment 6**).

Under BERA, a "contribution" means a gift, as well as a loan. BMC § 2.12.100. Candidates participating in public financing agree to a \$50.00 contribution aggregate limit from any one individual. BMC § 2.12. 500. A.7. Participating candidates may also only accept the following types of contributions:

1. Qualified contributions,
2. Contributions not greater than fifty (\$50) made by a natural person non-resident of Berkeley, or
3. Non-monetary contributions with a fair market value not greater than fifty dollars (\$50).

BMC § 2.12. 500. A.7.

Public financing candidates are not permitted to accept loan contributions. BMC § 2.12.500.A.7. Loans are specifically excluded from the definition of qualified contributions. BMC § 2.12.167. Mr. Henry is a resident of Berkeley and could only make a qualified contribution or a non-monetary contribution with a fair market value not greater than \$50.00.

When Candidate Lacey accepted the March 21, 2018 \$50.00 loan from Mr. Henry, this appeared to violate the restrictions on the types of contributions public financing candidates may accept as it did not fall within one of the three categories of acceptable contributions for public financing participating candidates. BMC § 2.12.500.A.7.

When Candidate Lacey subsequently accepted the \$50.00 May 5, 2018 monetary gift contribution from Mr. Henry, the aggregate amount of contributions from Mr. Henry totaled \$100.00, which

appears to violate the \$50.00 aggregate contribution limit from any one individual for public financing candidates. BMC 2.12.500.A.7.

For the reasons identified above, there appears to be sufficient circumstances for a reasonable basis on which to believe that a violation of BERA Section 2.12.500.A.7 has occurred.

## **DISPOSITION OF POTENTIAL VIOLATIONS**

### **1. Probable Cause Determination**

After presentation of this report, the Commission may dismiss the matter 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. Procedures of the FCPC section VI.B.1. Alternately, the Commission may determine that probable cause exists to believe that the BERA has been violated. *Id.* at Section VI.B.2. 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. *Id.*

If the Commission determines there is probable cause for believing the committee violated BMC section 2.12.500, the Commission shall consider what action to take and may consider the factors identified in Section VI.C.1 of the Procedures.

### **2. Proceeding After a Determination of Probable Cause**

Following a determination of probable cause, the Commission may take any of the following courses of action:

- a. Dismiss the complaint and take no further action;
- b. Request the Secretary conduct further investigation;
- c. Require the timely filing of campaign statements and/or amendments to campaign statements;
- d. Invite the respondents to participate in settlement negotiations.
- e. Schedule and conduct a hearing pursuant to Section 2.12.230 of BERA.<sup>4</sup>
- f. Ask the City Attorney or the District Attorney to seek legal remedies.
- g. Seek any other remedy within its authority.

Procedures for the FCPC section VI.C.2.

#### **Attachments:**

1. Letter from City Clerk's Office referring matter to Fair Campaign Practices Commission, dated August 6, 2018
2. Letter from FCPC Secretary to *Lacey for Council 2018* regarding referral to the FCPC for investigation, dated August 20, 2018.

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<sup>4</sup> If the Commission holds a hearing pursuant to BMC § 2.12.230, and determines that there is a violation, the violation penalties under BMC 2.12.231 would be available remedies. Because this matter potentially involves in violation of the Fair Elections Act of 2016, the Fair Elections Act penalties in BMC § 2.12.550 may be available in addition to the remedies in BMC § 2.12.231.

FCPC

October 18, 2018

Page 6 Referral Re Potential Violation of BERA by *Lacey for Council 2018*

3. Excerpts of Lacey for Council 2018, Form 460 semi-annual campaign statement filed July 30, 2018, covering the period from March 21, 2018 through June 30, 2018 (filed July 30, 2018).
4. Mary Kay Lacey application to participate in the City's Public Financing Program candidate certification, dated May 7, 2018
5. Mary Kay Lacey application to participate in the City's Public Financing Program Initial Qualifying Request for Fair Elections Funds Payment, dated May 7, 2018
6. Documents submitted by Mary Kay Lacey, dated August 21, 2018



August 6, 2018

**VIA EMAIL AND U.S. MAIL**

Mr. Stephen Henry, Treasurer  
Lacey for Council 2018  
3047 Benvenue Avenue  
Berkeley, CA 94705

**RE: Campaign Statement – Amendment Required**

Dear Mr. Henry:

The City Clerk Department has received your committee's Form 460 semi-annual campaign statement filed July 25, 2018, covering the period from March 21, 2018 through June 30, 2018.

As the local Filing Officer, our office reviews filed campaign statements to determine whether they conform on their face with requirements of the Berkeley Election Reform Act ("BERA") the California Political Reform Act (PRA). In furtherance of these duties, I am contacting you regarding items that appear to be noncompliant with BERA and state law.

**(1) *Incorrect period covered.***

Your semi-annual statement should cover the period January 1, 2018 through June 30, 2018, even if the committee was formed subsequent to the start of that period.

**(2) *Missing or incorrect address information.***

BMC Sections 2.12.280.G and H and state law require the residential street address of each contributor and street address of each payee. The committee provided a P.O. Box instead of a street address for contributor **Susan Henry** and payee **ActBlue**.

**(3) *Missing occupation/employer information.***

Under BMC Sections 2.12.280.G and H and state law, committees must list the occupations and employers of contributors and payees. The committee failed to specify the occupation and employer for the contributors **Gwen Morris**, and **Abbie Zak**, The committee also failed to specify the employer for the contributor **Tina Baker**, and the occupation for **Mauricio Viera** ("Sales").



**(4) Contributions with Negative Values.**

The statement lists a monetary contribution in Schedule A from contributor **Amy Mezey** in the amount of *negative* \$50.00, dated May 21, 2018. If this negative value means to represent a refunded contribution or payment made, the committee must disclose it in Schedule E (Payments Made), not Schedule A, and include the date the payment was made (or contribution refunded).

**(5) Contribution exceeding maximum permitted amount.**

The statement lists a loan in Schedule B of \$50.00 made by **Stephen Henry** on March 21, 2018; schedule A lists a contribution of \$50.00 made by **Stephen Henry** on May 5, 2018. A loan is considered a contribution under BERA and state law; therefore, this second contribution exceeded the allowable aggregate amount permitted from any one individual. This limitation is contained in BERA as follows (emphasis added):

BMC 2.12.500 Eligibility for Fair Elections campaign funding:

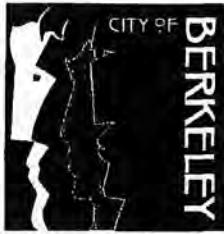
*A. To be eligible to be certified as a participating candidate, a candidate must...7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident 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)..."*

You may amend your statement to address items (1) through (4). If you intend to file an amendment and/or provide further information, please contact me no later than August 16, 2018. However, please note that item (5) has been referred to the Fair Campaign Practices Commission for further investigation. You may contact the FCPC Secretary at 981-6998 or [fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) if you have questions about the potential violation noted above.

Sincerely,

Leslie S. Rome  
Assistant Management Analyst  
on behalf of  
Mark Numainville  
City Clerk

Cc: Fair Campaign Practices Commission



Fair Campaign Practices Commission

August 20, 2018

**VIA EMAIL AND U.S. MAIL**

Mr. Stephen Henry, Treasurer  
Lacey for Council 2018  
3047 Benvenue Avenue  
Berkeley, CA 94705  
stephen@shenrylaw.com

Ms. Mary Kay Lacey, Candidate/Asst. Treasurer  
Lacey for Council 2018  
3047 Benvenue Avenue  
Berkeley, CA 94705  
mklacey@comcast.net

**RE: Referral to the Fair Campaign Practices Commission for investigation**

Dear Mr. Henry and Ms. Lacey:

By letter dated August 6, 2018, the City Clerk Department referred an item regarding a potential violation of the Berkeley Election Reform Act (BERA) by the committee *Lacey for Council 2018* to the Fair Campaign Practices Commission. The referral is regarding your committee's Form 460 semi-annual campaign statement filed July 30, 2018, covering the period from March 21, 2018 through June 30, 2018. (**Attachment 1.**)

The statement lists a loan in Schedule B of \$50.00 made by **Stephen Henry** on March 21, 2018; schedule A lists a contribution of a monetary gift of \$50.00 made by **Stephen Henry** on May 5, 2018. (**Attachment 2.**) A loan qualifies as a contribution under Berkeley Municipal Code section 2.12.100.

Candidate Mary Kay Lacey submitted an application to participate in the City's Public Financing Program, including a candidate certification dated May 7, 2018. (**Attachment 3.**) At its May 22, 2018 meeting, the Commission accepted the application with the following action:

*Motion to certify candidate Mary Kay Lacey to participate in the Berkeley public campaign financing program (M/S/C: Soichet/O'Donnell; Ayes: Smith, Metzger, O'Donnell, Soichet; Noes: None; Absent: McLean, Tsui (leave of absence), Harper, Saver).*

Additionally, the Commission approved Mary Kay Lacey's initial request for Fair Elections Funds with the following action:

*Motion to approve 6:1 public matching funds for candidate Mary Kay Lacey in an amount not to exceed \$14,400. (M/S/C: Soichet/Smith; Ayes: Smith, Metzger, O'Donnell, Soichet; Noes: None; Absent: McLean, Tsui (leave of absence), Harper, Saver).*

Pursuant to Berkeley Municipal Code section 2.12.500, candidates participating in the City's Public Financing Program may "[n]ot 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)."

Therefore, it appears that the second monetary gift contribution exceeded the allowable aggregate amount permitted from any one individual. The second contribution made by Stephen Henry on May 5, 2018 was submitted with the candidate's initial qualifying request for Fair Elections Funds Payment, which was the basis for the Commission's motion to approve public matching funds. (**Attachment 3**).

This item will be **placed on the agenda for the Fair Campaign Practices Commission's October 18, 2018 regular meeting** at 7:00 p.m. in Classroom C of the North Berkeley Senior Center at 1901 Hearst Avenue. If you would like to provide any information to the Commission regarding this matter, including any factors in mitigation or aggravation, please **submit your material in writing no later than Tuesday, October 9**, so that the materials may be included in the Commission's meeting packet. The packet is generally mailed and posted on the Commission's website (<https://www.cityofberkeley.info/FCPC/>) one week in advance of the meeting, and no later than 72 hours prior to the meeting.

If you have questions, you may contact the Commission Secretary at 981-6998 or [fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info).

Sincerely,



Jessica Mar

Secretary, Fair Campaign Practices and Open Government Commissions

cc: Mark Numainville, City Clerk

**Attachments:**

1. Letter from City Clerk's Office referring matter to Fair Campaign Practices Commission, dated August 6, 2018
2. Excerpts of Lacey for Council 2018, Form 460 semi-annual campaign statement filed July 30, 2018, covering the period from March 21, 2018 through June 30, 2018 (filed July 30, 2018).
3. Mary Kay Lacey application to participate in the City's Public Financing Program, dated May 7, 2018:
  - Mary Kay Lacey candidate certification;
  - Initial Qualifying Request for Fair Elections Funds Payment



Office of the City Clerk

August 6, 2018

**VIA EMAIL AND U.S. MAIL**

Mr. Stephen Henry, Treasurer  
Lacey for Council 2018  
3047 Benvenue Avenue  
Berkeley, CA 94705

**RE: Campaign Statement – Amendment Required**

Dear Mr. Henry:

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As the local Filing Officer, our office reviews filed campaign statements to determine whether they conform on their face with requirements of the Berkeley Election Reform Act ("BERA") the California Political Reform Act (PRA). In furtherance of these duties, I am contacting you regarding items that appear to be noncompliant with BERA and state law.

**(1) *Incorrect period covered.***

Your semi-annual statement should cover the period January 1, 2018 through June 30, 2018, even if the committee was formed subsequent to the start of that period.

**(2) *Missing or incorrect address information.***

BMC Sections 2.12.280.G and H and state law require the residential street address of each contributor and street address of each payee. The committee provided a P.O. Box instead of a street address for contributor **Susan Henry** and payee **ActBlue**.

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You may amend your statement to address items (1) through (4). If you intend to file an amendment and/or provide further information, please contact me no later than August 16, 2018. However, please note that item (5) has been referred to the Fair Campaign Practices Commission for further investigation. You may contact the FCPC Secretary at 981-6998 or [fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) if you have questions about the potential violation noted above.

Sincerely,

Leslie S. Rome  
Assistant Management Analyst  
on behalf of  
Mark Numainville  
City Clerk

Cc: Fair Campaign Practices Commission

**Recipient Committee  
Campaign Statement  
Cover Page**

(Government Code Sections 84200-84216.5)

ATTACHMENT 2

COVER PAGE

SEE INSTRUCTIONS ON REVERSE

	<b>Statement covers period</b> from <u>03/21/2018</u> through <u>06/30/2018</u>	<b>Date of election if applicable:</b> (Month, Day, Year) <u>11/06/2018</u>	Date Stamp <div style="border: 1px solid red; padding: 5px; color: red;">           E-Filed            07/30/2018            14:38:47            Filing ID:            172796718         </div>	<b>CALIFORNIA FORM 460</b> Page <u>1</u> of <u>31</u> For Official Use Only
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**1. Type of Recipient Committee:** All Committees – Complete Parts 1, 2, 3, and 4.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Officeholder, Candidate Controlled Committee<br><input type="checkbox"/> State Candidate Election Committee<br><input type="checkbox"/> Recall<br><small>(Also Complete Part 5)</small><br><br><input type="checkbox"/> General Purpose Committee<br><input type="checkbox"/> Sponsored<br><input type="checkbox"/> Small Contributor Committee<br><input type="checkbox"/> Political Party/Central Committee | <input type="checkbox"/> Primarily Formed Ballot Measure Committee<br><input type="checkbox"/> Controlled<br><input type="checkbox"/> Sponsored<br><small>(Also Complete Part 6)</small><br><br><input type="checkbox"/> Primarily Formed Candidate/Officeholder Committee<br><small>(Also Complete Part 7)</small> |
|---|---|

**2. Type of Statement:**

- |  |   |
|--|---|
| <input type="checkbox"/> Preelection Statement<br><input checked="" type="checkbox"/> Semi-annual Statement<br><input type="checkbox"/> Termination Statement<br><small>(Also file a Form 410 Termination)</small><br><input type="checkbox"/> Amendment (Explain below) | <input type="checkbox"/> Quarterly Statement<br><input type="checkbox"/> Special Odd-Year Report<br><input type="checkbox"/> Supplemental Preelection Statement - Attach Form 495 |
|--|---|

**3. Committee Information**

I.D. NUMBER  
1403957

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)  
Lacey For City Council 2018

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
<u>Berkeley</u>	<u>CA</u>	<u>94705</u>	<u>(510) 919-2163</u>

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR PO BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE
------	-------	----------	-----------------

OPTIONAL FAX / E-MAIL ADDRESS  
shenry@shenrylaw.com

**Treasurer(s)**

NAME OF TREASURER  
Stephen Henry

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
<u>Berkeley</u>	<u>CA</u>	<u>94705</u>	<u>(510) 898-1883</u>

NAME OF ASSISTANT TREASURER, IF ANY

Mary Kay Lacey

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
<u>Berkeley</u>	<u>CA</u>	<u>94705</u>	<u>(510) 919-2160</u>

OPTIONAL FAX / E-MAIL ADDRESS  
(510) 295-2516 / shenry@shenrylaw.com

**4. Verification**

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 07/30/2018  
Date

Executed on 07/30/2018  
Date

Executed on \_\_\_\_\_  
Date

Executed on \_\_\_\_\_  
Date

By Stephen Henry  
Signature of Treasurer or Assistant Treasurer

By Mary Kay Lacey  
Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor

By \_\_\_\_\_  
Signature of Controlling Officeholder, Candidate, State Measure Proponent

By \_\_\_\_\_  
Signature of Controlling Officeholder, Candidate, State Measure Proponent

**Schedule A (Continuation Sheet)  
Monetary Contributions Received**

Amounts may be rounded  
to whole dollars.

SCHEDULE A (CONT.)

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	03/21/2018	
through	06/30/2018	Page 12 of 31
NAME OF FILER		I.D. NUMBER
Lacey For City Council 2018		1403957

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
05/05/2018	Michael Bolgatz Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed, Berkeley, CA	50.00	50.00	G2018 \$50.00
05/05/2018	Samuel Gerson Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Psychologist Alliant University, San Francisco, CA	50.00	50.00	G2018 \$50.00
05/05/2018	Leah Henry Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Educator Children's Creativity Museum, San Francisco	50.00	50.00	G2018 \$50.00
05/05/2018	Stephen Henry Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed as Stephen F. Henry, Esq. - Berkeley	50.00	50.00	G2018 \$100.00
05/05/2018	Mary Kay Lacey Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed as Mary Kay Lacey, Esq. - Berkeley	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

\*Contributor Codes  
 IND - Individual  
 COM - Recipient Committee (other than PTY or SCC)  
 OTH - Other (e.g., business entity)  
 PTY - Political Party  
 SCC - Small Contributor Committee

**Schedule B – Part 1  
Loans Received**

Amounts may be rounded  
to whole dollars.

SCHEDULE B - PART 1

Statement covers period from <u>03/21/2018</u> through <u>06/30/2018</u>	<b>CALIFORNIA FORM 460</b>
Page <u>28</u> of <u>31</u>	I.D. NUMBER <u>1403957</u>

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Eacey For City Council 2018

FULL NAME, STREET ADDRESS AND ZIP CODE OF LENDER (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
<u>Stephen Henry Berkeley, CA 94705</u>	<u>Attorney Self employed as Stephen F. Henry, Esq. - Berkeley</u>	\$ <u>0.00</u>	\$ <u>50.00</u>	<input checked="" type="checkbox"/> PAID \$ <u>50.00</u> <input type="checkbox"/> FORGIVEN	\$ <u>0.00</u> <u>05/05/2018</u> DATE DUE	\$ <u>0.00</u> RATE	\$ <u>50.00</u> <u>03/21/2018</u> DATE INCURRED	CALENDAR YEAR \$ <u>50.00</u> PER ELECTION** \$ <u>2018 100.00</u>
<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$ _____	\$ _____	<input type="checkbox"/> PAID \$ _____ <input type="checkbox"/> FORGIVEN	\$ _____ DATE DUE	\$ _____ RATE	\$ _____ DATE INCURRED	CALENDAR YEAR \$ _____ PER ELECTION** \$ _____
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$ _____	\$ _____	<input type="checkbox"/> PAID \$ _____ <input type="checkbox"/> FORGIVEN	\$ _____ DATE DUE	\$ _____ RATE	\$ _____ DATE INCURRED	CALENDAR YEAR \$ _____ PER ELECTION** \$ _____
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		\$ _____	\$ _____	<input type="checkbox"/> PAID \$ _____ <input type="checkbox"/> FORGIVEN	\$ _____ DATE DUE	\$ _____ RATE	\$ _____ DATE INCURRED	CALENDAR YEAR \$ _____ PER ELECTION** \$ _____
<b>SUBTOTALS \$</b>		\$ <u>50.00</u>	\$ <u>50.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>	\$ <u>0.00</u>		

**Schedule B Summary**

(Enter (e) on  
Schedule E, Line 3)

- Loans received this period ..... \$ 50.00  
(Total Column (b) plus unitemized loans of less than \$100.)
- Loans paid or forgiven this period ..... \$ 50.00  
(Total Column (c) plus loans under \$100 paid or forgiven.)  
(Include loans paid by a third party that are also itemized on Schedule A.)
- Net change this period. (Subtract Line 2 from Line 1.) ..... **NET \$** 0.00  
Enter the net here and on the Summary Page, Column A, Line 2.  
(May be a negative number)

†Contributor Codes  
IND – Individual  
COM – Recipient Committee  
(other than PTY or SCC)  
OTH – Other (e.g., business entity)  
PTY – Political Party  
SCC – Small Contributor Committee

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





City Clerk Department  
 2180 Milvia Street  
 Berkeley, CA 94704  
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 05/07/2018  
 11:01:46  
 Filing ID:  
 171400997

**FAIR ELECTIONS ACT FORM**

**APPLICATION FOR PARTICIPATION  
 IN PUBLIC FINANCING PROGRAM**

(Berkeley Municipal Code Chapter 2.12 – Election Reform Act)

<b>OFFICE SOUGHT</b>		
OFFICE City Council	COUNCIL DISTRICT (IF APPLICABLE) 8	
ELECTION CYCLE 05/07/2018		
<b>CANDIDATE INFORMATION</b>		
LAST Lacey	FIRST Mary Kay	M.I.
<b>COMMITTEE INFORMATION</b>		
NAME OF CAMPAIGN COMMITTEE Lacey For City Council 2018	FPPC I.D. No. 1403957	
<b>CANDIDATE CERTIFICATION</b>		
<p>Under penalty of perjury, I hereby certify:</p> <p>I have complied with the restrictions of Berkeley Municipal Code Chapter 2.12 (Election Reform Act) during the election cycle to date; and</p> <p>My 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</p> <p>I will comply with the requirements of Chapter 2.12 during the remainder of the election cycle and, specifically, if certified as an eligible participating candidate, will comply with the requirements applicable to participating candidates.</p>		
Mary Kay Lacey CANDIDATE SIGNATURE	05/07/2018 DATE SIGNED	



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 11:17:15  
 Filing ID:  
 171401375

**FAIR ELECTIONS ACT FORM  
 INITIAL QUALIFYING DECLARATION FOR PUBLIC FUNDS  
 BY CANDIDATES FOR MAYOR OR CITY COUNCIL**

<b>OFFICE SOUGHT</b>			
OFFICE City Council		COUNCIL DISTRICT (IF APPLICABLE) District 8	
ELECTION CYCLE 11/06/2018			
<b>COMMITTEE INFORMATION</b>			
NAME OF CAMPAIGN COMMITTEE  Lacey For City Council 2018		FPPC I.D. No.  1403957	
STREET ADDRESS		APARTMENT/SUITE/FLOOR	
CITY Berkeley	STATE CA	ZIP CODE 94705	
TELEPHONE (510) 919-2163	EMAIL ADDRESS mklacey@comcast.net		
<b>CANDIDATE DECLARATION</b>			
I hereby declare that the following information is true and correct:			
<ul style="list-style-type: none"> <li>• All information on the attached Qualified Contribution Receipts is complete and accurate to the best of my knowledge.</li> <li>• I understand that the Commission shall verify that the qualified contributions meet all of the requirements and restrictions prior to the disbursement of funds.</li> <li>• I understand that if I submit any contributions that are not from the person(s) identified on the receipt I shall be liable to pay the Fair Elections Fund the entire amount in addition to any penalties.</li> <li>• 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.</li> <li>• I understand that all campaign filings must be current in order for a disbursement of Fair Election funds to be released.</li> </ul>			
Mary Kay Lacey		05/07/2018	
CANDIDATE SIGNATURE		DATE SIGNED	

**INITIAL QUALIFYING REQUEST FOR FAIR ELECTIONS FUNDS PAYMENT**

In order to participate in the Public Financing Program, a candidate must collect at least 30 Qualified Contributions from at least 30 unique contributors of at least \$10.00 and no more than \$50.00 each, for a total dollar amount of at least \$500.00.

All approved Qualified Contributions are matched at a 6:1 ratio. For all public matching funds requests, a candidate must submit the following documentation:

- Qualified Contributions List (below).
- Receipt for Qualified Contribution for Fair Elections Funds.
- Evidence of each contribution received, such as electronic copies of contributor checks, credit card authorizations, or online payment receipts.
- Electronic copies of itemized deposit slips.

	Last Name	First Name	Building #, Street, Apt.	Zip Code, City	Occupation	Employer	Payment Method	Date Received	Date Deposited	Deposit Batch #	Amount of Contribution
1.	Greenwood	Gail		94708 Berkeley	Attorney	PSZY, San Francisco, CA	Check	05/06/2018	05/07/2018	5	50.00
2.	Choy	Ronald		94705 Berkeley	Retired	None	Check	05/06/2018	05/07/2018	5	50.00
3.	Davis	Gregory		94705 Berkeley	Retired	None	Check	05/06/2018	05/07/2018	5	50.00
4.	Kidder	Douglas		94708 Berkeley	Consultant	OSKR, Inc, Emeryville, CA	Check	05/06/2018	05/07/2018	5	50.00
5.	Kidder	Allison		94708 Berkeley	Filed Station Manager	UC Berkeley, Berkeley, CA	Check	05/06/2018	05/07/2018	5	50.00
6.	Bigelow-Teller	Elisabeth		94707 Berkeley	Writer/editor/proofreader	Self employed, Berkeley, CA	Check	05/05/2018	05/07/2018	5	50.00
7.	Bolgatz	Michael		94705 Berkeley	Attorney	Self employed, Berkeley, CA	Check	05/05/2018	05/07/2018	5	50.00
8.	Henry	Stephen		94705 Berkeley	Attorney	Self employed - Berkeley	Check	05/05/2018	05/07/2018	5	50.00
9.	Lacey	Mary Kay		94705 Berkeley	Attorney	Self employed - Berkeley	Check	05/05/2018	05/07/2018	5	50.00
10.	Henry	Leah		94705 Berkeley	Educator	Children's Creativity Museum, San Francisco	Check	05/05/2018	05/07/2018	5	50.00
11.	Bokovoy	Phillip		94704 Berkeley	Consultant	Self-employed, Berkeley	Check	05/03/2018	05/07/2018	5	50.00
12.	Bliss	Judith		94707 Berkeley	Physician	Contra Costa Health Services, Martinez	Check	05/02/2018	05/07/2018	5	50.00
13.	Thomton	James		94705 Berkeley	Attorney	Carl Zeiss Meditec, Inc., Dublin, CA	Check	04/22/2018	05/02/2018	4	50.00
14.	Thomton	Kristi		94705 Berkeley	Manager	UC Berkeley, Berkeley, CA	Check	04/22/2018	05/02/2018	4	50.00
15.	Garz	Seth		94705 Berkeley	Economist	UC Berkeley, Berkeley, CA	Cash	04/18/2018	05/02/2018	4	50.00
										Subtotals	750.00

	Last Name	First Name	Building #, Street, Apt.	Zip Code, City	Occupation	Employer	Payment Method	Date Received	Date Deposited	Deposit Batch #	Amount of Contribution
16.	Garz	Julie		94705 Berkeley	Midwife	Kaiser Permanente, Oakland, CA	Check	04/18/2018	05/02/2018	4	50.00
17.	Webb	William		94705 Berkeley	Director	Maybeck School, Berkeley, CA	Check	04/16/2018	04/16/2018	3	50.00
18.	Flownight	Anja		94705 Berkeley	Realtor	Grubb Company, Berkeley, CA	Check	04/10/2018	04/16/2018	3	50.00
19.	Forest	Catherine		94705 Berkeley	Physician	Veterans Administration, Fairfield	Check	04/07/2018	04/16/2018	3	50.00
20.	Schnider	Frederick		94705 Berkeley	Lawyer	Law Offices of Fred Schnider, Berkeley, CA	Cash	04/07/2018	04/09/2018	2	50.00
21.	Zeemont	Mitchell		94705 Berkeley	Mortgage Banker	Newmark Realty Capital Inc., San Francisco, CA	Check	04/07/2018	04/09/2018	2	50.00
22.	Oleson	Robin		94705 Berkeley	Social worker	Veterans Administration, Oakland	Cash	04/07/2018	04/09/2018	2	50.00
23.	Fedman	Mary Elizabeth		94707 Berkeley	Yoga teacher	Self employed - Berkeley	Check	04/07/2018	04/09/2018	2	50.00
24.	Fedman	Alan		94707 Berkeley	Attorney	Dentons, US LLP, San Francisco, CA	Cash	04/07/2018	04/09/2018	2	50.00
25.	Francis	Karen		94703 Berkeley	Career counselor	U.C. Hastings College of Law, Berkeley, CA	Check	04/07/2018	04/09/2018	2	50.00
26.	Cusack	Dennis		94703 Berkeley	Attorney	Farella Braun & Martel, San Francisco, CA	Check	04/07/2018	04/09/2018	2	50.00
27.	Lyon	Eleanor		94707 Berkeley	Homemaker	None	Check	04/07/2018	04/09/2018	2	50.00
28.	Marostica	Matt		94707 Berkeley	Librarian	Stanford University	Check	04/07/2018	04/09/2018	2	50.00
29.	Zukor	Susie		94705 Berkeley	Attorney	Self-employed, Berkeley, CA	Cash	04/07/2018	04/09/2018	2	50.00
30.	Blair	Laura		94705 Berkeley	Retired	None	Check	04/06/2018	04/09/2018	2	50.00
31.	Sargent	Susan		94705 Berkeley	Attorney	Unemployed	Check	04/06/2018	04/09/2018	2	50.00
32.	Drinan	Mary		94708 Berkeley	Attorney	CSAA Insurance Group, Walnut Creek, CA	Cash	04/05/2018	04/09/2018	2	50.00
33.	Berges	Marian		94703 Berkeley	Unemployed	None	Cash	04/04/2018	04/09/2018	2	50.00
34.	Weaver	Stephen		94703 Berkeley	Project supervisor	Jetton Construction, Berkeley, CA	Check	04/04/2018	04/09/2018	2	50.00
35.	Carlson	Anne		94708 Berkeley	Chief Executive Officer	Jiminy's, Berkeley	Check	04/03/2018	04/09/2018	2	50.00
36.	Sayre	Anne		94705 Berkeley	Retired	None	Check	04/02/2018	04/09/2018	2	50.00
										Subtotals	1,050.00

	Last Name	First Name	Building #, Street, Apt.	Zip Code, City	Occupation	Employer	Payment Method	Date Received	Date Deposited	Deposit Batch #	Amount of Contribution
37.	MacLeod	Karen		94705 Berkeley	Retired	None	Check	04/02/2018	04/05/2018	1	50.00
38.	Carlson	Eric		94708 Berkeley	Business development	Jimmy's, Berkeley	Check	03/30/2018	04/05/2018	1	50.00
39.	Berg	Cheryl		94705 Berkeley	Lecturer	UC Berkeley Law School, Berkeley	Check	03/29/2018	04/05/2018	1	50.00
40.	Mezey	Philip		94705 Berkeley	Chief Executive Officer	Iron, Inc., Oakland, CA	Check	03/29/2018	04/05/2018	1	50.00
41.	Mezey	Amy		94705 Berkeley	Homemaker	None	Check	03/29/2018	04/05/2018	1	50.00
42.	Beckett	Michael		94703 Berkeley	Retired educator	None	Check	03/29/2018	04/05/2018	1	50.00
43.	Sperry	Josh		94705 Berkeley	Union representative	ESC Local 20, IFPTE, Oakland, CA	Check	03/29/2018	04/05/2018	1	50.00
44.	Hendrickson	Mimsa		94705 Berkeley	Consultant	Three Mountains, Berkeley	Check	03/29/2018	04/05/2018	1	50.00
45.	Berg	Jesse		94705 Berkeley	Attorney	General Counsel Law Ventures, Berkeley	Check	03/28/2018	04/05/2018	1	50.00
46.	Lynch	Margaret		94705 Berkeley	Retired doctor	None	Check	03/28/2018	04/05/2018	1	50.00
47.	Hahn	Sophie		94707 Berkeley	City Council Member	City of Berkeley	Check	03/23/2018	04/05/2018	1	50.00
48.	Bjerkholt	Eric		94707 Berkeley	Biotech Chief Financial Officer	Aimmune Therapeutics, South San Francisco	Check	03/23/2018	04/05/2018	1	50.00
										Subtotals	600.00
										Grand Totals	2,400.00

**Recipient Committee  
Campaign Statement  
Cover Page**

(Government Code Sections 84200-84216.5)

**ATTACHMENT 3**

COVER PAGE

Date Stamp	<div style="border: 2px solid red; padding: 5px; color: red; font-weight: bold;">                 E-Filed 07/30/2018 14:38:47  Filing ID: 172796718             </div>	CALIFORNIA FORM <b>460</b>
		Page <u>1</u> of <u>31</u> For Official Use Only

Statement covers period	Date of election if applicable: (Month, Day, Year)
from <u>03/21/2018</u>	<u>11/06/2018</u>
through <u>06/30/2018</u>	

SEE INSTRUCTIONS ON REVERSE

**1. Type of Recipient Committee:** All Committees – Complete Parts 1, 2, 3, and 4.

- |   |   |
|---|---|
| <input checked="" type="checkbox"/> Officeholder, Candidate Controlled Committee<br><input type="checkbox"/> State Candidate Election Committee<br><input type="checkbox"/> Recall<br><small>(Also Complete Part 5)</small><br><br><input type="checkbox"/> General Purpose Committee<br><input type="checkbox"/> Sponsored<br><input type="checkbox"/> Small Contributor Committee<br><input type="checkbox"/> Political Party/Central Committee | <input type="checkbox"/> Primarily Formed Ballot Measure Committee<br><input type="checkbox"/> Controlled<br><input type="checkbox"/> Sponsored<br><small>(Also Complete Part 6)</small><br><br><input type="checkbox"/> Primarily Formed Candidate/Officeholder Committee<br><small>(Also Complete Part 7)</small> |
|---|---|

**2. Type of Statement:**

- |  |   |
|--|---|
| <input type="checkbox"/> Preelection Statement<br><input checked="" type="checkbox"/> Semi-annual Statement<br><input type="checkbox"/> Termination Statement<br><small>(Also file a Form 410 Termination)</small><br><input type="checkbox"/> Amendment (Explain below) | <input type="checkbox"/> Quarterly Statement<br><input type="checkbox"/> Special Odd-Year Report<br><input type="checkbox"/> Supplemental Preelection Statement - Attach Form 495 |
|--|---|

**3. Committee Information**

ID NUMBER  
1403957

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)  
Lacey For City Council 2018

STREET ADDRESS (NO P.O. BOX)

CITY	STATE	ZIP CODE	AREA CODE/PHONE
<u>Berkeley</u>	<u>CA</u>	<u>94705</u>	<u>(510) 919-2163</u>

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY	STATE	ZIP CODE	AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS  
shenry@shenrylaw.com

**Treasurer(s)**

NAME OF TREASURER

Stephen Henry

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
<u>Berkeley</u>	<u>CA</u>	<u>94705</u>	<u>(510) 898-1883</u>

NAME OF ASSISTANT TREASURER, IF ANY

Mary Kay Lacey

MAILING ADDRESS

CITY	STATE	ZIP CODE	AREA CODE/PHONE
<u>Berkeley</u>	<u>CA</u>	<u>94705</u>	<u>(510) 919-2160</u>

OPTIONAL: FAX / E-MAIL ADDRESS  
(510) 295-2516 / shenry@shenrylaw.com

**4. Verification**

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 07/30/2018  
Date

Executed on 07/30/2018  
Date

Executed on \_\_\_\_\_  
Date

Executed on \_\_\_\_\_  
Date

By Stephen Henry  
Signature of Treasurer or Assistant Treasurer

By Mary Kay Lacey  
Signature of Controlling Officeholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor

By \_\_\_\_\_  
Signature of Controlling Officeholder, Candidate, State Measure Proponent

By \_\_\_\_\_  
Signature of Controlling Officeholder, Candidate, State Measure Proponent

**Schedule A (Continuation Sheet)  
Monetary Contributions Received**

SCHEDULE A (CONT.)

Amounts may be rounded  
to whole dollars.

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	03/21/2018	
through	06/30/2018	Page 12 of 31

NAME OF FILER Lacey For City Council 2018	I.D. NUMBER 1403957
--	------------------------

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
05/05/2018	Michael Bolgatz Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed, Berkeley, CA	50.00	50.00	G2018 \$50.00
05/05/2018	Samuel Gerson Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Psychologist Alliant University, San Francisco, CA	50.00	50.00	G2018 \$50.00
05/05/2018	Leah Henry Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Educator Children's Creativity Museum, San Francisco	50.00	50.00	G2018 \$50.00
05/05/2018	Stephen Henry Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed as Stephen F. Henry, Esq. - Berkeley	50.00	50.00	G2018 \$100.00
05/05/2018	Mary Kay Lacey Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed as Mary Kay Lacey, Esq. - Berkeley	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

\*Contributor Codes  
 IND - Individual  
 COM - Recipient Committee (other than PTY or SCC)  
 OTH - Other (e.g., business entity)  
 PTY - Political Party  
 SCC - Small Contributor Committee

**Schedule B – Part 1  
Loans Received**

Amounts may be rounded  
to whole dollars.

SCHEDULE B - PART 1

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	03/21/2018	
through	06/30/2018	Page 28 of 31
I.D. NUMBER		1403957

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Lacey For City Council 2018

FULL NAME, STREET ADDRESS AND ZIP CODE OF LENDER (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
Stephen Henry Berkeley, CA 94705	Attorney Self employed as Stephen F. Henry, Esq. - Berkeley	\$ 0.00	\$ 50.00	<input checked="" type="checkbox"/> PAID \$ 50.00 <input type="checkbox"/> FORGIVEN	\$ 0.00 15/05/2018 DATE DUE	% 0.00 RATE	\$ 50.00 03/21/2018 DATE INCURRED	CALENDAR YEAR \$ 50.00 PER ELECTION** \$ 2018 100.00
<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC				<input type="checkbox"/> PAID \$ <input type="checkbox"/> FORGIVEN	\$ DATE DUE	% RATE	\$ DATE INCURRED	CALENDAR YEAR \$ PER ELECTION** \$
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC				<input type="checkbox"/> PAID \$ <input type="checkbox"/> FORGIVEN	\$ DATE DUE	% RATE	\$ DATE INCURRED	CALENDAR YEAR \$ PER ELECTION** \$
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC				<input type="checkbox"/> PAID \$ <input type="checkbox"/> FORGIVEN	\$ DATE DUE	% RATE	\$ DATE INCURRED	CALENDAR YEAR \$ PER ELECTION** \$
<b>SUBTOTALS \$</b>		\$ 50.00	\$ 50.00	\$ 50.00	\$ 0.00	\$ 0.00		

**Schedule B Summary**

(Enter (e) on  
Schedule E, Line 3)

- Loans received this period ..... \$ 50.00  
(Total Column (b) plus unitemized loans of less than \$100.)
- Loans paid or forgiven this period ..... \$ 50.00  
(Total Column (c) plus loans under \$100 paid or forgiven.)  
(Include loans paid by a third party that are also itemized on Schedule A.)
- Net change this period. (Subtract Line 2 from Line 1.) ..... **NET \$ 0.00**  
Enter the net here and on the Summary Page, Column A, Line 2.  
(May be a negative number)

†Contributor Codes  
IND – Individual  
COM – Recipient Committee  
(other than PTY or SCC)  
OTH – Other (e.g., business entity)  
PTY – Political Party  
SCC – Small Contributor Committee

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

FPPC Form 460 (Jan/2016)  
FPPC Advice: advice@fppc.ca.gov (866/275-3772)  
www.fppc.ca.gov





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**FAIR ELECTIONS ACT FORM**

**APPLICATION FOR PARTICIPATION  
 IN PUBLIC FINANCING PROGRAM**

(Berkeley Municipal Code Chapter 2.12 – Election Reform Act)

<b>OFFICE SOUGHT</b>		
OFFICE City Council	COUNCIL DISTRICT (IF APPLICABLE) 8	
ELECTION CYCLE 05/07/2018		
<b>CANDIDATE INFORMATION</b>		
LAST Lacey	FIRST Mary Kay	M.I.
<b>COMMITTEE INFORMATION</b>		
NAME OF CAMPAIGN COMMITTEE Lacey For City Council 2018		FPPC I.D. No. 1403957
<b>CANDIDATE CERTIFICATION</b>		
<p>Under penalty of perjury, I hereby certify:</p> <p>I have complied with the restrictions of Berkeley Municipal Code Chapter 2.12 (Election Reform Act) during the election cycle to date; and</p> <p>My 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</p> <p>I will comply with the requirements of Chapter 2.12 during the remainder of the election cycle and, specifically, if certified as an eligible participating candidate, will comply with the requirements applicable to participating candidates.</p>		
Mary Kay Lacey CANDIDATE SIGNATURE		05/07/2018 DATE SIGNED



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Berkeley, CA 94704  
(510) 981-6900  
[www.cityofberkeley.info](http://www.cityofberkeley.info) | [elections@cityofberkeley.info](mailto:elections@cityofberkeley.info)

E-Filed  
05/07/2018  
11:17:15  
Filing ID:  
171401375

**FAIR ELECTIONS ACT FORM  
INITIAL QUALIFYING DECLARATION FOR PUBLIC FUNDS  
BY CANDIDATES FOR MAYOR OR CITY COUNCIL**

<b>OFFICE SOUGHT</b>			
OFFICE City Council		COUNCIL DISTRICT (IF APPLICABLE) District 8	
ELECTION CYCLE 11/06/2018			
<b>COMMITTEE INFORMATION</b>			
NAME OF CAMPAIGN COMMITTEE Lacey For City Council 2018		FPPC I.D. No. 1403957	
STREET ADDRESS		APARTMENT/SUITE/FLOOR	
CITY Berkeley	STATE CA	ZIP CODE 94705	
TELEPHONE (510) 919-2163	EMAIL ADDRESS mklacey@comcast.net		
<b>CANDIDATE DECLARATION</b>			
I hereby declare that the following information is true and correct:			
<ul style="list-style-type: none"><li>• All information on the attached Qualified Contribution Receipts is complete and accurate to the best of my knowledge.</li><li>• I understand that the Commission shall verify that the qualified contributions meet all of the requirements and restrictions prior to the disbursement of funds.</li><li>• I understand that if I submit any contributions that are not from the person(s) identified on the receipt I shall be liable to pay the Fair Elections Fund the entire amount in addition to any penalties.</li><li>• 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.</li><li>• I understand that all campaign filings must be current in order for a disbursement of Fair Election funds to be released.</li></ul>			
Mary Kay Lacey CANDIDATE SIGNATURE		05/07/2018 DATE SIGNED	

**INITIAL QUALIFYING REQUEST FOR FAIR ELECTIONS FUNDS PAYMENT**

In order to participate in the Public Financing Program, a candidate must collect at least 30 Qualified Contributions from at least 30 unique contributors of at least \$10.00 and no more than \$50.00 each, for a total dollar amount of at least \$500.00.

All approved Qualified Contributions are matched at a 6:1 ratio. For all public matching funds requests, a candidate must submit the following documentation:

- Qualified Contributions List (below).
- Receipt for Qualified Contribution for Fair Elections Funds.
- Evidence of each contribution received, such as electronic copies of contributor checks, credit card authorizations, or online payment receipts.
- Electronic copies of itemized deposit slips.

Last Name	First Name	Building #, Street, Apt.	Zip Code, City	Occupation	Employer	Payment Method	Date Received	Date Deposited	Deposit Batch #	Amount of Contribution
1	Greenwood	Gail	94708 Berkeley	Attorney	PSZY, San Francisco, CA	Check	05/06/2018	05/07/2018	5	50.00
2	Choy	Ronald	94705 Berkeley	Retired	None	Check	05/06/2018	05/07/2018	5	50.00
3	Davis	Gregory	94705 Berkeley	Retired	None	Check	05/06/2018	05/07/2018	5	50.00
4	Kidder	Douglas	94708 Berkeley	Consultant	OSKR, Inc, Emeryville, CA	Check	05/06/2018	05/07/2018	5	50.00
5	Kidder	Allison	94708 Berkeley	Filed Station Manager	UC Berkeley, Berkeley, CA	Check	05/06/2018	05/07/2018	5	50.00
6	Bigelow-Teller	Elisabeth	94707 Berkeley	Writer/editor/proofreader	Self employed, Berkeley, CA	Check	05/05/2018	05/07/2018	5	50.00
7	Bolgatz	Michael	94705 Berkeley	Attorney	Self employed, Berkeley, CA	Check	05/05/2018	05/07/2018	5	50.00
8	Henry	Stephen	94705 Berkeley	Attorney	Self employed - Berkeley	Check	05/05/2018	05/07/2018	5	50.00
9	Lacey	Mary Kay	94705 Berkeley	Attorney	Self employed - Berkeley	Check	05/05/2018	05/07/2018	5	50.00
10	Henry	Leah	94705 Berkeley	Educator	Children's Creativity Museum, San Francisco	Check	05/05/2018	05/07/2018	5	50.00
11	Bokovoy	Phillip	94704 Berkeley	Consultant	Self-employed, Berkeley	Check	05/03/2018	05/07/2018	5	50.00
12	Bliss	Judith	94707 Berkeley	Physician	Contra Costa Health Services, Martinez	Check	05/02/2018	05/07/2018	5	50.00
13	Thomton	James	94705 Berkeley	Attorney	Carl Zeiss Meditec, Inc., Dublin, CA	Check	04/22/2018	05/02/2018	4	50.00
14	Thomton	Kristi	94705 Berkeley	Manager	UC Berkeley, Berkeley, CA	Check	04/22/2018	05/02/2018	4	50.00
15	Garz	Seth	94705 Berkeley	Economist	UC Berkeley, Berkeley, CA	Cash	04/18/2018	05/02/2018	4	50.00
									Subtotals	750.00

Last Name	First Name	Building #, Street, Apt.	Zip Code, City	Occupation	Employer	Payment Method	Date Received	Date Deposited	Deposit Batch #	Amount of Contribution
16.	Garz	Julie	94705 Berkeley	Midwife	Kaiser Permanente, Oakland, CA	Check	04/18/2018	05/02/2018	4	50.00
17.	Webb	William	94705 Berkeley	Director	Maybeck School, Berkeley, CA	Check	04/16/2018	04/16/2018	3	50.00
18.	Plowright	Anja	94705 Berkeley	Realtor	Grubb Company, Berkeley, CA	Check	04/10/2018	04/16/2018	3	50.00
19.	Forest	Catherine	94705 Berkeley	Physician	Veterans Administration, Fairfield	Check	04/07/2018	04/16/2018	3	50.00
20.	Schnider	Frederick	94705 Berkeley	Lawyer	Law Offices of Fred Schnider, Berkeley, CA	Cash	04/07/2018	04/09/2018	2	50.00
21.	Zeemont	Mitchell	94705 Berkeley	Mortgage Banker	Newmark Realty Capital Inc., San Francisco, CA	Check	04/07/2018	04/09/2018	2	50.00
22.	Oleson	Robin	94705 Berkeley	Social worker	Veterans Administration, Oakland	Cash	04/07/2018	04/09/2018	2	50.00
23.	Fedman	Mary Elizabeth	94707 Berkeley	Yoga teacher	Self employed - Berkeley	Check	04/07/2018	04/09/2018	2	50.00
24.	Fedman	Alan	94707 Berkeley	Attorney	Dentons, US LLP, San Francisco, CA	Cash	04/07/2018	04/09/2018	2	50.00
25.	Francis	Karen	94703 Berkeley	Career counselor	U.C. Hastings College of Law, Berkeley, CA	Check	04/07/2018	04/09/2018	2	50.00
26.	Cusack	Dennis	94703 Berkeley	Attorney	Farella Braun & Martel, San Francisco, CA	Check	04/07/2018	04/09/2018	2	50.00
27.	Lyon	Eleanor	94707 Berkeley	Homemaker	None	Check	04/07/2018	04/09/2018	2	50.00
28.	Marostica	Matt	94707 Berkeley	Librarian	Stanford University	Check	04/07/2018	04/09/2018	2	50.00
29.	Zukor	Susie	94705 Berkeley	Attorney	Self-employed, Berkeley, CA	Cash	04/07/2018	04/09/2018	2	50.00
30.	Blair	Laura	94705 Berkeley	Retired	None	Check	04/06/2018	04/09/2018	2	50.00
31.	Sargent	Susan	94705 Berkeley	Attorney	Unemployed	Check	04/06/2018	04/09/2018	2	50.00
32.	Drinan	Mary	94708 Berkeley	Attorney	CSAA Insurance Group, Walnut Creek, CA	Cash	04/05/2018	04/09/2018	2	50.00
33.	Berges	Marian	94703 Berkeley	Unemployed	None	Cash	04/04/2018	04/09/2018	2	50.00
34.	Weaver	Stephen	94703 Berkeley	Project supervisor	Jetton Construction, Berkeley, CA	Check	04/04/2018	04/09/2018	2	50.00
35.	Carlson	Anne	94708 Berkeley	Chief Executive Officer	Jiminy's, Berkeley	Check	04/03/2018	04/09/2018	2	50.00
36.	Sayre	Anne	94705 Berkeley	Retired	None	Check	04/02/2018	04/09/2018	2	50.00
									Subtotals	1,050.00

	Last Name	First Name	Building #, Street, Apt.	Zip Code, City	Occupation	Employer	Payment Method	Date Received	Date Deposited	Deposit Batch #	Amount of Contribution
37.	MacLeod	Karen		94705 Berkeley	Retired	None	Check	04/02/2018	04/05/2018	1	50.00
38.	Carlson	Eric		94708 Berkeley	Business development	Jiminy's, Berkeley	Check	03/30/2018	04/05/2018	1	50.00
39.	Berg	Cheryl		94705 Berkeley	Lecturer	UC Berkeley Law School, Berkeley	Check	03/29/2018	04/05/2018	1	50.00
40.	Mezey	Philip		94705 Berkeley	Chief Executive Officer	Iron, Inc., Oakland, CA	Check	03/29/2018	04/05/2018	1	50.00
41.	Mezey	Amy		94705 Berkeley	Homemaker	None	Check	03/29/2018	04/05/2018	1	50.00
42.	Beckett	Michael		94703 Berkeley	Retired educator	None	Check	03/29/2018	04/05/2018	1	50.00
43.	Sperry	Josh		94705 Berkeley	Union representative	ESC Local 20, IFPTE, Oakland, CA	Check	03/29/2018	04/05/2018	1	50.00
44.	Hendrickson	Hinisa		94705 Berkeley	Consultant	Three Mountains, Berkeley	Check	03/29/2018	04/05/2018	1	50.00
45.	Berg	Jesse		94705 Berkeley	Attorney	General Counsel Law Ventures, Berkeley	Check	03/28/2018	04/05/2018	1	50.00
46.	Lynch	Margaret		94705 Berkeley	Retired doctor	None	Check	03/28/2018	04/05/2018	1	50.00
47.	Hahn	Sophie		94707 Berkeley	City Council Member	City of Berkeley	Check	03/23/2018	04/05/2018	1	50.00
48.	Bjerkholt	Eric		94707 Berkeley	Biotech Chief Financial Officer	Aimmune Therapeutics, South San Francisco	Check	03/23/2018	04/05/2018	1	50.00
										Subtotals	600.00
										Grand Totals	2,400.00

**Attachment 6**

Confirmation of Loan to Open Campaign Checking Account for Lacey For City Council 2018

I, Mary Kay Lacey, hereby confirm that on March 21, 2018, a check for \$50.00 was written from the personal joint checking account which I share with my husband, Stephen Henry, for the purpose of loaning my campaign \$50.00 to open my campaign checking account for Lacey For City Council 2018.

The loan was made from the joint checking account I share with my husband with the intent to later repay the loan from my campaign checking account.

On May 5, 2018, a check was written from the Lacey 2018 campaign checking account to repay the loan made from our joint checking account.

On May 5, 2018, I signed a check from our joint checking account for the purpose of making a \$50.00 personal contribution to the Lacey for City Council 2018 campaign.

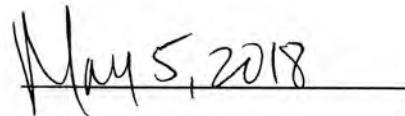
On May 5, my husband, Stephen Henry signed a check from our joint checking account in the amount of \$50.00 for the purpose of making a \$50.00 personal contribution to the Lacey for City Council 2018 campaign.

*I attest this is a true and accurate recitation of the facts.*

Signed

Handwritten signature of Mary Kay Lacey in black ink, written over a horizontal line.

Date

Handwritten date "May 5, 2018" in black ink, written over a horizontal line.

STEPHEN F HENRY  
MARY KAY LACEY  
9047 BENVENUE AVENUE  
BERKELEY, CA 947052509

80-7118 / 306  
3211

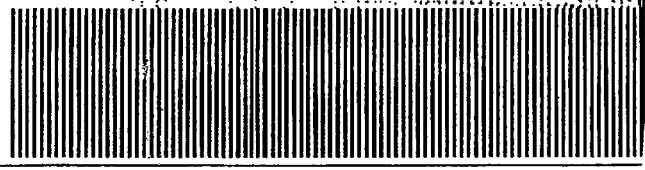
215

Date March 21 2018

Pay to the order of Lacey for City Council \$ 50.00  
for City and TFE Dollars

**citibank**  
Citi Private Bank  
CITIBANK N.A.

Memorandum



LACEY FOR CITY COUNCIL 2018

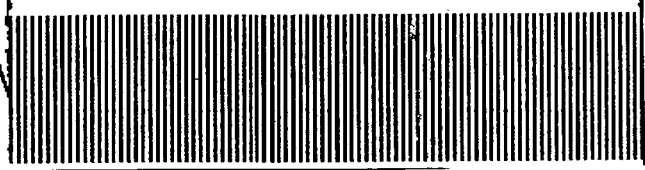
102

Date 5-5-18

Pay to the Order of Mary Kay Lacey \$ 50.00  
Fifty dollars and 00/100 Dollars

**WELLS FARGO**  
Wells Fargo Bank N.A.  
California  
wellsfargo.com

For Repayment of loan



Amounts may be rounded to whole dollars.

Statement covers period		<b>CALIFORNIA FORM 460</b>
from	03/21/2018	
through	06/30/2018	Page 12 of 31
		I.D. NUMBER
		1403957

SS AND ZIP CODE OF CONTRIBUTOR (ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed, Berkeley, CA	50.00	50.00	G2018 \$50.00
	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Psychologist Alliant University, San Francisco, CA	50.00	50.00	G2018 \$50.00
	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Educator Children's Creativity Museum, San Francisco	50.00	50.00	G2018 \$50.00
	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed as Stephen R. Henry, Esq. - Berkeley	50.00	50.00	G2018 \$100.00
	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Attorney Self employed as Mary Kay Lacey, Esq. - Berkeley	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>			250.00		



Schedule B - Part 1  
Loans Received

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 01/01/2018  
through 06/30/2018

CALIFORNIA **460**  
FORM

Page 28 of 31  
I.D. NUMBER  
1403957

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER  
Lacey For City Council 2018

(a) OUTSTANDING BALANCE BEGINNING THIS PERIOD	(b) AMOUNT RECEIVED THIS PERIOD	(c) AMOUNT PAID OR FORGIVEN THIS PERIOD*	(d) OUTSTANDING BALANCE AT CLOSE OF THIS PERIOD	(e) INTEREST PAID THIS PERIOD	(f) ORIGINAL AMOUNT OF LOAN	(g) CUMULATIVE CONTRIBUTIONS TO DATE
\$ 0.00	\$ 50.00	<input checked="" type="checkbox"/> PAID \$ 50.00 <input type="checkbox"/> FORGIVEN	\$ 0.00	% RATE	\$ 50.00 DATE INCURRED 03/21/2018	\$ 50.00 PERELECTION** \$ 100.00
IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	Stephen Henry Self employed as Stephen F. Henry, Esq. Berkeley					
FULL NAME, STREET ADDRESS AND ZIP CODE OF LENDER (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	3047 Benvenne Avenue Berkeley, CA 94705					
<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC						
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC						
<input type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC						
SUBTOTALS \$ 50.00 \$ 50.00 \$ 0.00						0.00

Schedule B Summary  
(Enter (e) on  
Schedule E, Line 3)

- Loans received this period ..... \$ 50.00  
(Total Column (b) plus unitemized loans of less than \$100.)
- Loans paid or forgiven this period ..... \$ 50.00  
(Total Column (c) plus loans under \$100 paid or forgiven.)  
(Include loans paid by a third party that are also itemized on Schedule A)
- Net change this period. (Subtract Line 2 from Line 1.) ..... NET \$ 0.00  
Enter the net here and on the Summary Page, Column A, Line 2.

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

FPPC Form 460 (Jan/2016)  
www.fppc.ca.gov  
FPPC Advice: advice@fppc.ca.gov (866/275-3772)

†Contributor Codes  
IND - Individual  
COM - Recipient Committee  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee

## Per Election Limits on Contributions to State Candidates

(For Elections Occurring from January 1, 2017 – December 31, 2018)

Candidate or Officeholder	Contributor Sources		
	Person (individual, business entity, committee/PAC)	Small Contributor Committee	Political Party
Senate and Assembly	\$4,400	\$8,800	No Limit
CalPERS/CalSTRS	\$4,400	\$8,800	No Limit
Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Supt. of Public Instruction, Insurance Commissioner, and Board of Equalization	\$7,300	\$14,600	No Limit
Governor	\$29,200	\$29,200	No Limit

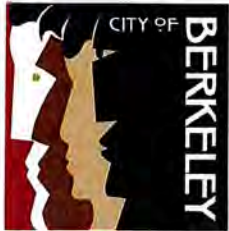
### Timing

There are no restrictions on when a candidate may begin to fundraise for a state office, and contributions for a general or special general election may be raised during or prior to a primary or special primary election for the same office.

A candidate who is defeated in the primary or special primary election, or who withdraws from the general or special general election, must return contributions received for the general or special general election to the contributors. The contributions are returned on a pro rata basis, less the cost of raising and administering the funds and expenses attributable to the general election paid prior to the primary election (e.g., media purchases). However, contributions (other than loans) made by a state candidate to his or her own campaign may not be returned to the candidate.

### Loans

Loans are contributions subject to limits. However, if a loan has been repaid, the lender, guarantor, endorser, or cosigner may make additional contributions to the same committee up to the limit.



Fair Campaign Practices Commission

Attachment C -  
Agenda Item 9

**MINUTES**

North Berkeley Senior Center  
1901 Hearst Avenue  
Classroom C (Upstairs)

Regular Meeting  
**October 18, 2018**  
7:00 p.m.

Members Present: Brad Smith, Dean Metzger, Emma Soichet, Brian Tsui, Mark McLean

Members Absent: Greg Harper (leave of absence), Patrick O'Donnell, Daniel Saver (leave of absence)

Also Present: Jessica Mar, Secretary/Deputy City Attorney  
Leslie Rome, Assistant Management Analyst, City Clerk's Office

1. **Call to Order**

Chair called the meeting to order at 7:05 p.m.

2. **Roll Call**

Roll call taken.

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

1 public comment on matters not on agenda. 5 members of the public in attendance.

4. **Reports**

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

5. **Approval of minutes for the September 20, 2018 regular meeting**

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

*Motion to approve minutes (M/S/C: Tsui/McLean; Ayes: Smith, Metzger, McLean, Tsui; Noes: None; Abstain: None; Absent: Soichet; Harper (leave of absence); O'Donnell, Saver (leave of absence).*

6. **Approval of minutes for the October 11, 2018 special meeting**

- c. Public comment: no speakers.
- d. Commission discussion and action.

*Motion to approve minutes (M/S/C: Smith/Tsui; Ayes: Smith, Metzger, McLean, Tsui; Noes: None; Abstain: None; Absent: Soichet; Harper (leave of absence); O'Donnell, Saver (leave of absence).*

7. Staff report regarding closure of North Berkeley Senior Center for renovations and change of meeting location; discussion and possible action.

Staff reported that the North Berkeley Senior Center will be closed next year for renovations. Commissions currently meeting at North Berkeley Senior Center will need to meet in alternate locations. The Secretary has submitted a request for a new meeting location for the Commission starting in January 2019. The Secretary will keep the Commission updated regarding the new meeting location.

-----Commissioner Soichet arrived at 7:17 p.m.-----

*The Chair, with the consent of the Commission, reordered item 9 before item 8.*

9. Complaint of alleged violation of the Berkeley Election Reform Act by *Droste for City Council 2018* submitted by H. Steel; discussion and possible action.

Public Comment: no public comment.

Commission discussion and action:

*Motion to find probable cause that a violation of BMC 2.12.500.A.7 and BMC 2.12.440 occurred for the Committee's use of the retail space (M/S/C: Smith/Soichet; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to find lack of probable cause that the donations of food and beverages as nonmonetary contributions to the committee violated BERA (M/S/C: McLean/Smith; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to place resolution of the complaint on the agenda for the next regular meeting (M/S/C: Tsui/Soichet; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

8. Public Campaign Financing Program requests for matching funds; discussion and possible action.

Public Comment: no comment.

Commission discussion and action:

*Motion to approve 6:1 public matching funds for candidate Cecilia Rosales in an amount not to exceed \$1,200.00. (M/S/C: Smith/Soichet; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Gregory Magofna in an amount not to exceed \$2,100.00. (M/S/C: Smith/Soichet; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to approve 6:1 public matching funds for candidate Rigel Robinson in an amount not to exceed \$1,242.00. (M/S/C: Smith/Tsui; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to temporarily adjourn at 8:22 p.m. (M/S/C: Soichet/Smith; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

-----*The Chair reconvened the meeting at 8:27 p.m.*-----

10. Referral from the City Clerk's Office regarding potential violation of the Berkeley Election Reform Act by *Lacey for Council 2018*; discussion and possible action.

Public Comment: one public comment.  
Commission discussion and action:

*Motion to find probable cause that the Committee committed a violation of BMC 2.12.500 (M/S/C: Tsui/Soichet; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to continue the referral to the next regular commission meeting and request staff report include training materials provided related to public financing, date of training, dates of Fair Election funds disbursements to the committee. (M/S/C: Soichet/McLean; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to withdraw the prior motion (M/S/C: McLean/Tsui; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Soichet; Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to continue the discussion of the item to a future regular meeting of the Commission include training materials provided related to public financing for treasurers and candidates, date of the training, and a timeline of the Committee's Fair Election funds disbursements to the committee. (M/S/C: Soichet/Tsui; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: None; Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

*Motion to continue items 11 and 12 on the agenda to the next regular meeting (M/S/C: McLean/Tsui; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).*

11. Letter from James Mcfadden, re: public financing changes, dated September 5, 2018; discussion and possible action. (Previously distributed in September 20, 2018 packet, page 32).

Public Comment: no comment.  
Commission discussion and action:

*No action taken.*

12. Report from the Ad Hoc Subcommittee on Independent Expenditures; discussion and possible action.

Public Comment: no comment.  
Commission discussion and action:

*No report given.*

13. Adjournment.

*Motion to adjourn* (M/S/C: Smith/Tsui; Ayes: Smith, Metzger, McLean, Soichet, Tsui; Noes: None; Abstain: None; Absent: Harper (leave of absence); O'Donnell, Saver (leave of absence)).

The meeting adjourned at 10:16 p.m.

## STEPHEN F. HENRY

November 9, 2018

Jessica Mar  
Secretary, Fair Campaign  
Practices Commission  
City of Berkeley  
2180 Milvia Street  
Berkeley, CA 94704

Re: Referral to the Fair Campaign Practices Commission for  
investigation re Lacey for Council 2018

Dear Ms. Mar:

I request that the following be made part of the record for the next meeting of the Fair Campaign Practices Commission that considers the Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018.

This is in response to questions posed by Commissioners Soichet, Tsui, and McLean regarding the timeline of training on public financing and my alleged knowledge that the \$50 loan made to open the campaign bank account was possibly a disqualifying event precluding participation in the Public Financing program. I never had that awareness and did not consider that as a possible ramification until the hearing I attended on October 18, 2018.

### Summary of Information Provided Prior To The October 18, 2018 FCPC Hearing

This letter provides a detailed summary of the events regarding this referral. The timeline shows that during months of correspondence between the Lacey 2018 campaign (the "Campaign"), and the Fair Campaign Practices Commission ("FCPC") Secretary, Jessica Mar — from August 20, 2018 until the evening of the October 18, 2018 hearing — neither Mary Kay Lacey nor I were told that taking a loan was a disqualifying event for public financing. Instead, Ms. Mar stated in her first letter to the Campaign, dated August 20, 2018, that a referral was being made to the FCPC because the "aggregate value" of my "contribution" to the campaign "was greater than \$50.00." (See August 20, 2018 letter, citing the language of Berkeley Municipal Code section 2.12.500 (7)). This was consistent with the earlier letter we received, dated August 6, 2018, from the City Clerk's office. That letter also cited section 2.12.500 (7), and stated that because I had made a loan and contribution to the campaign, "the second contribution exceeded the allowable aggregate amount permitted from any one individual."

Over the course of the next two months, the Campaign corresponded multiple times with Ms. Mar. During this time, we were never told that a loan is not allowed under the Public Financing program or that making a loan would be a disqualifying event. Rather, the *only* question discussed was whether the Campaign could show that it repaid the loan before Mr.

November 9, 2018

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Henry made a contribution — thereby demonstrating that the aggregate limit under section 2.12.500(7) was not violated. As stated by Ms. Mar, on September 25, 2018, “in order to address the issue raised in the referral from the City Clerk’s Office,” the Campaign would need to show “that the committee never had more than \$50.00 from Mr. Stephen Henry at one time.” (See email from Ms. Mar to Mary Kay Lacey, dated September 25, 2018, at 12:50 pm).

On October 8, 2018, I wrote to Ms. Mar explaining that the Campaign had made the showing requested because (1) the check to repay the loan was written on May 5, 2018, and (2) since all campaigns are expected to operate on a “cash basis of accounting,” the campaign no longer had the proceeds of the loan on May 5th when I made my contribution. (See email from Stephen Henry to Jessica Mar dated October 8, 2017 at 9:54 pm). In the intervening 10 days, we did not receive a reply from Ms. Mar, so Ms. Lacey wrote to Ms. Mar on October 18, 2018 (the day of the FCPC hearing) reiterating the position set forth in my October 8, 2018 email. (See email from Mary Kay Lacey, dated October 18, 2018 at 1:33 pm).

Ms. Mar responded to that email on October 18th, at 4:52 pm., and *for the first time* stated that “Public financing candidates are not permitted to accept loans under the Berkeley Fair Elections act of 2016.” (See email from Jessica Mar to Mary Kay Lacey, dated October 18, 2018, at 4:52 pm). Ms. Mar provided no citation for that proposition in her email response.

I have included the information summarized above in a time line format. I have also included correspondence and documents referenced in the timeline that are not already included in the prior submission from Ms. Mar.

#### TIMELINE

- |                |   |
|----------------|---|
| March 10, 2018 | Stephen Henry attends Campaign Finance training at Union Hall in Oakland. The training discusses state rules and does not address Berkeley’s rules or public financing.   |
| April 6, 2018  | Stephen Henry attends NetFile training at City Hall. The training does not address specific BERA rules or public financing other than the process by which to apply through NetFile.  |
| March 21, 2018 | Stephen Henry opens campaign bank account with \$50 loan from the joint checking account of Stephen Henry and Mary Kay Lacey. The account is opened in this manner based on an understanding (apparently mistaken) that under state campaign finance law, a campaign cannot take a donation until it has opened a campaign account, and therefore the account <i>must</i> be opened with a loan. NOTE: I now understand that Berkeley does not follow such a rule and that I could have opened the account with a donation. |
| May 5, 2018    | Per my understanding that state campaign finance rules require repayment of a loan with 45 days, Mary Kay Lacey repays the loan to the  |



joint checking account of Stephen Henry and Mary Kay Lacey. NOTE: No matching funds were sought for the loan at any time.

- May 5, 2018      Upon re-payment of the loan from the campaign account, both Stephen Henry and Mary Kay Lacey make individual contributions of \$50.00 each.
- May 5, 2018      In order to have a record of the re-payment of the loan, Mary Kay Lacey prepares an affidavit regarding re-payment of the loan and the contributions.
- May 7, 2018      First submission for public financing funds. \$14,400 in matching funds issued.
- June 11, 2018     Second submission for public financing funds. \$9,600 in matching funds issued.
- June 26, 2018     The BERA Seminar scheduled for Thursday, June 28 is cancelled and rescheduled to July 12, 2018.
- July 9, 2018      Third submission for public financing funds. \$6,000 in matching funds issued.
- July 12, 2018     The City Clerk and Deputy City Attorney Jessica Mar give a presentation on BERA and public financing. No statement is made that a loan is prohibited under the Public Financing program, nor is any statement made that making and repaying a loan is a disqualifying event. The materials provided during the presentation focuses on BERA, and make clear that loans are permitted. (See attached copy of PowerPoint presented).
- July 30, 2018     Stephen Henry, as treasurer, reports the loan, repayment of the loan, and his individual contribution on the Semi-Annual Statement.
- August 2, 2018     Fourth submission for public financing funds. \$7,200 in matching funds issued.
- August 6, 2018     Receipt of letter from City Clerk's office pertaining to the Semi-Annual Statement. No statement is made that the making of a loan is a disqualifying event or that further public financing funds may not be sought. The relevant portion of the letter states:

**(5) Contribution exceeding maximum permitted amount.**

The statement lists a loan in Schedule B of \$50.00 made by **Stephen Henry** on March 21, 2018; schedule A lists a contribution of \$50.00 made by **Stephen Henry** on May 5, 2018. A loan is considered a contribution under BERA and state law; therefore,

this second contribution exceeded the allowable aggregate amount permitted from any one individual. This limitation is contained in BERA as follows (emphasis added):

BMC 2.12.500 Eligibility for Fair Elections campaign funding:

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

You may amend your statement to address items (1) through (4). If you intend to file an amendment and/or provide further information, please contact me no later than August 16, 2018. However, please note that item (5) has been referred to the Fair Campaign Practices Commission for further investigation. You may contact the FCPC Secretary at 981-6998 or [fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) if you have questions about the potential violation noted above.

- August 6-20, 2018      Email correspondence with Clerk’s Office to correct portions of Semi-Annual Statement. No statement is made that the making of a loan is a disqualifying event or that further public financing funds may not be sought.
- August 20, 2018      Letter received from Jessica Mar regarding Referral to the Fair Campaign Practices Commission for investigation. No statement is made that the making of a loan is a disqualifying event or that further public financing funds may not be sought. Instead, the letter makes clear that that the sole basis of the referral is a claim that the aggregate limit was exceeded, *not* that loans are prohibited or that the loan constituted a disqualifying event
- August 20 –  
September 10, 2018      Email correspondence between Mary Kay Lacey and Jessica Mar regarding the issue of the loan as a contribution and whether the aggregate limit was exceeded under section 212.500.A(7). Ms. Lacey provides documents to show that the loan was repaid and then individual contributions were made. Ms. Mar does not state at any time during the course of these communications that making a loan is a disqualifying event or that further public financing funds may not be sought.

November 9, 2018

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September 10, 2018 Fifth submission for public financing funds. \$2,250 in matching funds issued.

Based on the submission for public financing funds by the City Clerk on September 10, 2018, and approval by the FCPC, it does not appear that the charge that I had improperly donated more than the allowable amount was considered a disqualifying event at that time by either the City Clerk's office or by Ms. Mar.

#### Summary of Information Provided From October 18, 2018 to the Present

On October 18, 2018, approximately two hours before the FCPC hearing, Ms. Mar sent an email in which she stated *for the first time* that "Public financing candidates are not permitted to accept loans under the Berkeley Fair Elections Act of 2016." Because Ms. Mar's October 18, 2018 email did not cite any provision to support that assertion, Ms. Lacey wrote to Ms. Mar to ask for such a citation. (*See* emails from Mary Kay Lacey to Jessica Mar, dated October 19, 2018 and October 30, 2018). On November 1, 2018, Ms. Mar responded to Ms. Lacey's email.

First, Ms. Mar cited to section 2.12.500.A.7 to support her position that loans are prohibited under the Berkeley Fair Elections Act. But that provision (as set forth above in the timeline), does not discuss loans in any manner. It discusses the fact that allowable contributions are limited to \$50, and that the aggregate amount of \$50 cannot be exceeded.

Next, Ms. Mar stated that "Loans are specifically excluded from the definition of qualified contributions [under] BMC section 2.12.167." (*See* email from Jessica Mar to Mary Kay Lacey, dated November 1, 2018). That provision states:

"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."

Ms. Mar's reading of this section to state that loans are prohibited does not square with the language of the provision, or the fact — as repeatedly stated in Ms. Mar's email correspondence from August and September, 2018 — that "a loan qualifies as a contribution under Berkeley Municipal Code section 2.12.100." (*See, e.g.*, August 20, 2018 letter.) I understand the provision to state that if a loan is made to the campaign, the campaign cannot seek matching funds on the loan. It does not say a loan is prohibited. Indeed, if there was a blanket prohibition on accepting loans under the Public Financing program, there would be no need to exclude them from qualifying for matching funds. Finally, under Ms. Mar's reading, a loan would be prohibited by a resident of Berkeley, but not a non-resident, since BMC 2.12.167 only addresses contributions by Berkeley residents. That would be non-sensical, and the only reasonable reading is that contributions (not including loans — i.e., excluding loans) by Berkeley residents "qualify" for matching funds.

As you know, the Campaign did not seek matching funds from the \$50.00 loan, and no matching funds were ever provided on the loan.

Finally, Ms. Mar cites to BMC section 2.12.500. A(6) as pertinent to the use of joint funds, but does not explain how that provision can be read to prohibit making a loan. BMC section 2.12.500A(6) provides that:

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

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);

If this provision is intended to be a blanket prohibition on a loan, it would have to be extrapolated from the language, because it does not say anything about a loan. Instead, fairly read, the provision makes clear that any funds that move from "personal funds," including "joint accounts", into the campaign account are subject to the \$50 limit.

Again, the Campaign did not exceed the \$50.00 limit at any time, and it did not seek matching funds on the initial deposit.

Therefore, even assuming that the FCPC were to find that there is a blanket prohibition on loans under the Public Financing program (which we do not believe is supported by the provisions relied upon by Ms. Mar), there is still no violation here, because the \$50 that was deposited into the campaign account from the joint account of Stephen Henry and Mary Kay Lacey was allowed under every provision set forth above. The initial deposit from the joint checking account of Mary Kay Lacey and Stephen Henry did not exceed \$50.00. Moreover, no request for matching funds was ever made with respect to that deposit. Instead, the initial deposit was repaid, and the campaign then had \$0 from Mary Kay Lacey or Stephen Henry. At that point, both Mary Kay Lacey and Stephen Henry were permitted to make individual \$50 contributions — which we both did, without exceeding the aggregate limit under section 2.12.500.A(7).

#### Conclusion

For the reasons explained above, and based on a fair reading of the Code provisions at issue, the Campaign respectfully asks the FCPC to dismiss the complaint and take no further action. Alternatively, if a violation is found, we ask that the FCPC find that no disqualifying event occurred. This request is based on the fact the City Clerk submitted the Campaign's request for public financing funds on September 10, 2018, and those funds were approved by the FCPC, which confirms that the charge that I had improperly donated more than the allowable amount was *not* considered a disqualifying event at that time by either the City Clerk's office or by Ms. Mar.

November 9, 2018

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Finally, to the extent the FCPC is concerned that the payee on the check to repay the initial deposit was Mary Kay Lacey (not Stephen Henry), Mary Kay Lacey can write a check from our joint checking account back to the campaign account, and the Campaign can write a check payable to me, which I will deposit into my joint checking account with Mary Kay Lacey.

Very truly yours,

A handwritten signature in black ink, appearing to read 'S. Henry', with a long horizontal flourish extending to the right.

STEPHEN F. HENRY

Enclosures

## Mary Kay Lacey

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**From:** FCPC (Fair Campaign Practices Commission) <FCPC@cityofberkeley.info>  
**Sent:** Thursday, November 1, 2018 5:32 PM  
**To:** 'Mary Kay Lacey'  
**Cc:** 'Stephen F. Henry'; Brown, Farimah F.; van Herick, Kristy  
**Subject:** Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018

Dear Ms. Lacey,

Candidates participating in the public financing program are not permitted to accept loans.

Participating candidates may also only accept the following types of contributions:

1. Qualified contributions,
2. Contributions not greater than fifty (\$50) made by a natural person non-resident of Berkeley, or
3. Non-monetary contributions with a fair market value not greater than fifty dollars (\$50).

BMC § 2.12. 500. A.7.

Public financing candidates are not permitted to accept loan contributions. BMC § 2.12.500.A.7. Loans are specifically excluded from the definition of qualified contributions. BMC § 2.12.167.

You and Mr. Henry explained that Mr. Henry made a contribution to the Committee, and that the Committee wrote a check to you, as the candidate, in an effort to repay the loan. Under the Berkeley Fair Election Act, the candidate cannot loan her or his committee money.

Berkeley Municipal Code 2.12.500.A.6 specifically addresses use of a candidate's own funds or those jointly held with his or her spouse:

To be certified as a participating candidate, a candidate must "[n]ot 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);

Mr. Henry could only make a qualified contribution or a nonmonetary contribution with a fair market value not greater than \$50.00 to your campaign.

Jessica Mar  
Deputy City Attorney | Secretary, Fair Campaign Practices and Open Government Commissions  
City of Berkeley  
2180 Milvia Street, Berkeley, CA 94704

**From:** Mary Kay Lacey [mailto:mklacey@comcast.net]  
**Sent:** Tuesday, October 30, 2018 1:49 PM  
**To:** Mar, Jessica E. <JMar@cityofberkeley.info>; FCPC (Fair Campaign Practices Commission) <FCPC@cityofberkeley.info>  
**Cc:** 'Stephen F. Henry' <stephen@shenrylaw.com>  
**Subject:** FW: Please respond to October 19th email re Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018

Dear Ms. Mar,

I am following up on the email that I sent to you (see below) on October 19, 2018. Would you please respond to the questions asked (below) so that Mr. Henry (or I) can write a complete letter regarding this matter.

If you are not going to provide a substantive response, please let us know.

Thank you,

Mary Kay

**From:** Mary Kay Lacey <[mklacey@comcast.net](mailto:mklacey@comcast.net)>

**Sent:** Friday, October 19, 2018 1:38 PM

**To:** 'FCPC (Fair Campaign Practices Commission)' <[FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)>; 'Stephen F. Henry' <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>; 'Mar, Jessica E.' <[JMar@cityofberkeley.info](mailto:JMar@cityofberkeley.info)>

**Subject:** RE: Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018

Dear Ms. Mar,

Stephen Henry will be writing a complete letter regarding this matter, but I wanted to follow up on your email below, which I did not see until late last night.

You and I had been having a discussion over several months about whether the Lacey2018 campaign had the proceeds of a \$50 loan and the proceeds of a \$50 donation in the campaign account at the same time. You asked us to provide evidence to support our claim that we did not.

We explained that we had provided that evidence.

Specifically, we provided a check from the campaign dated May 5, 2018 repaying the loan. Because the accounting for our campaign is on a cash basis, the effective date of the loan repayment was May 5, 2018.

Therefore, we did not have a loan in the amount of \$50 available to the campaign on May 5, 2018.

*In other words, we replaced the loan with a donation and because we repaid the loan prior to taking the donation, we never had more than \$50 from Mr. Henry available to the campaign.*

Pending Questions:

1. I asked you if it is correct, as City Council candidates have been told, that we are to use a cash (not an accrual) basis for our accounting.

Would you please answer that question at your earliest convenience.

2. Also, for purposes of clarity in the record, would you please cite what you are relying on to support your statement in the email immediately below, that "Public financing candidates are not permitted to accept loans under the Berkeley Fair Elections Act of 2016."

I am aware that a candidate cannot have a loan and a donation from the same person at the same time if it exceeds \$50.00, because a loan and a donation are both considered to be a contribution. But, I am unaware of any citation for the proposition as you stated it — that "candidates are not permitted to accept loans."

3. Finally, I understand from Mr. Henry that the position you took at last night's hearing did not turn on whether we had a \$50 loan in the campaign account at the same time we had a \$50 donation from Mr. Henry (which had been the question).

Instead, you took the position that once Mr. Henry made a donation of \$50, he violated BERA regardless of whether the first "contribution" (i.e., the loan) had been repaid at the time the donation was made.

If that is your position, would you please provide a legal citation that supports that position —and if it is not your position, would you please clarify what position you took last night.

Once we hear back from you about the three issues above, Mr. Henry will be able to send a complete letter to the Commission.

Thank you,

Mary Kay Lacey

**From:** FCPC (Fair Campaign Practices Commission) <[FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)>  
**Sent:** Thursday, October 18, 2018 4:52 PM  
**To:** 'Mary Kay Lacey' <[mklacey@comcast.net](mailto:mklacey@comcast.net)>; 'Stephen F. Henry' <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>  
**Subject:** RE: Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018

Dear Ms. Lacey,

Under the Berkeley Election Reform Act, a loan is a contribution. Public financing candidates are not permitted to accept loans under the Berkeley Fair Elections Act of 2016. This restriction applies regardless of the accounting method your committee used.

Jessica Mar  
Secretary, Fair Campaign Practices and Open Government Commissions  
City of Berkeley  
2180 Milvia Street, Berkeley, CA 94704

**From:** Mary Kay Lacey [<mailto:mklacey@comcast.net>]  
**Sent:** Thursday, October 18, 2018 3:23 PM  
**To:** FCPC (Fair Campaign Practices Commission) <[FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)>; 'Stephen F. Henry' <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>  
**Subject:** RE: Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018

Ms. Mar,

Would you please respond to the email that was sent to you by Mr. Henry on October 8, 2018, and the email that I sent to you earlier today.

Thank you,

Mary Kay Lacey

**From:** FCPC (Fair Campaign Practices Commission) <[FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)>  
**Sent:** Thursday, October 18, 2018 3:17 PM  
**To:** 'Mary Kay Lacey' <[mklacey@comcast.net](mailto:mklacey@comcast.net)>; 'Stephen F. Henry' <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>  
**Subject:** Referral to the Fair Campaign Practices Commission for investigation re Lacey for Council 2018



Dear Ms. Lacey and Mr. Henry:

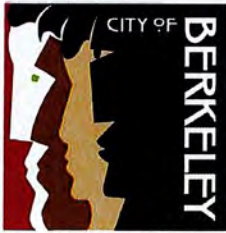
As you were notified by the August 20, 2018 correspondence, the referral from the City Clerk's Office regarding *Lacey for Council 2018*, has been placed on the agenda for the Fair Campaign Practices Commission's October 18, 2018 meeting.

The agenda for the meeting is available on the FCPC's Website:

[https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission on Fair Campaign Practices/10%2018%202018%20FCPC%20Agenda.pdf](https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission%20on%20Fair%20Campaign%20Practices/10%2018%202018%20FCPC%20Agenda.pdf)

A copy of the report for the item (pdf) is attached to this email and is also available on the Commission's website.

Jessica Mar  
Secretary, Fair Campaign Practices and Open Government Commissions  
City of Berkeley  
2180 Milvia Street, Berkeley, CA 94704



Fair Campaign Practices Commission

**DATE:** July 19, 2018  
**TO:** FAIR CAMPAIGN PRACTICES COMMISSION  
**FROM:** JESSICA MAR, Commission Secretary  
**SUBJECT:** Berkeley Election Reform Act Information Seminar on July 12, 2018

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Berkeley candidates, committee officers, Fair Campaign Practices Commissioners, and members of the public were invited to attend a Berkeley Election Reform Act Information Seminar on July 12, 2018.

The City Clerk and Commission Secretary will conduct the training and will cover a number of important topics including creating a campaign committee, BERA and the California Political Reform Act, the campaign statement filing schedule, the public financing program, contribution limits, disclosure requirements, and election filing requirements.

Attachments: 1. City of Berkeley BERA Information Seminar Flier

# City of Berkeley BERA Information Seminar

*Berkeley Election Reform Act  
(BERA) Information Seminar*

**Date:** July 12, 2018

**Time:** 6:00 pm

**Place:** North Berkeley Senior Center  
1901 Hearst Avenue  
Berkeley, CA 94709

*RSVP not required*

*For more information:*

*Please contact  
City of Berkeley  
City Clerk Department  
elections@cityofberkeley.info  
(510) 981-6900*

City of Berkeley  
City Clerk Department  
2180 Milvia Street  
Berkeley, CA 94704  
Phone: 510-981-6900  
E-mail: elections@cityofberkeley.info



## Learn about:

- Creating a Campaign Committee
  - Form 410
  - City of Berkeley Statement of Organization
- BERA versus the Political Reform Act
- Campaign Statement Filing Schedule
- Public Financing Program
- Contribution Limits
- Disclosure Requirements
- Electronic Filing Requirements
- And More!

All Candidates and Committee Officers are encouraged to attend this important seminar.

## **BERKELEY ELECTION REFORM ACT**

### **A Guide To Navigating Local Election Rules**



*Presented by:*  
**City Clerk Department**  
**City Attorney's Office**



2018 Election Cycle

## **Disclaimer**

The following pages are designed to be visual aids only and contain only highlights and selected provisions of local election laws. They do not carry the force of law. Please consult the Berkeley Election Reform Act, local Regulations, the Campaign Filing Manual and City staff for guidance.

This workshop is designed for **Berkeley candidates** who plan to raise or spend \$250 or more on their election and other committees active in Berkeley elections.

### **What Will You Learn?**

- How to get started
- General information and rules regarding campaign requirements and prohibitions
- How to complete and file campaign reports
- What to do after the election
- Resources

### *What is the Berkeley Election Reform Act (BERA)?*

- ▶ Initiative Ordinance passed by Berkeley voters in 1974.
- ▶ Codified in Chapter 2.12 of the Berkeley Municipal Code.
- ▶ Imposes **contribution limits** for candidate-controlled committees.
- ▶ Imposes **disclosure requirements** for all committees beyond those in state law.
- ▶ Created the Berkeley Fair Campaign Practices Commission to administer BERA (information, compliance, enforcement).
- ▶ Contains the Fair Elections Act of 2018 (Public Financing)
- ▶ BERA Regulations adopted by the FCPC



## State Laws

- Political Reform Act
  - Filing: Secretary of State Political Reform Division
  - Enforcement/Advice: Fair Political Practices Commission
- State FPPC Advice Letters and Regulations
- State FPPC Campaign Filing Manuals
- **Remember:** BERA supplements, but does not replace, the state regulations in the Political Reform Act.

[www.fppc.ca.gov](http://www.fppc.ca.gov)

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## Electronic Filing

- **Mandatory** for all committees that reach \$1,000 threshold.
- Once you reach \$1,000, you must e-file until termination of committee.
- City Clerk Support and Training:
  - Call (510) 981-6908
  - Email [elections@cityofberkeley.info](mailto:elections@cityofberkeley.info)
- NetFile is the electronic filing system used in Berkeley



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## Public Financing

- New for 2018
- Mayor and City Council only
- Optional
- Candidates that opt in are eligible for a 6:1 match on qualifying contributions up to \$40,000 for Council and \$120,000 for Mayor
- Additional restrictions and regulations for participating candidates
- More information in the public financing guide

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## Public Financing - Timeline

- Must start early
- Qualifying Request – 30 unique contributions of at least \$10 each for a total of at least \$500
- Must submit a Qualifying Request no later than the close of the candidate nomination period (August 10, 2018)

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## Getting Started

- Form 501 – Candidate Intention Statement
  - file with your local elections office
- Form 410 – Statement of Organization
  - file original with the Secretary of State (SOS) and a copy with your local elections office
  - registers your committee and gets the committee ID#
  - include \$50 committee fee
- City Statement of Organization – File with City Clerk Only
- Open Bank Account – ask your bank what they require

**Hard Copies Only! Do not e-file these forms**

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### Form 501 Candidate Intention Statement

- File before receiving or spending money, including personal funds
- File a new 501 for each election, even if you're running for re-election
- File with City Clerk

Candidate Intention Statement				CALIFORNIA FORM 501
Check One: <input checked="" type="checkbox"/> Initial <input type="checkbox"/> Amendment (Sign) _____				Date Filed: _____ FPC/CEA Use Only
<b>1. Candidate Information:</b>				
NAME OF CANDIDATE (set the table initial)		DAYTIME TELEPHONE NUMBER	FAX NUMBER (optional)	E-MAIL (optional)
Hernandez, Sue		510 555-1234	510 555-1235	shernandez@global.net
STREET ADDRESS: _____ CITY: _____ STATE: _____ ZIP CODE: _____				
100 Sandburg Street		BERKELEY	CA	94702
CITY COUNCIL POSITION TITLE: _____ AGENCY NAME: _____ DISTRICT NUMBER: _____ F. AIRBORN <input checked="" type="checkbox"/> RESIDENT STATE				
OFFICE JURISDICTION: _____ City of Berkeley _____ HEALTH				
<input type="checkbox"/> State (include unit) _____ <input checked="" type="checkbox"/> City <input type="checkbox"/> County <input type="checkbox"/> Multi-County _____				
2016 <input type="checkbox"/> Primary general election <input checked="" type="checkbox"/> Special/Trustee election				
<b>2. State Candidate Expenditure Limit Statement:</b>				
<small>(CFCER) and CFCER candidates subject to special conditions and candidates for local offices do not complete Part 2.)</small>				
<input type="checkbox"/> I accept the voluntary expenditure ceiling for the election stated above <input type="checkbox"/> I do not accept the voluntary expenditure ceiling for the election stated above				
Amendment: <input type="checkbox"/> I do not exceed the expenditure ceiling in the primary or special election held on _____ and I accept the voluntary expenditure ceiling for the general or special run-off election				
I contributed personal funds in excess of the expenditure ceiling for the election stated above.				
<b>3. Verification:</b>				
I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.				
Executed on: August 1, 2016 <small>make legible</small>		Signature: <u>Sue Hernandez</u> <small>Candidate</small>		
<small>FPC Form 501 (08/12/2016)                      FPC/CEA Use Only (8/6/2016) (2/15/17)</small>				

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### Form 410 Statement of Organization

<b>Statement of Organization Recipient Committee</b> Statement Type <input checked="" type="checkbox"/> Initial <input type="checkbox"/> Amendment <input type="checkbox"/> Termination - See Part 5 <small>Not yet qualified <input type="checkbox"/> or List I.D. number: # _____</small>		Date Stamp _____	<b>CALIFORNIA FORM 410</b> <small>For Official Use Only</small>
Date qualified as committee: 08 / 04 / 2016 <small>Date qualified as committee (if applicable)</small>		Date of Termination: _____ <small>Date of Termination</small>	
<b>1. Committee Information</b> NAME OF COMMITTEE: Hernandez for City Council 2016 STREET ADDRESS (IND. PG. 804): 100 Sandburg Street CITY: Berkeley STATE: CA ZIP CODE: 94709 AREA CODE/PHONE: (510)555-1234 MAILING ADDRESS (IF DIFFERENT): Same E-MAIL ADDRESS: <u>shernandez@global.net</u> COUNTY OF RESIDENCE: Alameda JURISDICTION WHERE COMMITTEE IS ACTIVE: Berkeley Attach additional information on appropriate page.		<b>2. Treasurer and Other Principal Officers</b> NAME OF TREASURER: Ben Marks STREET ADDRESS (IND. PG. 804): 10 Parkway Plaza CITY: Berkeley STATE: CA ZIP CODE: 94709 AREA CODE/PHONE: (510)555-2600 NAME OF ASSISTANT TREASURER, IF ANY: Sue Hernandez STREET ADDRESS (IND. PG. 804): 100 Sandburg Street CITY: Berkeley STATE: CA ZIP CODE: 94709 AREA CODE/PHONE: (510)555-1234 NAME OF PRINCIPAL OFFICER(S): STREET ADDRESS (IND. PG. 804): CITY: STATE: ZIP CODE: AREA CODE/PHONE:	
<b>3. Verification</b> I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on: 08/07/2016 By: <u>Ben Marks</u> SIGNATURE OF TREASURER OR ASSISTANT TREASURER Executed on: 08/07/2016 By: <u>Sue Hernandez</u> SIGNATURE OF CONTROLLING OFFICER, CANDIDATE, OR STATE MEASURE PROponent			

### Form 410 Page 2

<b>Statement of Organization Recipient Committee</b> INSTRUCTIONS ON REVERSE		<b>CALIFORNIA FORM 410</b> Page 2 I.D. NUMBER
COMMITTEE NAME: Hernandez for City Council 2016		
* All committees must list the financial institution where the campaign bank account is located.		
NAME OF FINANCIAL INSTITUTION: First Bank and Trust ADDRESS: 900 North D Street CITY: Berkeley STATE: CA ZIP CODE: 94709	AREA CODE/PHONE: (510)555-6555	BANK ACCOUNT NUMBER: 0790-9900-2540
<b>4. Type of Committee</b> Complete the applicable section.		
<b>Controlled Committee</b> <ul style="list-style-type: none"> <li>List the name of each controlling officer, candidate, or officeholder controlled, also list the elective office sought or held, and district number, if any, and the year of the election.</li> <li>List the political party with which each officeholder or candidate is affiliated or check "nonpartisan."</li> <li>If this committee acts jointly with another controlled committee, list the name and identification number of the other controlled committee.</li> </ul>		
NAME OF CANDIDATE/OFFICEHOLDER/STATE MEASURE PROponent: Sue Hernandez ELECTIVE OFFICE SOUGHT OR HELD (INCLUDE DISTRICT NUMBER IF APPLICABLE): Berkeley City Council YEAR OF ELECTION: 2016 PARTY: <input checked="" type="checkbox"/> Nonpartisan <input type="checkbox"/> Partisan		
<b>Primarily Formed Committee</b> Primarily formed to support or oppose specific candidates or measures in a single election. List below:		
CANDIDATE(S) NAME OF MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTERS)	CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) (ABRIDGED) (INCLUDE DISTRICT NO., CITY OR COUNTY, AS APPLICABLE)	OTHER USE SUPPORT <input type="checkbox"/> OPPOSE <input type="checkbox"/>

## Type of Committee

### Candidate-Controlled Committee

- Formed to support candidate, in/directly controlled by candidate.
- Contributions limited to **\$250**; no contributions from businesses.

### Ballot Measure Committee

- Formed to support or oppose a ballot measure.
- No limits on contribution source or amount received.

### General Purpose Committee

- Supports/opposes *various* measures/candidates over time; not candidate-controlled or primarily formed for candidate/measure.
- No limits on contributions source or amount received.

### Independent Expenditure Committees

- Formed to make independent expenditures in City election (not in coordination with any candidate or ballot measure committee).
- Typically sponsored; does not accept contributions.

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## Form 410



- Common Mistakes
- Name of Committee
- Phone Numbers for Offices
- Principal Officers
- Required Signatures
- Proper Committee Type

**These errors will delay processing and  
the assignment of your State ID  
Number.**

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## Committee Identification Number

Upon receipt of the Form 410, the Secretary of State's Office will assign your committee an ID number.

The ID number will be posted on their website at [www.cal-access.sos.ca.gov](http://www.cal-access.sos.ca.gov).

This number is used on all FPPC reporting forms.

**Note:** If your bank requires a taxpayer ID, contact the IRS at (800) 829-4933 or go to their website at [www.irs.gov](http://www.irs.gov).

The screenshot shows the Cal-Access website search interface. A search bar contains the name 'hernandez' and a red arrow points to the 'GO' button. Below the search bar, the results are displayed in a table with columns for ENTITY ID, ENTITY NAME, ENTITY TYPE, and STATUS.

ENTITY ID	ENTITY NAME	ENTITY TYPE	STATUS
182422	ANIBODY BUT LUIS HERNANDEZ	RECIPIENT COMMITTEE	TERMINATED
1221222	CITIZENS OF SAN FERNANDO FOR THE RECALL OF CONGRESSMAN JOSE HERNANDEZ AND CONGRESSWOMAN TALLE RILEY	RECIPIENT COMMITTEE	ACTIVE
182242	DANIEL HERNANDEZ TRUCKING	MAJOR DONOR	
182243	HERNANDEZ TRUCKING, DANIEL *	MAJOR DONOR	
122225	ESPINALDO COMMITTEE TO ELECT ROSE HERNANDEZ	RECIPIENT COMMITTEE	TERMINATED
182423	ESPINALDO COMMITTEE TO ELECT ROSE HERNANDEZ	RECIPIENT COMMITTEE	TERMINATED
102122	HERNANDEZ FOR CITY COUNCIL, J.A.	RECIPIENT COMMITTEE	ACTIVE
182229	HERNANDEZ & ASSOCIATES, LAW OFFICES OF RICHMOND	MAJOR DONOR	
182233	HERNANDEZ (CONGRESSMAN JMS (HAC)) COMMITTEE TO ELECT RALPH	RECIPIENT COMMITTEE	TERMINATED
182234	HERNANDEZ JEFF. FE ELECT	RECIPIENT COMMITTEE	ACTIVE
1221232	HERNANDEZ JIMM. COMMITTEE TO ELECT ORLANDO	RECIPIENT COMMITTEE	TERMINATED
182235	HERNANDEZ JIM *	RECIPIENT COMMITTEE	TERMINATED
182236	HERNANDEZ JIM	RECIPIENT COMMITTEE	TERMINATED
182237	HERNANDEZ JIM	RECIPIENT COMMITTEE	TERMINATED

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## Campaign Bank Account Rules

- One bank account per election
- May be opened as a personal account (*if your bank requires a tax ID#, contact the IRS*)
- No commingling of funds (*with personal or other committee funds*)
- Candidate must make all campaign expenditures from campaign account

### Exceptions:

- Candidate may pay filing fees and the \$50 annual committee fee out of pocket
- Campaign workers/volunteers may make out of pocket expenditures and be reimbursed (promptly!)

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## Candidate and Treasurer Responsibilities

- Before a candidate or committee may receive contributions, a treasurer must be appointed.
- Both the candidate and treasurer must take appropriate steps to ensure compliance with reporting/recordkeeping rules.
- Stay informed. Be aware of bank deposits and proper expenditures of campaign funds.
- In the event of an audit or Enforcement investigation, both the candidate and treasurer are equally liable for non-disclosure on campaign reports or lack of records.

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## Recordkeeping

- Candidates – don't pay out of pocket! **Deposit your personal funds in your campaign bank account first.**
- Record the names and addresses of contributors of \$25 or more, and the occupation/employer of individuals who contribute \$50 or more.
- Keep copies of all receipts and contribution documentation for at least four years.

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## Filing Schedule

- Late Contribution Reports – (90 days)
- Late Independent Expenditure Reports – (90 days)
- First Pre-Election Report
- Second Pre-Election Report
- Semi-Annual Report
  
- Note reporting periods and deadlines
  
- Monetary penalties for late filings



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## Enforcement

- Since 2007, we have issued over \$16,000 in fines to 36 different filers.
- Fines accrue at \$10 per day after the deadline.
- **File on time – you can always amend later.**
- City Clerk issues late filing penalties.
- The FCPC may also issue additional penalties of up to \$1,000 per violation or up to the amount of the unlawful or undisclosed contribution or expenditure, whichever is greater.

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## BERA: The Basics

*BERA vs. State Law*

- ▶ \$250 contribution limit for candidates.
- ▶ Source limits for candidates.
- ▶ \$50 and up require written instrument and itemized reporting obligations.
- ▶ Late contribution reports required for \$100-\$999 during last 16 days.
- ▶ Mass mailings (Certificate and 3 copies within set time).
- ▶ Late independent expenditure (3 copies of communication filed with City Clerk).
- ▶ Top four donors listed on materials for all committees receiving contributions over \$250.

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## What is a Contribution?

- Payment received by candidate
- Payment made at the behest of candidate
- Candidate's personal funds
- Loans from candidate or others
- Fundraiser tickets (full ticket price)
- Non-monetary goods and services, including food/beverages



**Contribution limits apply to all of these!**

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## Contribution Limits

- \$250 contribution limit for candidates.
  - Includes cash and in-kind contributions
  - Applies to contributions to a:
    - Candidate-controlled committee.
    - Non-candidate-controlled committee that supports a Berkeley candidate.
- Does not apply to ballot measure committees (except *recall* measures).
- Does not apply to the candidate contributing or loaning money to own campaign.

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## Contribution Limits

(continued)

- **No contributions to candidates (or recall measures) from businesses**, including labor unions & non-profits.
  - No free office space or inventory from such groups.



- Contributions of \$250 or less from PACs to candidates are allowed, however the source of contributions to the PAC must be individuals.

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## Receiving Electronic Contributions

Contributions may be received by credit card, wire transfer, debit account transaction, text message, or similar electronic payment options (including contributions received via the Internet or telephone).



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## Receiving \$5,000 or More From a Contributor?

Not if you are a Berkeley candidate!

You **must** send the contributor a notice that they may need to file as a major donor.

*A sample notice is provided in Campaign Disclosure Manual 2.*

The donor may need to file:

- **Form 461** Major Donor Statement
- **Form 497** 24-Hour Contribution Report

*Major Donor committees should refer to Campaign Disclosure Manual 5.*

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## Exceptions to Contributions

These are generally **NOT** reportable:

- Volunteer personal services
- Home/office fundraiser
- Uncompensated internet activity
- Certain communications from an organization to its members (Regulation 18531.7)

JOIN US



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## Home and Office Events

State Law: If the **total** cost of the event is \$500 or less, the occupant/host has not made a contribution.

BERA: More restrictive than state law. Under BMC 2.12.100, if the value of the use of personal or real property is in excess of \$50, it qualifies as a contribution. Likewise, food and beverages for any one event that cost more than \$50 qualify as a contribution.

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## Campaign Fundraisers

- Report donated items at fair market value on Schedule C - Non-monetary (In-kind) Contributions.
- Fair market value is the amount it would cost any member of the public to purchase the item, not necessarily the amount the donor paid.

*Note: A spouse or domestic partner of an elected officer or a candidate may not receive compensation from campaign funds for services rendered, including fundraising services for the candidate's campaign.*

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## Contribution Restrictions

- Never accept or spend \$50 or more in cash
- No contributions of \$50 or more made by money order or cashier's check may be accepted
- No anonymous contributions of \$50 or more may be accepted

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## Disclosure Requirements: Differences From State Law

- ▶ Itemize contributions and expenditures at \$50, not \$100.
- ▶ On the appropriate schedule, aggregate contributions and expenditures of less than \$50.
- ▶ Include occupation and name of employer (or principal place of business if self employed).

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## Disclosure Requirements

*(continued)*

- Monetary contributions and expenditures of \$50 or more must be made by written instrument (e.g., check, credit card or debit card).
- Anonymous contributions or expenditures of \$50 or more are prohibited.
- State: \$100 or more for both.
- State requires record retention for contributions of \$25 or more.



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## Form 460 Campaign Statement

### Fast Facts

- A public document
- Reviewed by City Clerk
- Use Form 460 to amend previous statements
- Generally, the date filed is the postmark on the envelope
- Subject to \$10/day late fees and other enforcement penalties

### Where to File

**Local Committees:** City Clerk

**Multiple Committees:** Holding one office and running for another? File for both committees in both locations.

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## Form 460 Snap Shot of Schedules

### Money In

- Schedule A: Contributions
- Schedule B: Loans Received
- Schedule C: Non-Monetary Contributions
- Schedule I: Miscellaneous Increases to Cash

### Money Out

- Schedule B: Loan Repayments
- Schedule E: Expenditures
- Schedule F: Accrued Expenses

**Note:** Schedules D, G, and H (money out) are not commonly used by local candidates and will not be discussed at this workshop. For more information on these schedules, please see Manual 2 or contact FPPC.

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# Form 460 Schedule A

## Reporting Monetary Contributions

**Date received** = **possession** of check (not date deposited) or **possession** of payment information for credit cards.

**Itemize** = disclose details about the contributor - the names and addresses of contributors of \$50 or more in an election cycle.

For contributors who are individuals, also report the **occupation and employer**.

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# Form 460 Schedule A Schedule A

### Schedule A Monetary Contributions Received

You must include individuals' occupation & employer

Amount less than \$50 this period is added to previous contribution

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER 12 NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME AND BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
8/1/2016	Linda Miller 123 South B Street Oakland, CA 94601	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Nurse, Oakland Medical Clinic	50	100	

IND = Individual  
COM = Committee

Lump sum - report contributions less than \$50

#### Schedule A Summary

1. Amount received this period - itemized monetary contributions. (Include all Schedule A subtotals.)	\$	860
2. Amount received this period - unitemized monetary contributions of less than \$100	\$	1,200
3. Total monetary contributions received this period. (Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.)	TOTAL \$	2,060

# Form 460 Schedule A

Sally Morgan  
James Morgan  
304 S. 14th Street  
Berkeley, CA 94709 3317

PAY TO THE ORDER OF Sue Hernandez 200 <sup>00</sup>

Two Hundred Dollars DOLLARS

Contribution Sally Morgan

If one signer on a joint checking account, the signer is the contributor

Donor made contribution from her business account and another from her personal account. Contribution from business account to candidate is **ILLEGAL**

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
8/1/2016	Clara's Cupcakes 411 Main Street Berkeley, CA 94709	<input type="checkbox"/> IND <input type="checkbox"/> COM <input checked="" type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC		99	198	
8/2/2016	Clara Edgeworth 411 Main Street Santa Clara, CA 94709	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Owner, Clara's Cupcakes	99	198	

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# Form 460 - Schedule E

An expenditure of \$50 or more for a gift, meal, or travel must include certain details.

Date, number of attendees, whether candidate &/or any individual with authority to make expenditures attended, and purpose

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Jacqueline's Kitchen 42 Mariner Way Santa Clara, CA 95053		8/15/16: Lunch to discuss campaign strategy, 4 attendees, including candidate and treasurer	120
Sue Hernandez 100 Sandburg Street Santa Clara, CA 94709	FIL	Filing Fee Reimbursement	1,000
County Bank Visa 2900 Middleton Street Dayton, OH 45330			1,500
Subvondor: Phone Banks R Us \$1,000 2550 Parkway Plaza Mountain View, CA 94039	PHO		

Reimburse candidate for filing fee

Credit card payment

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## Form 460 Schedule E Reporting Subvendors

- Report subvendors of campaign agents and consultants.
- Itemize payments of \$50 or more.
- Reimburse campaign workers within 45 days.

NAME AND ADDRESS OF PAYEE <small>(IF CONTRIBUTOR ALSO REPORTS NAME)</small>	CODE OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Freeman & Associates 650 South Gateway Blvd Berkeley, CA 94709	CNS		3,000
<u>Subvendor:</u> Daily News 5750 1475 Seventh Street Berkeley, CA 94709			

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## Form 460 - Schedule F Reporting Accrued Expenses

- Report goods or services received, but not yet paid, during reporting period.
- Continue to report as accrued expense until paid off.
- If not paid off within 45 days it becomes a contribution.



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## Pay your debts promptly

- State law: payments by an agent on behalf of a committee become **non-monetary contributions** if not repaid within 45 days.
- Extension of credit: must pay off outstanding expenses or they may become a contribution.
- Failure to timely repay may result in a violation of BERA's \$250 contribution limit or business ban.



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## Late Contributions

- \$100-\$999: file within 48 hours (last 16 days).
- \$1,000 or more: file within 24 hours (last 90 days).
- *Candidates must still abide by \$250 limit!*
- Must file late contribution report even if contribution received on election day.
- Includes loans.
- \$10 per day penalty for late filing!!!
- E-filers must file electronically



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## Form 497 24-Hour Contribution Report

- File if contributions totaling \$1,000 or more are received from a single source in the 90 days before or on the date of the election (Berkeley candidates – this can only be a loan from the candidate)
- Mandatory electronic filing.

497 Contribution Report		Amounts may be rounded to whole dollars.		CALIFORNIA FORM 497
ISSUE AND TITLE <b>Berkeleyans for Measure A</b>		Date of This Filing	8/21/2016	For Official Use Only
AREA CODE/PHONE NUMBER	ID. NUMBER (if associate)	Report No.	3	
STREET ADDRESS 100 Sandburg Street		<input type="checkbox"/> Amendment to Report No. (explain below)		
CITY	STATE	ZIP CODE	No. of Pages	
Berkeley	CA	94709	1	
1. Contribution(s) Received				
DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER ID. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED
8/20/2016	Frances Burney 1444 Riverside Drive Berkeley, CA 94079	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Owner, Burney Publishing Company	1,500 <input type="checkbox"/> Check if Loan <small>Provide interest rate</small>

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## Filings: Avoiding Common Errors

- Do your homework.
- File on time.
- Include all required approvals (*i.e.*, treasurer and candidate).
- Remember \$250 and source limits on contributions/loans to candidates.
- File timely amendments.
- Candidates may not pay vendors.



## Mass Mailings

- 200 or more similar pieces of mail.
  - Excludes mail sent in response to a request or other inquiry (e.g., newsletter subscription).
- File in person both a Certificate of Mass Mailing and three (3) copies with the City Clerk one day after mailing, or mail both to Clerk on same day as mailing, *by guaranteed overnight delivery*.
- BERA does not regulate content!

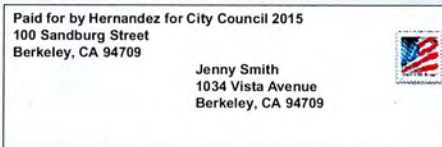


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## Identification on Mailings

### **If:**

More than 200 similar pieces are sent in a calendar month (mass mailing)



### **Then:**

“Paid for by” and committee name and address must be on the outside of the mailing in no less than 6-point type and in a contrasting color. The committee ID number is recommended, but not required.

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## Mass Mailings Recordkeeping Requirement

- Retain a copy of each mass mailing
- In your records, keep note of:
  - Date
  - Method of postage
  - Number of pieces

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## Political Advertisement Disclaimers

Go to:  
[FPPC Home Page >](#)  
[Learn >](#)  
[Campaign Rules >](#)  
[Campaign Advertising](#)

**Political Advertising Disclaimers**

**1. Communications by Candidate Committees for their own Election**

The disclaimer must include, unless otherwise noted: "Paid for by committee name."  
 Examples: "Paid for by Jones for Assembly 20XX"  
 "Paid for by Friends of Smith for Mayor 20XX"

Communication	Manner of Display
<p><b>All mass mailings</b> – more than 200 sent within a calendar month (including emails and faxes)</p>	<ul style="list-style-type: none"> <li>• Candidate's committee name/address for file with Form 410 (on outside of mailing if no Form 410 on file, use candidate name/address)</li> <li>• Only committee name (no address) required on emails</li> <li>• "Paid for by" must be in the same color and font as the committee name/address and immediately in front of it above the name/address</li> <li>• If sent by more than one candidate/committee:                             <ul style="list-style-type: none"> <li>◦ Also on at least one sheet in the mailing</li> </ul> </li> <li>• No less than 6-point type/contrasting print color</li> <li>• Return envelopes (if included in solicitations) – committee's name, address and ID number are recommended but not required</li> </ul>
<p><b>Telephone calls advocating candidate's own election</b> (500 or more) – made by:</p> <ul style="list-style-type: none"> <li>• Vendors ("roboc" calls) or</li> <li>• Paid individuals other than the candidate, campaign manager or volunteers</li> </ul>	<ul style="list-style-type: none"> <li>• Any time during the message</li> <li>• Must identify the candidate that paid for the call or an organization authorizing the call that files campaign reports</li> <li>• Must state that the call is "paid for by" or "authorized by" the identified candidate or organization                             <ul style="list-style-type: none"> <li>◦ Examples: This call was paid for by Senator Jones. This call was authorized by [name of committee]</li> </ul> </li> <li>• No ID required on telephone calls personally dialed by candidate, campaign manager or volunteers</li> </ul>

[fdms@fdpp.org](mailto:fdms@fdpp.org) (866) 275-3732 or (916) 321-2566  
[www.fppc.ca.gov](http://www.fppc.ca.gov) FPPC 760-012-03-2014 v Page 1 of 2

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## Independent Expenditures

- Expenditures that are not in coordination with any candidate or ballot measure committee.
- Differs from a nonmonetary contribution, which is done in coordination with the affected committee.

**Candidates may not use campaign funds to make “independent expenditures” related to other candidates.**

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## Independent Expenditures

- Period for reporting “late” independent expenditures of \$1,000 or more extends to last 90 days before election day, including election day.
- Report within 24 hours.
- **BMC § 2.12.297:**  
Submit three copies of communication funded by expenditure to City Clerk.

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## “Major Funding” Disclosure

- Campaign communications must include:
  - The name of the committee.
  - **“Major Funding Provided By”** followed by the names, cities of domicile, and total contribution amounts for each of the top 4 donors (contributions or loans).
- Committees are required to comply if they receive contributions or loans exceeding \$250.
- Candidates who personally contribute or loan more than \$250 to their committee must disclose that loan or contribution.

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## Major Funding Provided By

- “Campaign communications” means:
  - 1,000 or more pieces of campaign literature (mailers, flyers, pamphlets, door hangers).
  - Paid advertisements (newspapers, magazines, internet).
  - 1,000 or more similar emails or pre-recorded telephone calls in a calendar month.
- Disclosure not required on:
  - Small promotional items (pens, mugs, pins).
  - Mass media (TV or radio ads).
  - Posters, yard signs, billboards.

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## Example of Disclosure

***Paid for by Citizens for Kitten Rights,  
Yes on Measure C Committee  
(FPPC #1234567)***

***Major Funding Provided By:  
Cat Lovers of America, San Diego, \$5000;  
Cats for All Political Action Committee,  
Sacramento, \$1000;  
Jon Doe, Berkeley, \$500;  
Jane Smith, Oakland, \$400.***

*(FPPC number recommended but not required.)*

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## Post-Election: Got Debt?

- Can raise funds to pay off debt after an election.
- Candidates may receive a contribution for the prior period, but **only** from someone who did not contribute the maximum of \$250 for that period.
  - **And** only as necessary to retire debt.
  - **And** no later than December 31, 2020 for the November 2018 election.
- Mark such contributions: “**G18**”

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### After the Election: Successful Candidates

- Must continue to file campaign reports and pay the \$50 annual fee until the committee terminates.
- May continue to receive contributions and use leftover funds for officeholder expenses.
- May use leftover funds for election to a future office if the funds are redesignated or transferred **before they become surplus.**
- Leftover funds become surplus **90 days after leaving office.**

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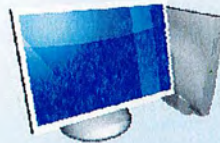
### After the Election: Defeated Candidates

- Must continue to file campaign reports and pay the \$50 annual fee until you terminate the committee.
- May use leftover funds for election to a future office if the funds are redesignated or transferred **before they become surplus.**
- Funds become surplus **90 days after the end of the semi-annual reporting period.**
- The end of the semi-annual reporting period is June 30 for elections held in the first six months of the year and December 31 for elections held in the last six months.

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## After the Election: Leftover Assets

- Leftover assets may also become surplus.
- For personal use, you must purchase the item at fair market value.
- Proceeds from the sale of items are shown as miscellaneous increases to cash on Schedule I.
- Public Financing Candidates must return all unspent funds to the Fair Elections Fund



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## Using Leftover Campaign Funds for a Future Election

### **Running for Same Office**

- File Form 501
- File *amended* Form 410

### **Running for Different Office**

- File Form 501
- File *new* Form 410
- Open a new bank account
- Transfer funds to new bank account

*Note: Remember this must be done before the funds become surplus.*



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## Terminating Your Committee

The following criteria must be met:

- No remaining funds
- Not receiving or planning to receive contributions
- Not making or planning to make expenditures
- Termination Forms 410 and 460 must be filed

*Note: There is no timeframe for terminating a local committee, but you must continue to file campaign reports and pay the \$50 annual fee until the committee terminates.*

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## Resources

- Campaign Rules Page of FPPC Website
- Campaign Disclosure Manuals
- Form Instructions
- Candidate/Treasurer Video on YouTube
- Your City Clerk or County Elections Office
- FPPC E-mail - [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov)
- FPPC Phones - 866-275-3772
- Secretary of State

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## Questions?

- Closely read the **Campaign Filing Manual**.
- Consult **BERA** and **FCPC Regulations**.
- Call City staff – there is no such thing as a silly question!

City Clerk: 981-6908

City Attorney: 981-6998

email: [FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)



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## APPENDIX A: FREQUENTLY ASKED QUESTIONS

- QUESTION: Signature requirements: Is a wet signature required on the Qualified Contribution Receipt?
- ANSWER: **A hand-written signature is required, but does not have to be an original "wet" signature. The contributor must sign the hard copy receipt by hand, but they can send you a scan or image of their signed receipt via e-mail or other electronic means. The Treasurer must upload the image of the form in NetFile and must also print a copy to keep as a record.**
- QUESTION: Will voters be informed if a candidate is or is not participating in Public Financing Program?
- ANSWER: **BMC § 2.12.510 requires a notice to be printed on the same page as the candidate statement for participating candidates. There is no notice for non-participating candidates.**  
*The notice will read:*  
*"This candidate is participating in the Berkeley Fair Elections Program, which provides public matching funds to candidates who abide by specific fundraising restrictions."*
- QUESTION: Can participating candidates accept donations from both Berkeley and non-Berkeley residents, at a max of \$50 for both types of residents?
- ANSWER: **Yes, see BMC § 2.12.500(7). Only QUALIFIED contributions from Berkeley residents are eligible for the City's 6-to-1 match; contributions from non-Berkeley residents are allowed (at the \$50 limit) but are not eligible for public matching funds.**
- QUESTION: How much can a candidate contribute to his/her own campaign committee?
- ANSWER: **BMC § 2.12.500(6) states that candidates (including their spouse, domestic partner, and dependent children) are limited to contributing a maximum of \$50 to their own committee. This includes non-monetary contributions and loans.**
- QUESTION: If a participating candidate reaches the \$40,000 or \$120,000 maximum of public matching funds, can the candidate continue to raise funds?
- ANSWER: **Yes; however, they will no longer be eligible for public matching funds and the \$50 limit and other restrictions of the program remain in effect.**
- QUESTION: Can campaign funds from a prior campaign be carried over into the Fair Elections Program?
- ANSWER: **No, remaining funds from a previous election must be disposed of in accordance with BMC § 2.12.515.**
- QUESTION: How does the treasurer submit the Qualified Contribution receipt and supporting documentation?
- ANSWER: **Each contribution must be accompanied by the receipt and supporting documentation. A scanned image or photo of the receipt and documentation must be uploaded into NetFile when the contribution is entered.**

**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. (Ord. 7564-NS § 3, 2017; Ord. 7524-NS § 3.2 (part), 2016)

Compile Chapter

**The Berkeley Municipal Code is current through Ordinance 7639-NS, passed February 19, 2019.**

Disclaimer: The City Clerk's Office has the official version of the Berkeley Municipal Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

City Website: <http://www.cityofberkeley.info/Home.aspx>  
(<http://www.cityofberkeley.info/Home.aspx>)  
Telephone number: (510) 981-6900  
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City Clerk (<http://www.cityofberkeley.info/clerk>), 2180 Milvia Street, Berkeley, CA 94704  
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**CITY OF BERKELEY**  
**CAMPAIGN STATEMENT FILING SCHEDULE**  
**NOVEMBER 6, 2018 GENERAL MUNICIPAL ELECTION**

Attachment I -  
Agenda Item 9

All candidates running for office in November 2018 and committees supporting or opposing local candidates or measures in the November 2018 election are required to file pre-election campaign statements and late contribution reports in addition to semi-annual statements. Open committees not supporting/opposing candidates or measures in the November 2018 election must only file semi-annual statements. (Government Code § 84200 et. al and B.M.C. 2.12)

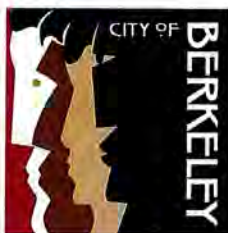
**HOW TO FILE:** All committees that have raised or spent \$1,000 or more must file electronically. Committees under the \$1,000 threshold may file in hard copy. Contact the City Clerk Department for specific direction on how to file.

<u>TYPE OF STATEMENT</u>	<u>PERIOD COVERED</u> <sup>1/</sup>	<u>FILING DEADLINE</u>	<u>WHO MUST FILE</u>
Quarterly Statement for Ballot Measure Committees	1/1/18 – 3/31/18	4/30/18 <sup>2/</sup>	Any committee that makes expenditures in excess of \$250 in support of or opposition to a measure (including during signature gathering) must file quarterly statements in addition to semi-annual and pre-election statements.
First Semi-Annual Statement	1/1/18 – 6/30/18	7/31/18 <sup>2/</sup>	All officeholders, candidates and committees. Officeholders that do not have an open committee must file Form 470 by July 31.
First Pre-Election Statement For November Election	7/1/18 – 9/22/18	9/27/18 <sup>2/</sup>	Officeholders, candidates and committees supporting or opposing candidates or measures on the 11/6/18 ballot. <sup>3/</sup> Candidates without a committee, file Form 470 only.
Second Pre-Election Statement For November Election	9/23/18 – 10/20/18	10/25/18 <sup>2/</sup>	Officeholders, candidates and committees supporting or opposing candidates or measures on the 11/6/18 ballot. <sup>3/</sup>
Late Contribution Reports	8/8/18 – 11/6/18	24 HOURS AFTER receipt of any contribution of \$1,000 or more	Officeholders, candidates or committees with single source contributions of \$1000 or more during the reporting period.
	10/21/18 – 11/6/18	48 HOURS AFTER receipt of any contribution of \$100-\$999 <sup>4/</sup>	Officeholders, candidates or committees with single source contributions between \$100 and \$999 during the reporting period.
Second Semi-Annual/Post-Election Statement For November Election	10/21/18 – 12/31/18	1/31/19 <sup>2/</sup>	All committees, whether or not they had any <u>campaign activity</u> ; all officeholders and candidates who have raised or spent \$250 or more for the calendar year. <sup>3/</sup>

Committees making **Independent Expenditures** of \$1,000 or more to support or oppose candidates or other ballot measures file Form 496 within 24 hours between 8/8/18 – 11/6/18. Form 462 must also be filed within 10 days. In addition, three copies of the communication funded by the expenditure must be filed with City Clerk.

- <sup>1/</sup> The period covered by any statement begins on the day after the closing date of the last statement filed. The period covered begins on Jan. 1<sup>st</sup> if no previous statement filed.
- <sup>2/</sup> Deadlines are extended to the next business day if they fall on a Saturday, Sunday, or an official city holiday for all reports except Late Contribution Reports.
- <sup>3/</sup> Candidates who have already filed a Form 470 for the first semi-annual period who do not receive or spend more than \$250 in a calendar year are not required to file another Form 470.
- <sup>4/</sup> The requirement does not exempt filers from the \$250 per candidate contribution limitation.

There is no provision in the law for extending a filing deadline. Late statements are subject to a \$10 per day late fine.



Fair Campaign Practices Commission

**DATE:** April 11, 2019

**TO:** FAIR CAMPAIGN PRACTICES COMMISSION

**FROM:** MARIAM MORLEY, Renne Public Law Group,  
on behalf of Farimah Brown, City Attorney

**SUBJECT:** Staff Report and Draft Negotiated Stipulation with Droste for City Council 2018

---

At its meeting of October 18, 2018, the Commission adopted a motion finding probable cause to believe that when Droste for City Council 2018 (“the Committee”) accepted a gift of the use of commercial space, without payment, from Gordon Commercial Properties, LLC it violated Sections 2.12.500.A.7 and 2.12.440 of the Berkeley Municipal Code (“BMC”). On March 21, 2018 the Commission requested staff “to engage in settlement negotiations with respondents for a stipulation that admits a violation and assesses a monetary penalty in the amount of the market rate value of the rental space used.”

The rental space used was a vacant retail storefront offered for lease at the rate of \$6,258 per month. Gordon Commercial Properties had not calculated a daily or hourly rate for rental of the space because the space was not offered to the public for use on that basis. The Committee used the space for eight hours on August 19, 2018 for its campaign kickoff event. The pro-rated cost for eight hours of use, based on the advertised monthly rental rate, would have been approximately \$67.28. (The calculations used to reach this cost, and the pro-rated cost for similar spaces, is shown on the chart entitled “Fair Market Value of Space at 2633 Ashby Avenue,” which is attached to this memorandum as **Attachment 1**.) These pro-rated costs based on the monthly rental rate do not reflect the price that a leasing agent or owner would charge for use of a similar space for parties, conferences or other events on an hourly or daily basis. Therefore, to determine the market rate value of the space used for the kickoff event, staff reviewed listings for event spaces in the vicinity of 2633 Ashby Avenue. Staff looked at many listings in Berkeley and Oakland, and the chart at Attachment A presents the three spaces that we deemed closest to the size and character of 2633 Ashby. The space that was most similar to 2633 Ashby in terms of square footage and amenities was a movement studio in the Temescal neighborhood of Oakland. That space is a little smaller than 2633 Ashby, but has an additional restroom. It is offered on

the website Peerspace for eight hours at a price of \$744.60. Based on that price, I determined that the market rate value of the use of the space at 2633 Ashby for eight hours was approximately \$750.

Pursuant to the Commission's guidance, I entered into negotiations with the Committee with the purpose of reaching a negotiated stipulation that admitted the violation and agreed to a penalty in the amount of \$750. The draft negotiated stipulation is attached for the Commission's review and approval as **Attachment 2** to this memorandum.

## Calculation of Fair Market Value of Space at 2633 Ashby Avenue

### Retail Spaces in Elmwood and Claremont Neighborhoods:

Address	Rentable Square Feet	Amenities	Price per Square Foot	Monthly rate	Daily rate (in a 31-day month)	Hourly rate	8-hour rate
*2633 Ashby Ave	2,086	1 restroom	\$3.00/month	\$6,258.00	\$201.87	\$8.41	\$67.28
3048 Claremont Ave	2,400	1 restroom	\$3.25/month	\$7,800.00	\$251.61	\$10.48	\$83.87
2942 College Ave	2,200	Large backyard space; unclear if there is a restroom	\$3.46/month	\$7,620.00	\$245.81	\$10.24	\$81.94

\*Location of Droste kick-off party

### Rental Spaces for Special & Private Events in North Oakland and Berkeley:

Venue Description	Location	Rentable Square Feet	Amenities	Price per hour	Price for 8 hours
Spacious Movement Studio in Temescal	Temescal, Oakland	1,900	Wifi; 2 bathrooms; 1 shower	\$100.00	\$744.60 (discounted because of length of reservation; processing fee included)
Downtown Performance Space with brick walls, skylights, & stage	Downtown Berkeley	1,090	Tables & chairs provided; speakers; 160 sq. ft. stage; kitchenette for prep work/re-heating food; two-bathrooms	\$100.00	\$1,007.40 (processing & cleaning fee included)
Gorgeous Flex Space in South Berkeley - Lots of Parking & Natural Light	Southwest Berkeley	2,400	Tables & chairs provided; speakers; visual projector with 8'x10' wall screen; 50" LED TV	\$109.00	\$941.48 (discounted because of length of reservation; processing & cleaning fee included)



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2180 Milvia Street, Fourth Floor  
Berkeley, California 94704  
3 Telephone: (510) 981-6998  
4 Facsimile: (510) 981-6960

5 Attorneys for FAIR CAMPAIGN PRACTICES COMMISSION

7 BEFORE THE FAIR CAMPAIGN PRACTICES COMMISSION  
8 CITY OF BERKELEY

10 In the Matter of  
11 DROSTE FOR CITY COUNCIL 2018,  
12 Respondent.

**STIPULATION, DECISION AND ORDER**

14 This stipulation is entered into by and between the Fair Campaign Practices Commission (the  
15 "Commission" or "FCPC") and Droste for City Council 2018 ("Respondent"), through its assistant  
16 treasurer Kerry Birnbach and through the candidate Lori Droste. The following is a true and accurate  
17 summary of the facts in this matter.

18 1. On August 19, 2018 Droste for City Council 2018 ("the Committee") held  
19 a campaign kickoff event in a vacant retail space at 2633 Ashby Avenue in Berkeley. The  
20 Secretary to the Fair Political Practices Commission ("the Commission") received a  
21 complaint October 2, 2018 ("the Complaint") stating that the candidate, Lori Droste,  
22 thanked Kevin Gordon of Gordon Commercial Properties, LLC for donating the space.

23 2. The Secretary investigated the Complaint in accordance with Sections V.B  
24 and D of the FCPC Procedures and contacted Kerry Birnbach, the Committee's assistant  
25 treasurer. Ms. Birnbach explained that the Committee believed, in reliance on written  
26 guidance from the California Fair Political Practices Commission, that the kickoff event  
27 was an office fundraiser that was not subject to campaign disclosure requirements. The  
28 Secretary reminded Ms. Birnbach that Berkeley candidates are subject to the Berkeley

1 Election Reform Act (“BERA”), which can impose requirements on Berkeley campaign  
2 committees that exceed the requirements of state law.

3 3. Ms. Birnbach responded promptly to the Secretary’s information and  
4 agreed that the Committee would take corrective action. On October 12, 2018 the  
5 Committee paid Gordon Commercial Properties, LLC \$100 for the use of the space. The  
6 Committee filed an amended Form 460 on October 14 disclosing the accrued expense, and  
7 then disclosed the \$100 payment in its October 23, 2018 Form 460 filing.

8 4. At its meeting of October 18, 2018, the Commission adopted a motion  
9 finding probable cause to believe that the Committee’s use of the commercial space  
10 without payment violated Sections 2.12.500.A.7 and 2.12.440 of the Berkeley Municipal  
11 Code (“BMC”). On March 21, 2018 the Commission requested staff “to engage in  
12 settlement negotiations with respondents for a stipulation that admits a violation and  
13 assesses a monetary penalty in the amount of the market rate value of the rental space  
14 used.”

15 5. The rental space used was a vacant retail storefront offered for lease at the  
16 rate of \$6,258 per month. Gordon Commercial Real Estate Services had not calculated a  
17 daily or hourly rate for rental of the space because the space was not offered to the public  
18 for use on that basis. The Committee used the space for eight hours on the day of the kick-  
19 off event. The pro-rated cost for eight hours of use, based on the advertised monthly rental  
20 rate, would have been approximately \$67.28. This pro-rated cost does not reflect the price  
21 that a leasing agent or owner would charge for use of a similar space for parties,  
22 conferences or other events on an hourly or daily basis.

23 6. To determine the market rate value of the space used for the kickoff event,  
24 staff reviewed listings for event spaces in the vicinity of 2633 Ashby Avenue. The space  
25 that was most similar to 2633 Ashby in terms of square footage and amenities was offered  
26 on the website Peerspace for eight hours at a price of \$744.60. Staff determined that the  
27 market rate value of the use of the space at 2633 Ashby for eight hours was approximately  
28 \$750.

1           7.       The gift of the use or real property is a contribution under BERA if the  
2 value of such use exceeds \$50. (BMC Section 212.100.) BERA prohibits candidates for  
3 elective office in Berkeley from receiving contributions from certain organizations and  
4 from business entities, including a proprietorships, firms, partnerships, joint ventures,  
5 syndicates, business trusts, companies and corporations. (See BMC Section 2.12.440.)  
6 This prohibition applies to Gordon Commercial Properties, LLC, which is a limited  
7 liability company.

8           8.       As a candidate participating in Berkeley’s public campaign financing  
9 program, Ms. Droste was allowed to receive only the following contributions: “qualified  
10 contributions, contributions not greater than fifty dollars (\$50) made by a natural person  
11 non-resident of Berkeley, or non-monetary contributions with a fair market value not  
12 greater than fifty dollars (\$50).” (BMC Section 2.12.500.A.7.) A qualified contribution is  
13 “a monetary contribution, excluding loans, made directly in aid of the nomination or  
14 election of one or more candidates not greater than fifty dollars (\$50) made by a natural  
15 person resident of the City of Berkeley.” (BMC Section 2.12.167.)

16           9.       When the Committee accepted the gift of the use of the commercial space  
17 at 2633 Ashby Avenue from Gordon Commercial Properties, LLC, a gift with a fair  
18 market value in excess of \$50, it violated BMC Section 2.12.440 because the gift was a  
19 prohibited contribution from a business entity. Acceptance of that contribution also  
20 violated BMC Section 2.12.500.A.7 because the contribution was not a qualified  
21 contribution, a monetary contribution of less than \$50 from a non-resident of Berkeley, or  
22 a non-monetary contribution with a fair market value of less than \$50.

23           10.      When a person is found guilty of violating BERA, the campaign treasurer  
24 “who received part of all of the contribution or contributions which constitute the  
25 violation shall pay promptly from available campaign funds, if any, the amount received  
26 from such person in excess of the amount permitted by [BERA] to the City for deposit in  
27 the Fair Elections Fund of the City.” (BMC Section 2.12.435.) In addition, in determining  
28 the appropriate penalty after a hearing that results in a finding that a violation of BERA

1 occurred, the Commission “may order any of the following: A. Cease and desist violation  
2 of this Chapter. B. File any reports, statements or other documents or information required  
3 by this Chapter. C. Pay a monetary penalty of up to \$1,000.00 per violation, or up to the  
4 amount or value of the unlawful or undisclosed contribution or expenditure, whichever is  
5 greater, to the Fair Elections Fund of the City. (BMC Section 2.12.231.)

6 11. Ms. Droste confirms that her campaign committee, Droste for City Council  
7 2018, has been terminated, its bank account closed, and unspent funds returned to the City  
8 of Berkeley for deposit into the Fair Elections Fund in accordance with BMC Section  
9 2.12.500.H. Accordingly, Ms. Droste has agreed to pay the monetary penalty representing  
10 the fair market value of the use of the commercial space for the campaign kickoff event,  
11 \$750.00, from her personal funds.

12  
13 **ADMISSIONS AND STIPULATION**

14 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties as  
15 follows:

16 1. Respondent violated BMC Sections 2.12.44 and 2.12.500.A.7 when it accepted a  
17 contribution of the use of space at 2633 Ashby Avenue in Berkeley for its campaign kickoff event as set  
18 forth in paragraphs 1 through 11, above, which are a true and accurate summary of the facts in this  
19 matter.

20 2. Based on the facts and law detailed above, and BMC Section 2.12.231, Candidate Droste  
21 agrees to pay the sum of seven hundred fifty dollars (\$750) from her personal funds as a monetary  
22 penalty, payable to the City of Berkeley for deposit into the City’s Fair Elections Fund, no later than May  
23 15, 2019.

24 3. Respondent agrees to take necessary and prudent precautions to comply with all  
25 provisions of BERA and FPCP regulations in the future. Further, Respondent will seek advice, as needed,  
26 from the City Clerk and FPCP staff on compliance with BERA and FCPC regulations prior to filing  
27 deadlines to aid in future compliance.

28 4. The parties agree to this Stipulation to resolve all factual and legal issues raised in this

1 matter and to reach a final disposition without having to hold an administrative hearing to determine the  
2 liability of Respondent. Respondent understands and hereby knowingly and voluntarily waives any and  
3 all procedural rights under BERA and the FPCP Procedures in regards to this matter.

4 5. The FPCP agrees that if Respondent executes this Stipulation it will forego any further  
5 enforcement action against Respondent as to this matter, and if approved by the FPCP, this Stipulation  
6 will resolve all factual and legal issues raised in this matter and will be the final disposition of this matter  
7 for purposes of BMC Sections 2.12.450 and 2.12.455. Nothing in this section shall be read to preclude  
8 the Commission's consideration of any complaint or other action for any false statements stemming from  
9 any of Respondent's representations in this Stipulation.

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

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

17  
18 Dated: April \_\_\_, 2019

\_\_\_\_\_  
FARIMAH BROWN, City Attorney  
Attorney for Fair Campaign Practices Commission

19  
20  
21 Dated: April \_\_\_, 2019

\_\_\_\_\_  
KERRY BIRNBACH, Assistant Treasurer  
Droste for City Council 2018

\_\_\_\_\_  
LORI DROSTE, Councilmember  
City of Berkeley, District 8

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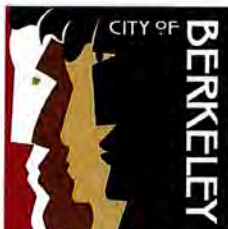
**ORDER**

The foregoing Stipulation of the parties In the Matter of Droste for City Council 2018 is hereby accepted as the final decision and order of the Fair Campaign Practices Commission effective upon execution below by the Chairperson. Further, it is hereby ordered that this Stipulation, Decision and Order be appended to the committee’s campaign statements on file with the Office of the City Clerk, City of Berkeley.

IT IS SO ORDERED.

Dated: April \_\_, 2019

\_\_\_\_\_  
DEAN METZGER, Chairperson  
FAIR CAMPAIGN PRACTICES COMMISSION



Fair Campaign Practices Commission

**DATE:** April 11, 2019  
**TO:** FAIR CAMPAIGN PRACTICES COMMISSION  
**FROM:** EMMANUELLE SOICHET, Commission Secretary  
**SUBJECT:** Staff Report Regarding Potential Violation of the Berkeley Election Reform Act by Greg Magofna for Berkeley City Council 2018

---

This referral from the City Clerk's office relates to a candidate's potential misuse of public-financing program funds for the purchase of a \$150 ticket to a Democratic Party fundraiser.

The item was included on the agenda for the Commission's November 15, 2018, meeting, which was subsequently cancelled. This is the first time the Commission will discuss and potentially take action on the referral. It is also the first time the Commission handles a matter dealing with improper use of public-financing funds.

For the reasons below, staff recommends the Commission find probable cause of a violation and request staff enter into a stipulation with the candidate that requires him to repay the \$150 ticket fee to the City's Fair Elections Fund.

#### **I. Background**

Greg Magofna was a candidate for City Council in 2018 who participated in the City's public-financing program, the Fair Elections Act. On November 5, 2018, the candidate's committee, Greg Magofna for Berkeley City Council 2018, filed an amended Form 460 for the period of Sept. 23 to Oct. 20, 2018. (**See Attachment 1.**) The amended Form 460 listed a \$150 payment to ActBlue that was described as "Admission fee for Democratic fundraiser." (**Attachment 1**, page 9.)

Later that day, the candidate contacted the City Clerk's office regarding the expenditure. (**Attachment 2.**) Anticipating that the payment was the subject of a forthcoming complaint against him, Mr. Magofna explained that the payment was for "a ticket to the Alameda County Democratic Unity Dinner." (*Id.*) Mr. Magofna indicated that he did not know that the payment constituted a violation of the Berkeley Elections Reform Act (BERA) but that, if it did constitute a violation, it was "completely by mistake" and was

not committed knowingly. (*Id.*) He stated he wanted to rectify any violation immediately and asked how to proceed. (*Id.*)

On November 6, 2018, the City Clerk identified the expenditure as a contribution potentially in violation of Berkeley Municipal Code (BMC) section 2.12.530(B)(2)(d), which prohibits public-financing candidates from using Fair Elections funds for contributions to party committees. (**See Attachment 3.**) The Clerk referred the matter to the Commission.

The specific dinner in question was the Alameda County Democratic Party's 48th Annual Unity Dinner, which took place on September 29, 2018. (**See Attachments 4 & 5.**) The event's website and social media postings advertise the annual dinner as "the premier fundraising event for the Alameda County Democratic Party." (*Id.*) The webpage through which attendees purchased tickets stated that attendees' "Individual Ticket or Sponsorship will benefit the Alameda County Democratic Central Committee Federal Account: FEC # C00375279." (**Attachment 6.**) Similarly, the receipt that Mr. Magofna received after purchasing the ticket (and which he later provided to staff) stated "Thank you for your contribution in support of Alameda County Democratic Party (CA) – Federal!" (**Attachment 7.**)

The Statement of Organization filed by the Alameda County Democratic Central Committee with the Federal Elections Commission in 2017 confirms it is a local committee of the Democratic Party. (**Attachment 8.**)

## **II. Alleged BERA violation**

### **The Prohibited Use of Public Funds**

The Fair Elections Act restricts how public-financing candidates may use the public funds they receive and makes clear that it is unlawful for candidates to "misuse" these funds. (BMC § 2.12.550.B.)

The prohibited uses of Fair Elections funds are enumerated in BMC section 2.12.530.B, which specifically prohibits participating candidates from using the funds for "indirect campaign purposes, including . . . [a] contribution or loan to the campaign committee of another candidate or to a party committee or other political committee." (BMC § 2.12.530.B.2.d.)

The applicable definition of "contribution" is based on the general BERA definition. (BMC § 2.12.530.C.) This generally includes any gift "made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates," and specifically "includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events." (*Id.* § 2.12.100.)



### **Potential Penalties under BERA**

A violation of the Fair Elections Act's prohibited uses provision is potentially subject to three somewhat complementary penalties provisions under BERA.

- *First*, is the general penalty provision of BERA (which overall is codified at chapter 2.12 of the Municipal Code): “Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly, or unlawfully contributed, expended, gave or received.” (BMC § 2.12.460.)
- *Second*, is the general penalty provision applicable to violations found following a Commission hearing on the complaint: “[T]he Commission may order” the violating party to cease its violations, file any required reports under BERA, and “[p]ay a monetary penalty of up to \$1,000 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.” (BMC § 2.12.231.)
- *Third*, is the specific penalty provision applicable to violations of the Fair Elections Act found following a Commission hearing on the complaint: “If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.” (*Id.* § 2.12.550.B-C.)

### **III. FCPC Procedural Guidance**

Under section V.B.2 of the Commission's procedures, upon receipt of this referral, the Commission has three options. It “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.” (Procedures for the FCPC § VI.B.2.)

For option (c), the procedures specify that “[p]robable 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.” (*Id.* § VI.B.2.)

If the Commission finds probable cause that a violation has occurred, it “may take any of the following courses of action”:

- a. Dismiss the complaint, where appropriate, and take no further action.
- b. Request the Secretary conduct further investigation, including an audit of campaign records;
- c. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an

omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;

- d. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.
- e. Schedule and conduct a hearing pursuant to Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after 12 the Secretary has completed his or her report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.
- f. Ask the City Attorney or the District Attorney to seek legal remedies.
- g. Seek any other remedy within its authority.

(*Id.* § VI.C.2.)

When deciding upon the appropriate action, the Commission may take into consideration the following factors:

- 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.

(*Id.* § VI.C.1.)

#### **IV. Staff Analysis and Recommendation**

It is undisputed here that the Committee made a \$150.00 expenditure for admission to the September 29, 2018, event. The event's website clearly indicated that ticket

proceeds would benefit the Alameda County Democratic Central Committee, which is a local party committee. Under BERA, this expenditure is thus considered a contribution to a party committee, which is a prohibited use of Fair Elections funds under BMC section 2.12.530.B.2.d.

As to the factors the Commission should consider in deciding on the appropriate action to take, staff believes these tilt to a stipulation with a minimal penalty. The violation is relatively minor and was committed by a first-time candidate who proactively reached out to the Clerk's office to determine if there was a violation and to correct the violation.

In addition, there was no attempt to conceal or mislead, and the violation appears inadvertent. The expenditure was fully disclosed in the Committee's Form 460, which described the expenditure as a payment for admission to a Democratic Party fundraiser. The candidate explained that he did not believe that the payment constituted a BERA violation, but that if it did, he wanted to rectify the violation as soon as possible. He reiterated again in an email to the Commission staff secretary in March 2019 that any violation was a mistake and that he understood that other candidates (ostensibly not public-financing candidates) had used campaign funds to purchase tickets to the same event. (**Attachment 9.**)

Finally, there is no indication the violation – for a \$150 ticket to a countywide fundraiser apparently conducted for purposes outside of the City Council election – had any effect on the election.

For many of these same reasons, there is no evidence indicating that this violation was "knowing or willful" such that the Commission should move to impose a penalty beyond requiring the candidate to return the funds.

As a result, staff recommends the Commission take two actions: (1) find probable cause of a violation of BMC section 2.12.530.B; and (2) request that staff engage in negotiations with the candidate to enter into a stipulation that admits a violation occurred and requires the candidate to return the \$150 payment to the City's Fair Elections Fund.

#### **Attachments**

1. Amended Form 460 for period of Sept. 23 to Oct. 20, 2018
2. Email from Greg Magofna to City Clerk's office dated Nov. 5, 2018
3. Letter from City Clerk's office to Magofna campaign dated Nov. 6, 2018
4. Screenshot of homepage for 48<sup>th</sup> Annual Unity Dinner (as of March 2019)
5. Screenshot of Facebook posting for 48<sup>th</sup> Annual Unity Dinner (as of March 2019)
6. Screenshot of webpage to purchase tickets for 48<sup>th</sup> Annual Unity Dinner (as of March 2019)
7. Email receipt from ActBlue for contribution (redacted)
8. 2017 Statement of Organization filed by the Alameda County Democratic Central Committee
9. Email from Greg Magofna to FCPC staff secretary dated April 5, 2019

# Recipient Committee Campaign Statement Cover Page

(Government Code Sections 84200-84216.5)

<p>Statement covers period                  from <u>09/23/2018</u>                  through <u>10/20/2018</u></p>	<p>Date of election if applicable:                  (Month, Day, Year)  <u>11/06/2018</u></p>	<p>Date Stamp</p> <div style="border: 1px solid red; padding: 5px; display: inline-block;"> <p>E-Filed                      11/05/2018                      10:05:40                      Filing ID:                      174696659</p> </div>	<p><b>CALIFORNIA FORM 460</b></p>
<p>Page <u>1</u> of <u>17</u></p> <p>For Official Use Only</p>			

SEE INSTRUCTIONS ON REVERSE

### 1. Type of Recipient Committee: All Committees - Complete Parts 1, 2, 3, and 4.

- Offfholder, Candidate Controlled Committee
- State Candidate Election Committee
- Recall *(Also Complete Part 5)*
- General Purpose Committee
- Sponsored
- Small Contributor Committee
- Political Party/Central Committee
- Primarily Formed Ballot Measure Committee
- Controlled
- Sponsored *(Also Complete Part 6)*
- Primarily Formed Candidate/Offfholder Committee *(Also Complete Part 7)*

### 2. Type of Statement:

- Preelection Statement
  - Semi-annual Statement
  - Termination Statement *(Also file a Form 410 Termination)*
  - Amendment *(Explain below)*
  - Quarterly Statement
  - Special Odd-Year Report
  - Supplemental Preelection Statement - Attach Form 495
- Corrected occupation/employer, address, and payment source information to align statement with compliance standards*

### 3. Committee Information

COMMITTEE NAME (OR CANDIDATE'S NAME IF NO COMMITTEE)  
 Greg Magofna for Berkeley City Council 2018

I.D. NUMBER  
 1406534

### Treasurer(s)

NAME OF TREASURER  
 Benjamin Choi

MAILING ADDRESS

STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE  
 Berkeley CA 94704 (808) 222-3183

MAILING ADDRESS (IF DIFFERENT) NO. AND STREET OR P.O. BOX

CITY STATE ZIP CODE AREA CODE/PHONE  
 Walnut Creek CA 94598 (626) 322-7509

NAME OF ASSISTANT TREASURER, IF ANY  
 Gregory Magofna

MAILING ADDRESS

CITY STATE ZIP CODE AREA CODE/PHONE

OPTIONAL: FAX / E-MAIL ADDRESS  
 gregory.magofna@gmail.com

CITY STATE ZIP CODE AREA CODE/PHONE  
 Berkeley CA 94704 (808) 222-3183

OPTIONAL: FAX / E-MAIL ADDRESS  
 dhfchoi@gmail.com

### 4. Verification

I have used all reasonable diligence in preparing and reviewing this statement and to the best of my knowledge the information contained herein and in the attached schedules is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 11/03/2018 By Benjamin Choi Signature of Treasurer or Assistant Treasurer

Executed on 11/03/2018 By Gregory Magofna Signature of Controlling Offfholder, Candidate, State Measure Proponent or Responsible Officer of Sponsor

Executed on \_\_\_\_\_ By \_\_\_\_\_ Signature of Controlling Offfholder, Candidate, State Measure Proponent

Executed on \_\_\_\_\_ By \_\_\_\_\_ Signature of Controlling Offfholder, Candidate, State Measure Proponent

**Recipient Committee  
Campaign Statement  
Cover Page — Part 2**

**5. Officeholder or Candidate Controlled Committee**

NAME OF OFFICEHOLDER OR CANDIDATE  
Gregory Magofna  
 OFFICE SOUGHT OR HELD (INCLUDE LOCATION AND DISTRICT NUMBER IF APPLICABLE)  
City Council Member Berkeley City Council: City of Berkeley District 4  
 RESIDENTIAL/BUSINESS ADDRESS (NO. AND STREET) CITY STATE ZIP  
Berkeley CA 94704

**Related Committees Not Included in this Statement:** List any committees not included in this statement that are controlled by you or are primarily formed to receive contributions or make expenditures on behalf of your candidacy.

COMMITTEE NAME	I.D. NUMBER	CONTROLLED COMMITTEE?
NAME OF TREASURER		<input type="checkbox"/> YES <input type="checkbox"/> NO
COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)		
CITY STATE ZIP CODE AREA CODE/PHONE		
COMMITTEE NAME	I.D. NUMBER	
NAME OF TREASURER		CONTROLLED COMMITTEE? <input type="checkbox"/> YES <input type="checkbox"/> NO
COMMITTEE ADDRESS STREET ADDRESS (NO P.O. BOX)		
CITY STATE ZIP CODE AREA CODE/PHONE		

**6. Primarily Formed Ballot Measure Committee**

NAME OF BALLOT MEASURE

BALLOT NO. OR LETTER	JURISDICTION	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
----------------------	--------------	---

Identify the controlling officeholder, candidate, or state measure proponent, if any.  
 NAME OF OFFICEHOLDER, CANDIDATE, OR PROPONENT

OFFICE SOUGHT OR HELD	DISTRICT NO. IF ANY
-----------------------	---------------------

**7. Primarily Formed Candidate/Officeholder Committee** List names of officeholder(s) or candidate(s) for which this committee is primarily formed.

NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE
NAME OF OFFICEHOLDER OR CANDIDATE	OFFICE SOUGHT OR HELD	<input type="checkbox"/> SUPPORT <input type="checkbox"/> OPPOSE

Attach continuation sheets if necessary

# Campaign Disclosure Statement Summary Page

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

CALIFORNIA  
FORM  
**460**

Page 3 of 17

I.D. NUMBER  
1406534

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Greg Magofina for Berkeley City Council 2018

## Contributions Received

	Column A TOTAL THIS PERIOD (FROM ATTACHED SCHEDULES)	Column B CALENDAR YEAR TOTAL TO DATE
1. Monetary Contributions	Schedule A, Line 3 \$ 1,324.00	\$ 7,927.95
2. Loans Received	Schedule B, Line 3 0.00	0.00
3. SUBTOTAL CASH CONTRIBUTIONS	Add Lines 1 + 2 \$ 1,324.00	\$ 7,927.95
4. Nonmonetary Contributions	Schedule C, Line 3 0.00	0.00
5. TOTAL CONTRIBUTIONS RECEIVED	Add Lines 3 + 4 \$ 1,324.00	\$ 7,927.95

## Expenditures Made

6. Payments Made	Schedule E, Line 4 \$ 10,224.94	\$ 17,798.90
7. Loans Made	Schedule H, Line 3 0.00	0.00
8. SUBTOTAL CASH PAYMENTS	Add Lines 6 + 7 \$ 10,224.94	\$ 17,798.90
9. Accrued Expenses (Unpaid Bills)	Schedule F, Line 3 0.00	0.00
10. Nonmonetary Adjustment	Schedule G, Line 3 0.00	0.00
11. TOTAL EXPENDITURES MADE	Add Lines 8 + 9 + 10 \$ 10,224.94	\$ 17,798.90

## Current Cash Statement

12. Beginning Cash Balance	Previous Summary Page, Line 16 \$ 14,249.99	
13. Cash Receipts	Column A, Line 3 above 1,324.00	
14. Miscellaneous Increases to Cash	Schedule I, Line 4 7,439.94	
15. Cash Payments	Column A, Line 8 above 10,224.94	
16. ENDING CASH BALANCE	Add Lines 12 + 13 + 14, then subtract Line 15 \$ 12,788.99	

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

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

## Cash Equivalents and Outstanding Debts

18. Cash Equivalents See instructions on reverse \$ 0.00

19. Outstanding Debts Add Line 2 + Line 9 in Column B above \$ 0.00

To calculate Column B, add amounts in Column A to the corresponding amounts from Column B of your last report. Some amounts in Column A may be negative figures that should be subtracted from previous period amounts. If this is the first report being filed for this calendar year, only carry over the amounts from Lines 2, 7, and 9 (if any).

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

1/1 through 6/30 7/1 to Date

20. Contributions Received \$ \$

21. Expenditures Made \$ \$

## Expenditure Limit Summary for State Candidates

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

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

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ \$ \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_ \$ \_\_\_\_\_

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

# Schedule A Monetary Contributions Received

Amounts may be rounded  
to whole dollars.

SCHEDULE A  
**CALIFORNIA 460**  
FORM

Statement covers period  
from 09/23/2018  
through 10/20/2018

Page 4 of 17

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER Greg Magofina for Berkeley City Council 2018

I.D. NUMBER  
1406534

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR <small>(IF COMMITTEE ALSO ENTERED NUMBER)</small>	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER <small>(IF SELF-EMPLOYED ENTER NAME OF BUSINESS)</small>	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR <small>(JAN. 1 - DEC. 31)</small>	PER ELECTION TO DATE <small>(IF REQUIRED)</small>
09/24/2018	Jim Novosel Berkeley, CA 94703	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Architect The Ray Architects; Berkeley, CA	50.00	50.00	G2018 \$50.00
09/30/2018	Richard Furuzawa Berkeley, CA 94707	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Retired Retired	50.00	50.00	G2018 \$50.00
10/04/2018	Myron Okada Berkeley, CA 94708	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Retired Retired	50.00	50.00	G2018 \$50.00
10/06/2018	Krista Gulbransen Oakland, CA 94619	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Executive Director Berkeley Rental Housing Coalition	50.00	50.00	G2018 \$50.00
10/07/2018	Alden Mudge Berkeley, CA 94703	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Writer/Editor Self-employed; Berkeley, CA	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

## Schedule A Summary

- Amount received this period – itemized monetary contributions.  
(Include all Schedule A subtotals.) ..... \$ 1,250.00
- Amount received this period – unitemized monetary contributions of less than \$100 ..... \$ 74.00
- Total monetary contributions received this period.  
(Add Lines 1 and 2. Enter here and on the Summary Page, Column A, Line 1.) ..... **TOTAL \$** 1,324.00

\*Contributor Codes  
IND – Individual  
COM – Recipient Committee  
OTH – Other (e.g. business entity)  
PTY – Political Party  
SCC – Small Contributor Committee

# Schedule A (Continuation Sheet) Monetary Contributions Received

Amounts may be rounded  
to whole dollars.

SCHEDULE A (CONT.)

CALIFORNIA  
FORM  
**460**

Statement covers period  
from 09/23/2018  
through 10/20/2018

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NAME OF FILER

Greg Magofna for Berkeley City Council 2018

ID NUMBER

1406534

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE ALSO ENTER ID NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/08/2018	Joan Neveu Walnut Creek, CA 94596	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Retired Retired	50.00	50.00	G2018 \$50.00
10/09/2018	Richard Lucien Berkeley, CA 94707	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Consultant Lucien & Co., Inc.	50.00	50.00	G2018 \$50.00
10/11/2018	Kiran Shenoy Richmond, CA 94804	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Gov. Affairs Director Oakland Berkeley Realtors	50.00	50.00	G2018 \$50.00
10/13/2018	Sabina Aurilio Berkeley, CA 94709	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Learning Specialist/Educator Head Royce School	50.00	50.00	G2018 \$50.00
10/13/2018	Jessica Chacon Berkeley, CA 94704	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Nonprofit Management Consultant Self-employed; Berkeley, CA	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

\*Contributor Codes  
IND - Individual  
COM - Recipient Committee  
(other than PTY or SCC)  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee



# Schedule A (Continuation Sheet) Monetary Contributions Received

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

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SCHEDULE A (CONT.)

**CALIFORNIA  
FORM 460**

NAME OF FILER

Greg Magofina for Berkeley City Council 2018

I.D. NUMBER  
1406524

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE ALSO ENTER ID NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PERELECTION TO DATE (IF REQUIRED)
10/13/2018	Scott Chacon Berkeley, CA 94704	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Software Developer Chatterbug Inc.	50.00	50.00	G2018 \$50.00
10/13/2018	Geoffrey Lomax Berkeley, CA 94709	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Research Administrator State of California	50.00	50.00	G2018 \$50.00
10/13/2018	Susan Wengraf Berkeley, CA 94708	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	City Councilmember City of Berkeley	50.00	50.00	G2018 \$50.00
10/14/2018	Olivia Anglade Berkeley, CA 94709	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Consultant The Boston Consulting Group	50.00	50.00	G2018 \$50.00
10/14/2018	Marilyn Capiteilli Berkeley, CA 94703	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Retired	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

\*Contributor Codes  
IND - Individual  
COM - Recipient Committee  
(other than PTY or SCC)  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee

# Schedule A (Continuation Sheet) Monetary Contributions Received

Amounts may be rounded  
to whole dollars.

SCHEDULE A (CONT)

Statement covers period  
from 09/23/2018  
through 10/20/2018

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**CALIFORNIA FORM 460**

NAME OF FILER: Greg Magofna for Berkeley City Council 2018  
I.D. NUMBER: 1406534

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE ALSO ENTER ID NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)	PER ELECTION TO DATE (IF REQUIRED)
10/14/2018	Sarah Capitelii Berkeley, CA 94702	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Professor University of San Francisco	50.00	50.00	G2018 \$50.00
10/14/2018	Peter Ross Berkeley, CA 94702	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Director, Strategic Initiatives Learning Policy Institute	50.00	50.00	G2018 \$50.00
10/14/2018	Sam Singer Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Strategist Singer Associates Public Relations San Francisco	50.00	50.00	G2018 \$50.00
10/15/2018	Kathrin Skjerping Berkeley, CA 94706	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Program Manager City of San Francisco	50.00	50.00	G2018 \$50.00
10/15/2018	David Trachtenberg Berkeley, CA 94705	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Architect Trachtenberg Architects	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

\*Contributor Codes  
IND - Individual  
COM - Recipient Committee  
(Other than PTY or SCC)  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee

# Schedule A (Continuation Sheet) Monetary Contributions Received

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

CALIFORNIA  
FORM  
**460**

SCHEDULE A (CONT.)

NAME OF FILER

Greg Magofna for Berkeley City Council 2018

Page 8 of 17  
I.D. NUMBER  
1406534

DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR <small>(IF COMMITTEE, ALSO ENTER I.D. NUMBER)</small>	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER <small>(IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)</small>	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR <small>(JAN. 1 - DEC. 31)</small>	PER ELECTION TO DATE <small>(IF REQUIRED)</small>
10/15/2018	Liz Varnhagen Berkeley, CA 94702	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Retired Retired	50.00	50.00	G2018 \$50.00
10/16/2018	Kim-Mai Cutler Berkeley, CA 94708	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Partner Initialized Capital	50.00	50.00	G2018 \$50.00
10/16/2018	Jon Tau Berkeley, CA 94703	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Economic Development Official SF County	50.00	50.00	G2018 \$50.00
10/18/2018	Eric Davila Oakland, CA 94608	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Digital Communications UCSF	50.00	50.00	G2018 \$50.00
10/19/2018	Ben Gerhardtstein Berkeley, CA 94702	<input checked="" type="checkbox"/> IND <input type="checkbox"/> COM <input type="checkbox"/> OTH <input type="checkbox"/> PTY <input type="checkbox"/> SCC	Public Health CDC	50.00	50.00	G2018 \$50.00
<b>SUBTOTAL \$</b>				250.00		

\*Contributor Codes  
IND - Individual  
COM - Recipient Committee  
(other than PTY or SCC)  
OTH - Other (e.g., business entity)  
PTY - Political Party  
SCC - Small Contributor Committee

**Schedule E  
Payments Made**

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

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SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER  
Greg Magafna for Berkeley City Council 2018

I.D. NUMBER  
1406534

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- OMP campaign paraphernalia/misc.
- CNS campaign consultants
- CTB contribution (explain nonmonetary)\*
- CVC civic donations
- TL candidate filing/ballot fees
- ND fundraising events
- IND independent expenditure supporting/opposing others (explain)\*
- LEG legal defense
- LIT campaign literature and mailings
- MBR member communications
- MTG meetings and appearances
- OFC office expenses
- PET petition circulating
- PHO phone banks
- POL polling and survey research
- POS postage, delivery and messenger services
- PRO professional services (legal, accounting)
- PRT print ads
- RAD radio airtime and production costs
- RFD returned contributions
- SAL campaign workers' salaries
- TEL t.v. or cable airtime and production costs
- TRC candidate travel, lodging, and meals
- TRS staff/spouse travel, lodging, and meals
- TSF transfer between committees of the same candidate/sponsor
- VOT voter registration
- WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER ID NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Namecheap, Inc. Phoenix, AZ 85034	WEB		Domain and email services fees	15.00
Staples Berkeley, CA 94704	OFC		Printing, stationery, and office supplies	83.63
ActBlue Somerville, MA 02144	CVC		Admission fee for Democratic fundraiser	150.00
<b>SUBTOTAL \$</b>				248.63

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**Schedule E Summary**

1. Itemized payments made this period. (Include all Schedule E subtotals.) ..... \$ 10,155.09
2. Unitemized payments made this period of under \$100 ..... \$ 69.85
3. Total interest paid this period on loans. (Enter amount from Schedule B, Part 1, Column (e).) ..... \$ 0.00
4. Total payments made this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Column A, Line 6.) ..... **TOTAL \$** 10,224.94

**Schedule E**  
**(Continuation Sheet)**  
**Payments Made**

Amounts may be rounded  
to whole dollars.

SCHEDULE E (CONT.)

Statement covers period  
from 09/23/2018  
through 10/20/2018

Page 10 of 17

**CALIFORNIA 460**  
**FORM**

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER  
Greg Magofna for Berkeley City Council 2018

I.D. NUMBER  
1406534

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- AMP** campaign paraphernalia/misc.
- CNS** campaign consultants
- CTB** contribution (explain nonmonetary)\*
- CVC** civic donations
- FL** candidate filing/ballot fees
- FND** fundraising events
- ND** independent expenditure supporting/opposing others (explain)\*
- LEG** legal defense
- LIT** campaign literature and mailings
- MBR** member communications
- MTG** meetings and appearances
- OFC** office expenses
- PET** petition circulating
- PHO** phone banks
- POL** polling and survey research
- POS** postage, delivery and messenger services
- PRO** professional services (legal, accounting)
- PRT** print ads
- RAD** radio airtime and production costs
- RFD** returned contributions
- SAL** campaign workers' salaries
- TEL** t.v. or cable airtime and production costs
- TRC** candidate travel, lodging, and meals
- TFS** staff/spouse travel, lodging, and meals
- TSF** transfer between committees of the same candidate/sponsor
- VOT** voter registration
- WEB** information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER ID NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Twitter, Inc. San Francisco, CA 94103	WEB	Ad space		15.67
Amazon.com, Inc. Seattle, WA 98109	POS	Postage stamps		93.86
Getaround San Francisco, CA 94103	TRC	Car-sharing travel expense to attend endorsement meeting		24.99
United States Postal Service Berkeley, CA 94704	POS	Postage stamps		71.75
United States Postal Service Berkeley, CA 94704	POS	Postage stamps		7.00

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 213.27

**Schedule E  
(Continuation Sheet)  
Payments Made**

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

Page 11 of 17

**CALIFORNIA  
FORM 460**

SCHEDULE E (CONT.)

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Greg Magofna for Berkeley City Council 2018

ID NUMBER  
1406534

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- OMP campaign paraphernalia/misc.
- ONS campaign consultants
- CTB contribution (explain nonmonetary)\*
- CVC civic donations
- FL candidate filing/ballot fees
- FND fundraising events
- ND independent expenditure supporting/opposing others (explain)\*
- LEG legal defense
- LT campaign literature and mailings
- MBR member communications
- MTG meetings and appearances
- OFC office expenses
- FET petition circulating
- PHO phone banks
- POL polling and survey research
- POS postage, delivery and messenger services
- PRO professional services (legal, accounting)
- PRT print ads
- RAD radio airtime and production costs
- RFD returned contributions
- SAL campaign workers' salaries
- TEL t.v. or cable airtime and production costs
- TRC candidate travel, lodging, and meals
- TRS staff/spouse travel, lodging, and meals
- TSF transfer between committees of the same candidate/sponsor
- VOT voter registration
- WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Mailchimp Atlanta, GA 30308	WEB		Email marketing service platform	50.00
Twitter, Inc. San Francisco, CA 94103	WEB		Ad space	13.50
Facebook, Inc. Menlo Park, CA 94025	WEB		Ad space	7.87
Facebook, Inc. Menlo Park, CA 94025	WEB		Ad space	17.13
Autumn Press Berkeley, CA 94710	LIT		Informational mailers	2,573.32

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 2,661.82

**Schedule E**  
**(Continuation Sheet)**  
**Payments Made**

Amounts may be rounded  
to whole dollars.

SCHEDULE E (CONT.)

Statement covers period  
from 09/23/2018 through 10/20/2018  
Page 12 of 17  
CALIFORNIA FORM 460  
I.D. NUMBER 1406534

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Greg Magofna for Berkeley City Council 2018

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- OMP campaign paraphernalia/misc.
- CNS campaign consultants
- CTB contribution (explain nonmonetary)\*
- CVC civic donations
- FL candidate filing/ballot fees
- FND fundraising events
- ND independent expenditure supporting/opposing others (explain)\*
- LEG legal defense
- LT campaign literature and mailings
- MBR member communications
- MTG meetings and appearances
- OFC office expenses
- PET petition circulating
- PHO phone banks
- POL polling and survey research
- POS postage, delivery and messenger services
- PRO professional services (legal, accounting)
- PRT print ads
- RAD radio airtime and production costs
- RFD returned contributions
- SAL campaign workers' salaries
- TEL t.v. or cable airtime and production costs
- TRC candidate travel, lodging, and meals
- TFS staff/spouse travel, lodging, and meals
- TSE transfer between committees of the same candidate/sponsor
- VOT voter registration
- WEB information technology costs (internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER ID NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Autumn Press Berkeley, CA 94710	POS		Postage for informational mailers	1,022.19
Donorbox San Francisco, CA 94103	WEB		Funds payout fees	1.75
NationBuilder Los Angeles, CA 90071	WEB		Website platform service fee	29.00
Twitter, Inc. San Francisco, CA 94103	WEB		Ad space	17.00
Donorbox San Francisco, CA 94103	WEB		Funds payout fees	5.25

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 1,075.19

**Schedule E  
(Continuation Sheet)  
Payments Made**

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

CALIFORNIA  
FORM 460  
Page 13 of 17  
I.D. NUMBER  
1406534

SCHEDULE E (CONT)

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Greg Magofna for Berkeley City Council 2018

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- CMP** campaign paraphernalia/misc.
- CNS** campaign consultants
- CTB** contribution (explain nonmonetary)\*
- CVC** civic donations
- FL** candidate filing/ballot fees
- FND** fundraising events
- JD** independent expenditure supporting/opposing others (explain)\*
- LEG** legal defense
- LT** campaign literature and mailings
- MBR** member communications
- MTG** meetings and appearances
- OFC** office expenses
- PET** petition circulating
- PHO** phone banks
- POL** polling and survey research
- POS** postage, delivery and messenger services
- PRO** professional services (legal, accounting)
- PRT** print ads
- RAD** radio airtime and production costs
- RFD** returned contributions
- SAL** campaign workers' salaries
- TEL** t.v. or cable airtime and production costs
- TRC** candidate travel, lodging, and meals
- TRS** staff/spouse travel, lodging, and meals
- TSF** transfer between committees of the same candidate/sponsor
- VOT** voter registration
- WEB** information technology costs (Internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Pacific Printing San Jose, CA 95110	CMP		Lawn signs	1,394.24
Ellen Toomey Albany, CA 94706	LIT		Mailer design services	900.00
DonorBox San Francisco, CA 94103	WEB		Funds payout fees	1.75
Ellen Toomey Albany, CA 94706	LIT		Mailer design services	350.00
DonorBox San Francisco, CA 94103	WEB		Funds payout fees	1.03

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 2,647.02



**Schedule E  
(Continuation Sheet)  
Payments Made**

Amounts may be rounded  
to whole dollars.

SCHEDULE E (CONT.)

Statement covers period  
from 09/23/2018 through 10/20/2018  
Page 14 of 17  
CALIFORNIA FORM 460  
I.D. NUMBER 1406534

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Greg Magofna for Berkeley City Council 2018

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- GMP campaign paraphernalia/misc.
- CNS campaign consultants
- CTB contribution (explain nonmonetary)\*
- CVC civic donations
- FL candidate filing/ballot fees
- FND fundraising events
- ND independent expenditure supporting/opposing others (explain)\*
- LEG legal defense
- LIT campaign literature and mailings
- MER member communications
- MTG meetings and appearances
- OFC office expenses
- PET petition circulating
- PHO phone banks
- POL polling and survey research
- POS postage, delivery and messenger services
- PRO professional services (legal, accounting)
- PRT print ads
- RAD radio airtime and production costs
- RFD returned contributions
- SAL campaign workers' salaries
- TEL t.v. or cable airtime and production costs
- TRC candidate travel, lodging, and meals
- TRS staff/spouse travel, lodging, and meals
- TSE transfer between committees of the same candidate/sponsor
- VOT voter registration
- WEB information technology costs (Internet, e-mail)

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Donorbox San Francisco, CA 94103	WEB		Funds payout fees	22.75
Facebook, Inc. Menlo Park, CA 94025	WEB	Ad space		21.74
Facebook, Inc. Menlo Park, CA 94025	WEB	Ad space		13.12
Twitter, Inc. San Francisco, CA 94103	WEB	Ad space		2.58
Autumn Press Berkeley, CA 94710	LIT	Informational mailers		2,223.28

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 2,283.47

# Schedule E (Continuation Sheet) Payments Made

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

CALIFORNIA  
FORM 460

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I.D. NUMBER  
1406534

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER  
Greg Magoana for Berkeley City Council 2018

**CODES:** If one of the following codes accurately describes the payment, you may enter the code. Otherwise, describe the payment.

- |  |  |   |
|--|--|---|
| <ul style="list-style-type: none"> <li>OMP campaign paraphernalia/misc.</li> <li>CNS campaign consultants</li> <li>CTB contribution (explain nonmonetary)*</li> <li>CVC civic donations</li> <li>FL candidate filing/ballot fees</li> <li>FND fundraising events</li> <li>ND independent expenditure supporting/opposing others (explain)*</li> <li>LEG legal defense</li> <li>LIT campaign literature and mailings</li> </ul> | <ul style="list-style-type: none"> <li>MBR member communications</li> <li>MTG meetings and appearances</li> <li>OFC office expenses</li> <li>PET petition circulating</li> <li>PHO phone banks</li> <li>POL polling and survey research</li> <li>POS postage, delivery and messenger services</li> <li>PRO professional services (legal, accounting)</li> <li>PRT print ads</li> </ul> | <ul style="list-style-type: none"> <li>RAD radio airtime and production costs</li> <li>RFD returned contributions</li> <li>SAL campaign workers' salaries</li> <li>TEL t.v. or cable airtime and production costs</li> <li>TRC candidate travel, lodging, and meals</li> <li>TRS staff/spouse travel, lodging, and meals</li> <li>TSF transfer between committees of the same candidate/sponsor</li> <li>VOT voter registration</li> <li>WEB information technology costs (internet, e-mail)</li> </ul> |
|--|--|---|

NAME AND ADDRESS OF PAYEE (IF COMMITTEE ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID
Autuma Press Berkeley, CA 94710	POS		Postage for informational mailers	1,022.19
Donorbox San Francisco, CA 94103	WEB		Funds payout fees	3.50

\* Payments that are contributions or independent expenditures must also be summarized on Schedule D.

**SUBTOTAL \$** 1,025.69

# Schedule I Miscellaneous Increases to Cash

Amounts may be rounded  
to whole dollars.

Statement covers period  
from 09/23/2018  
through 10/20/2018

CALIFORNIA  
FORM 460  
SCHEDULE I

Page 16 of 17

SEE INSTRUCTIONS ON REVERSE  
NAME OF FILER

Greg Magofna for Berkeley City Council 2018

DATE RECEIVED	FULL NAME AND ADDRESS OF SOURCE (IF COMMITTEE, ALSO ENTER ID NUMBER)	DESCRIPTION OF RECEIPT	AMOUNT OF INCREASE TO CASH
09/28/2018	City of Berkeley Berkeley, CA 94704	Public matching funds	6,839.94
10/19/2018	City of Berkeley Berkeley, CA 94704	Public matching funds	600.00
<b>SUBTOTAL \$</b>			7,439.94

Attach additional information on appropriately labeled continuation sheets.

## Schedule I Summary

- Itemized increases to cash this period. \$ 7,439.94
- Unitemized increases to cash of under \$100 this period. \$ 0.00
- Total of all interest received this period on loans made to others. (Schedule H, Column (e)). \$ 0.00
- Total miscellaneous increases to cash this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Line 14.) **TOTAL \$ 7,439.94**

**Additional Comments  
For Form 460**

**ADDITIONAL COMMENTS  
CALIFORNIA  
FORM 460**

**NAME OF FILER**

Greg Magofna for Berkeley City Council 2018

Page 17 of 17  
I.D. NUMBER

1406534

2nd Pre-Election Statement

**Garcia, Vanessa N.**

---

**From:** Greg Magofna <hello@gregmagofna.com>  
**Sent:** Monday, November 05, 2018 1:56 PM  
**To:** Elections  
**Cc:** Benji Choi  
**Subject:** BERA Expenditure

Hello City Clerk,

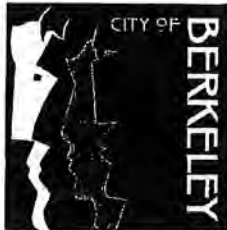
It was recently brought to my attention by a Daily Cal reporter that the Berkeley Progressive Student Alliance has brought a claim against me for a BERA violation.

The transaction in question is a ticket to the Alameda County Democratic Unity Dinner. If this is a violation, I had no idea. There are a lot of changes to the rules for campaigns taking public financing and if I am in violation, I in no way did this knowingly. I've been very carefully about following the rules and spending campaign money ethically and have listed all expenditures very clearly on my Form 460.

If this is a violation, it was completely by mistake and I would like to rectify this immediately. Please let me know how to proceed.

Thank you,  
G  
510.545.3994

[gregmagofna.com](http://gregmagofna.com)  
[facebook.com/greg4berk](https://facebook.com/greg4berk)  
[twitter.com/greg4berk](https://twitter.com/greg4berk)



November 6, 2018

**VIA U.S. MAIL**

Mr. Benjamin Choi, Treasurer  
Greg Magofna for Berkeley City Council 2018  
1905 Arkeff Road  
Walnut Creek, CA 94598

**RE: Campaign Statement – Referral to FCPC**

Dear Mr. Choi:

The City of Berkeley Fair Campaign Practices Commission (“FCPC”) is tasked under the Berkeley Election Reform Act (“BERA”) with determining whether required campaign documents were filed and, if so, whether they conform on their face with requirements of BERA. See Berkeley Municipal Code (“BMC”) § 2.12.215.

In furtherance of these duties, I have reviewed your committee’s Form 460 campaign statements filed October 25, 2018, and November 5, 2018 (Amendment), covering the period from September 23, 2018, through October 20, 2018. I am contacting you regarding items that appear to be noncompliant with BERA.

**(1) *Potentially prohibited expenditure.***

The campaign statement reflects an expenditure that may violate BERA’s expenditure prohibition. BMC Section 2.12.530 prohibits Public Finance candidates from using Fair Elections funds on certain items.

The following expenditure may be in violation of this section: *\$150 expenditure to ActBlue to purchase “Admission fee for Democratic fundraiser.”* BMC Section 2.12.530 states that candidates may not make a contribution “to a party committee.” The committee indicated in an email to the City Clerk on November 5, 2018, that the \$150 charge was for a ticket to the Alameda County Democratic Unity Dinner of September 29, 2018.

This potentially prohibited expenditure has been referred to the Fair Campaign Practices Commission (FCPC) for further investigation. You may contact the FCPC Secretary at 510-981-6998 or [fcpc@cityofberkeley.info](mailto:fcpc@cityofberkeley.info) if you have questions regarding this matter.

Sincerely,

A handwritten signature in cursive script that reads "M. Brown".

Mary Brown  
Assistant City Clerk  
on behalf of  
Mark Numainville  
City Clerk

Cc: Fair Campaign Practices Commission



**WHEN**

**SATURDAY SEPTEMBER 29 2018 AT  
6:00PM**

**WHERE**

**1 HEGENBERGER RD OAKLAND CA**

*splash*





**WHEN**  
SATURDAY SEPTEMBER 29 2018 AT  
6:00PM



**WHERE**  
1 HEGENBERGER RD OAKLAND CA

### ABOUT THE UNITY DINNER

For over 4 decades, the Unity Dinner has been the premier fundraising event for the Alameda County Democratic Party.

Part fundraiser, part celebration of our Democratic values, the passion and funds you bring to the Party are even more critical in the age of Trump. Join us!

Our dinner program will feature local and statewide luminaries and awards for our local Democratic heroes.

A silent auction will take place beginning at the cocktail hour.

Cash Bar. Business or Cocktail attire preferred.



# Table Sponsorship Levels

**WHEN**  
6:00PM

**WHERE**

1 HEGENBERGER RD OAKLAND CA

**Champion:**  
**\$5,000**

**Leader:**  
**\$4,000**

**Partner:**  
**\$3,000**

**Defender:**  
**\$2,000**

Premier Full Page Ad in Program  
Table for 10 people- Premier location  
Logo on Step-and-Repeat Banner  
Logo Recognition in Program  
Logo Recognition on Event Site  
Logo Recognition in social media and email  
10 Raffle Tickets  
2 Bottles of Wine for Table

Full Page Ad in Program  
Table for 10 people  
Logo on Step-and-Repeat Banner  
Logo Recognition in Program  
Logo Recognition on Event Site  
Logo Recognition in social media and email

Half Page Ad in Program  
Table for 10 people  
Logo on Step-and-Repeat Banner  
Logo Recognition in Program  
Logo Recognition on Event Site  
Logo Recognition in social media and email

Quarter Page Ad in Program  
Table for 10 people  
Logo Recognition in Program  
Logo Recognition on Event Site  
Logo Recognition in social media and email



# Individual Sponsorship Levels

**WHEN**  
6:00PM

**WHERE**  
HEGENBERGER RD OAKLAND CA

**Patron:**  
**\$1,000**

- 2 Event Tickets
- Logo on Step-and-Repeat Banner
- Logo Recognition in Program
- Logo Recognition on Event Site
- Logo Recognition in social media and email
- 10 Raffle tickets

**Advocate:**  
**\$600**

- 2 Event Tickets
- Logo Recognition in Program
- Logo Recognition on Event Site
- Logo Recognition in social media and email

**Ally: \$400**

- 2 Event Tickets
- Name Recognition in Program
- Name Recognition on Event Site
- Name Recognition in social media and email

**Friend: \$200**

- 1 Event Ticket
- Name Recognition in Program
- Name Recognition on Event Site
- Name Recognition in social media and email

**6:00p**  
**m**

Cocktail Hour

**7:30p**  
**m**

Dinner and Program Begins

**9:00p**  
**m**

Dinner Ends

## The Venue

Oakland Airport Hilton | Hegenberger Rd Oakland CA



**WHEN**  
SATURDAY SEPTEMBER 29 2018 AT  
6:00PM



**WHERE**  
1 HEGENBERGER RD OAKLAND CA



0 0 0 00  
DAYS HOURS MINUTES SECONDS



**#ALAMEDAUNITY**

Check out some photos from 2017 and join us this year!



**splash**



CONTACT THE ORGANIZER

facebook

Sign Up

Join or Log Into Facebook

27 Events

Events

+ Create Event



English (US) · Español · Português (Brasil) · Français (France) · Deutsch

Privacy · Terms · Advertising · Ad Choices · Cookies · More · Facebook © 2019

SEP 29 48th Annual Democratic Unity Dinner! Public · Hosted by Alameda County Democratic Party

★ Interested

Saturday, September 29, 2018 at 6:00 PM – 9:00 PM PDT about 5 months ago

Hilton Oakland Airport 1 Hegenberger Pl., Oakland, California 94621 Show Map

98 Went · 165 Interested

Share this event with your friends

Details

Save The Date! The Alameda County Democratic Party's 48th Annual Unity Dinner is coming up soon!

For over four decades, the Unity Dinner has been the premier fundraising event for the Alameda County Democratic Party.

Part fundraiser, part celebration of our Democratic values, the passion and funds you bring to the Party are even more critical in the age of Trump. Join us!

Our dinner program will feature local and statewide luminaries and awards for our local Democratic heroes.

A silent auction will take place beginning at the cocktail hour.

Cash Bar. Business or Cocktail attire preferred.

Tickets: \$175 at the door (Subject to availability) \$150 Regular Tickets (September 8-28, until sold out) \$100 Early Bird rate (Good through September 7)

Get your tickets here: https://secure.actblue.com/donate/alamedaunity2018#

Sponsorship information coming soon. Please email unitydinner@gmail.com with any questions.

See Less

Causes Politics Fundraising

About Alameda County Democratic Party



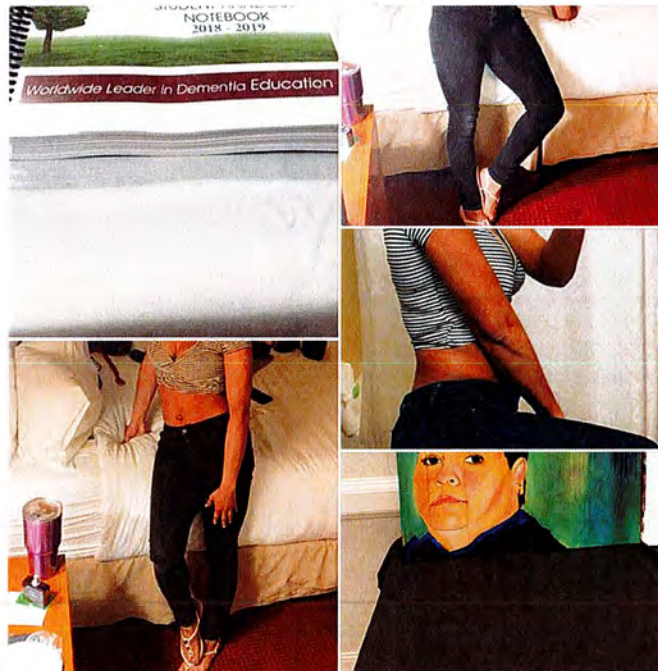
**Alameda County Democratic Party**  
Political Organization · Hayward, California  
[www.acdems.org](http://www.acdems.org)

About the Venue

**Hilton**  
Hilton Oakland Airport  
Event · 1 likes

[Go to Page](#)

Gallery



[See All Photos](#)

# 2018 Annual Democratic Unity Dinner—Individual Ticket and Sponsorships

48th Annual Democratic Unity Dinner

**Date: Saturday, September 29, 2018**

**Time: Reception 6:00 p.m., Dinner 7:30 p.m.**

**Place: Oakland Airport Hilton, 1 Hegenberger Road, Oakland CA 94621**

Join Democratic elected officials and Democratic Party, labor and community leaders to support our Democratic ticket in this crucial year.

## Individual Tickets:

\$175 at the door (Subject to availability)

\$150 Regular Ticket (September 15-28 or until sold out)

\$100 Early Bird rate (Extended—Good through September 14)

## Individual Sponsorships:

### Patron: \$1,000

2 event tickets

Logo on Step-and-Repeat Banner

Logo Recognition in Program

Logo Recognition on Event Site/Social/Email

10 Raffle tickets

Confirm by 9/17/18

### Advocate: \$600

2 event tickets

Logo Recognition in Program

Logo Recognition on Event Site/Social/Email

Confirm by 9/17/18

### Ally: \$400

2 event tickets

Name Recognition in Program

Name Recognition on Event Site/Social/Email

Confirm by 9/17/18

### Friend: \$200

1 event ticket

Name Recognition in Program

Name Recognition on Event Site/Social/Email

Confirm by 9/17/18

Please choose your individual sponsorship level here. Once complete, please contact us at [unitydinner@gmail.com](mailto:unitydinner@gmail.com) with your guest list and logo or name, depending on sponsorship level. Please confirm by 9.17.18 to ensure inclusion in event materials.

To purchase table sponsorships or Student tickets, please email: [unitydinner@gmail.com](mailto:unitydinner@gmail.com)

Paid for by Alameda County Democratic Central Committee and not authorized by any candidate or candidate committee.

Your Individual Ticket or Sponsorship will benefit the Alameda County Democratic Central Committee Federal Account: FEC # C00375279

Make checks payable to the Alameda County Democratic Central Committee (FPPC #747153 | FEC # C00375279).

Contributions to the Alameda County Democratic Central Committee are not tax deductible for federal income tax purposes.

Your contribution will be used in connection with federal election laws and is subject to the limitations and prohibitions of the Federal Election Campaign Act. Contributions used in connection with federal elections are limited to \$10,000 (Limit shared with California Democratic Party) per calendar year. Federal Law requires us to report the name, address, occupation and name of employer of individuals whose contributions exceed \$200 in a calendar year (Federal ID #C00375279).

Corporate and union contributions are acceptable under California law to be used in connection with non-federal elections. California law permits contributions up to \$7,300 per calendar year for use in supporting state candidates. There are no limits on contributions used for purposes other than supporting state candidates (State ID#747153).

1) Tickets

2) Details

3) Payment

Funds raised through this event support Alameda County Democratic Party (CA) - Federal

Early Bird Ticket

\$100.00 each

Sold out!

Available through Sept. 14

Ticket

\$150.00 each

Sold out!

Through Sept. 28 - \$175 at door as available

Friend Sponsor

\$200.00 each

Sold out!

Ally Sponsor (2 tickets)

\$400.00 each

Sold out!

Advocate Sponsor (2 tickets)

\$600.00 each

Sold out!

Can't attend?

\$



Make a donation instead!

0.00

Total: \$0.00

Continue

### Contribution rules

1. I am a U.S. citizen or lawfully admitted permanent resident (i.e., green card holder).
2. This contribution is made from my own funds, and funds are not being provided to me by another person or entity for the purpose of making this contribution.
3. I am making this contribution with my own personal credit card and not with a corporate or business credit card or a card issued to another person.
4. I am at least eighteen years old.
5. I am not a federal contractor.

Paid for by ActBlue ([actblue.com](https://actblue.com)) and not authorized by any candidate or candidate's committee.

Contributions or gifts to ActBlue are not deductible as charitable contributions for Federal income tax purposes.

Attachment 7 -  
Agenda Item 11

**From:** info+AB62824339@actblue.com on behalf of ActBlue Receipts <info+AB62824339@actblue.com>  
**Sent:** Tuesday, September 25, 2018 2:08 PM  
**To:**  
**Subject:** Thank you for your contribution!

Thank you for your contribution!

Thank you for your contribution!  
We look forward to seeing you at the Unity Dinner on September 29th!

## Your contribution receipt

**\$150.00**

One-time contribution

Thank you for your contribution in support of Alameda County Democratic Party (CA) - Federal!

1 Ticket ticket	\$150.00
<b>Total charged</b>	<b>\$150.00</b>

Name Gregory Magofna

Order # [AB62824339](#)

Order Date 9/25/2018

Payment Type MasterCard

Billing ZIP

This transaction will appear as one or more charges to ACTBLUE\*ALAMEDA.DEM.PARTY on your credit card statement.

[Edit payment details](#)

[Unsure about this charge?](#)

**Gregory, sign in now to save this contribution**

[Sign in to your ActBlue Express account](#)

**Save time donating** in the future and **make sure this contribution appears in your contribution history** by signing in to your ActBlue Express account now.

## Your ticket summary

Fundraising Page 2018 Annual Democratic Unity Dinner—  
Individual Ticket and Sponsorships

Ticket Count 1 Ticket

Tickets will be sent to your guests individually, after you complete the ticket information.

[Complete your ticket information](#)

Paid for by ActBlue [actblue.com](http://actblue.com) and not authorized by any candidate or candidate's committee.

Contributions or gifts to ActBlue are not tax deductible as charitable contributions for federal income tax purposes.

**Need help?** Reply to this email or drop us a line at [info@actblue.com](mailto:info@actblue.com).



FEC FORM 1

STATEMENT OF ORGANIZATION

Office Use Only

1. NAME OF COMMITTEE (in full) (Check if name is changed) Example: If typing, type over the lines. 12FE4M5

ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE

ADDRESS (number and street) P.O. BOX 3937 (Check if address is changed) HAYWARD CA 94540 CITY STATE ZIP CODE

COMMITTEE'S E-MAIL ADDRESS info@acdems.org (Check if address is changed) Optional Second E-Mail Address

COMMITTEE'S WEB PAGE ADDRESS (URL) (Check if address is changed)

2. DATE 07 27 2017

3. FEC IDENTIFICATION NUMBER C C00375279

4. IS THIS STATEMENT NEW (N) OR AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer Kelley, Royce, . . .

Signature of Treasurer Kelley, Royce, . . . [Electronically Filed] Date 07 31 2017

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g. ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

5. TYPE OF COMMITTEE

**Candidate Committee:**

- (a) This committee is a principal campaign committee. (Complete the candidate information below.)
- (b) This committee is an authorized committee, and is NOT a principal campaign committee. (Complete the candidate information below.)

Name of Candidate \_\_\_\_\_

Candidate Party Affiliation	Office Sought:	House	Senate	President	State
					District

- (c) This committee supports/opposes only one candidate, and is NOT an authorized committee.

Name of Candidate \_\_\_\_\_

**Party Committee:**

(d)  This committee is a  SUB (National, State or subordinate) committee of the  DEM (Democratic, Republican, etc.) Party.

**Political Action Committee (PAC):**

- (e) This committee is a separate segregated fund. (Identify connected organization on line 6.) Its connected organization is a:
 

<input type="checkbox"/> Corporation	<input type="checkbox"/> Corporation w/o Capital Stock	<input type="checkbox"/> Labor Organization
<input type="checkbox"/> Membership Organization	<input type="checkbox"/> Trade Association	<input type="checkbox"/> Cooperative

In addition, this committee is a Lobbyist/Registrant PAC.

- (f) This committee supports/opposes more than one Federal candidate, and is NOT a separate segregated fund or party committee. (i.e., nonconnected committee)

In addition, this committee is a Lobbyist/Registrant PAC.

In addition, this committee is a Leadership PAC. (Identify sponsor on line 6.)

**Joint Fundraising Representative:**

- (g) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, at least one of which is an authorized committee of a federal candidate.
- (h) This committee collects contributions, pays fundraising expenses and disburses net proceeds for two or more political committees/organizations, none of which is an authorized committee of a federal candidate.

Committees Participating in Joint Fundraiser

1. \_\_\_\_\_ | FEC ID number C
2. \_\_\_\_\_ | FEC ID number C
3. \_\_\_\_\_ | FEC ID number C
4. \_\_\_\_\_ | FEC ID number C

Write or Type Committee Name

# ALAMEDA COUNTY DEMOCRATIC CENTRAL COMMITTEE

**6. Name of Any Connected Organization, Affiliated Committee, Joint Fundraising Representative, or Leadership PAC Sponsor**

NONE

Mailing Address

CITY

STATE

ZIP CODE

Relationship:    Connected Organization    Affiliated Committee    Joint Fundraising Representative    Leadership PAC Sponsor

**7. Custodian of Records:** Identify by name, address (phone number -- optional) and position of the person in possession of committee books and records.

Full Name    Kelley, Royce, . . .

Mailing Address    3041 Deakin St.

Berkeley    CA    94705

Title or Position    CITY    STATE    ZIP CODE

Treasurer    Telephone number    510    384    3033

**8. Treasurer:** List the name and address (phone number -- optional) of the treasurer of the committee; and the name and address of any designated agent (e.g., assistant treasurer).

Full Name of Treasurer    Kelley, Royce, . . .

Mailing Address    3041 Deakin St.

Berkeley    CA    94705

Title or Position    CITY    STATE    ZIP CODE

Treasurer    Telephone number    510    384    3033

Full Name of Designated Agent: Torello, Robin, . . .

Mailing Address: 356 Bowling Green St.

San Leandro CA 94577

CITY STATE ZIP CODE

Title or Position: Assistant Treasurer

Telephone number: [ ] - [ ] - [ ]

9. **Banks or Other Depositories:** List all banks or other depositories in which the committee deposits funds, holds accounts, rents safety deposit boxes or maintains funds.  
 Name of Bank, Depository, etc.

U.S. Bank

Mailing Address: P.O. Box 1800

Saint Paul MN 55101

CITY STATE ZIP CODE

Name of Bank, Depository, etc.

Mailing Address

CITY STATE ZIP CODE

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**From:** Gregory Magofna <gregory.magofna@gmail.com>  
**Sent:** Friday, April 05, 2019 2:12 PM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Cc:** Benji Choi  
**Subject:** Re: Requesting information re: FCPC referral  
**Attachments:** Thank you for your contribution!.eml; Unity Dinner 2018 - Last Chance! Early Bird Discount Ends Tomorrow.eml; BERA Expenditure.eml

Dear Ms. Soichet,

Please find attached the receipt for the purchase and a copy of the event description. Please also find attached a November 5, 2018 email I sent to the FCPC Secretary immediately after I found out this was a violation asking how to rectify the situation.

I've been involved with politics for years and know that people have use campaign funds to purchase tickets for this event, and though I tried very carefully to follow all of the BERA rules, I somehow didn't connect the dinner ticket to a campaign contribution to "a party committee". It was completely by mistake and I tried to be very transparent and responsible in my use of public funds, hence why it was listed on the Form 460.

Regards,  
G

On Mar 27, 2019, at 12:30 PM, FCPC (Fair Campaign Practices Commission) <[FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)> wrote:

Mr. Choi,

I am the current staff secretary for the FCPC. I wanted to reach out to you regarding the FCPC referral described in the attached letter, in particular to see if you could share with me any records or information regarding the \$150 expenditure to ActBlue at issue. This was the following "Admission fee for Democratic fundraiser" line item on page 9 of the committee's Nov. 5 amended Form 460 for the period of 9/23/18 to 10/20/18:

<image001.png>

I appreciate your help with this matter. Any questions, please let me know.

Emma Soichet

**Emmanuelle Soichet**

Secretary, Fair Campaign Practices and Open Government Commissions  
City of Berkeley  
2180 Milvia Street, Berkeley, CA 94704



<Ltr to B. Choi G. Magofna 3-27-19.pdf>

## Work Plan Proposals for FCPC

for 2019

- BERA public financing amendments
- Regulations for public financing
- Receive due process training for hearing complaints
- Review procedures for submitting proposals to the City Council
- Find ways to reduce the number of pages in the commission packet (Eliminate production of 260 and 497 forms printed for the commissioner's packet by referring to website) – other ideas
- Review and Revise procedures for reviewing and hearing complaints

# COMMUNICATIONS



To the members of the Fair Campaign Practices Commission:

2018 was the first election cycle in which candidates for Berkeley elected offices participated in the new Berkeley Fair Elections program. The Fair Elections program was adopted by voters who approved Measure X1 on the November 2016 ballot. The program provides candidates with 6-to-1 matching funds for candidates who agree to forego all contributions above \$50. The system was adopted with three goals in mind: (1) broadening the base of candidates who run for office, (2) encouraging grassroots and face-to-face connection with voters, and (3) limiting the influence of special-interest money on our local elections.

As the main proponents of this initiative, we as an organization reached out to the fourteen candidates for Berkeley city council to get their feedback on the program. Of these fourteen candidates, ten used public matching funds, while another two applied for public matching funds but were never qualified to receive funds. (More on that below.) We received responses from nine of the candidates.

#### **Overall Satisfaction with the Program**

Overall, the respondents had a positive view of the Berkeley Fair Elections program. This included progressives and moderates, incumbents and challengers, and winners and losers. In the 2018 race, every district was competitive, with at least one candidate besides the winner securing 30% of the vote. Four candidates maxed out on their matching contributions from the city, receiving \$40,000 from the city. Another candidate received just shy of the maximum, receiving \$39,450 from the city. The remaining participating candidates received between \$17,164 and \$30,269 in matching funds.

There were common responses from the candidates highlighting that the system performed as designed. Most candidates commented that the system allowed them to spend less time fundraising and more time engaging with voters. Many candidates also expressed the opinion that the low-contribution limit for matching funds (\$50 to receive \$300 in matching funds) encouraged them to engage with a broader segment of voters. Most candidates also expressed the view that the amount of the contribution limit (\$50) as well as the capped amount of public matching funds (\$40,000) was sufficient to run a credible campaign.

There were additional benefits from the system that we as proponents did not foresee — several candidates expressed the view that the public matching funds system allowed them to more easily plan and budget for their campaigns, knowing that they would likely max out on Berkeley's matching funds.

A few sample comments directly from candidates underscore the perceived benefits of the Fair Elections program. The sentiment of each of these comments represents a sentiment expressed by multiple other candidates as well.

*In terms of impacting the election at large, I think public matching funds helped to encourage a more diverse group of candidates into the field- people that wouldn't have been able to personally contribute a lot to their campaigns were still able to run viable*

*campaigns because of the matching funds. This helped draw in people who worked full time, were students, or didn't have a ton of savings run for office.*

-Candidate #1

*It meant most fundraising happened as a part of other events, during canvassing, going to different political clubs. Definitely spent more time with voters that could only give \$5-10. I got donations from a couple people living in vans, students finding coins in their couch, etc. When deciding what events or organizations to go to, the number of people was a greater consideration than wealth of average membership.*

-Candidate #2

*I was able to gather funds earlier in the campaign, leaving me more time to speak with voters. It allowed me to more easily turn away funds from large organizations or requests from other candidates/organizations for contributions (I didn't have to say no; it is built in). It allowed more people to enter the race which made it more competitive.*

-Candidate #3

Even a majority of the candidates who ultimately did not prevail had positive feedback about the program. Said one such candidate, "The 6 to 1 match got a lot of people excited as they were able to help the campaign significantly with even a couple of dollars." Said another such candidate, "[public matching funds] enabled me to reach out to a broader audience of potential and likely supporters, and provided a strong incentive for people to donate.... I was able to spend less time fundraising and more time focusing on talking to voters... I was running against an incumbent, and I think that public financing strongly helped to level the playing field and make it a much more competitive race." Another such candidate noted that they "absolutely support" public matching funds and expressed hope that "it can be expanded to other electoral office in the City."

#### **The Financial Soundness of the Fair Elections Fund**

The amount of mandatory monetary allocation by the City to the system appears to be sufficient to fund the program. Under the fair elections law, \$500,000 is contributed to a fair elections fund every year until the fund reaches \$2 million, at which point the fund is replenished up to the cap. According to the City Clerk, of the \$1 million allocated to the public financing program since 2016, the fair elections fund has a balance of \$580,645. After subtracting administrative costs, the fair elections fund will have \$1,466,121 to distribute for the 2020 elections, which will be more expensive than the 2018 race owing to the addition of the mayor's race. The fair elections fund appears to be solvent and working as designed.

#### **Minor Reforms to Improve the Program**

While most candidates expressed their overall support for the Fair Elections program, there were several areas that candidates identified as needing improvement. MapLight endorses three changes to the system in light of this feedback and MapLight's review of the system:

***Speed Up Disbursements in August and September.*** One common concern was the pace of disbursements. Candidates most need funds in August and September, as campaign season ramps up and campaigns begin to prepare for the opening of vote-by-mail. For those candidates who do not get a jump on fundraising in spring or summer, the current disbursement schedule is insufficient. MapLight recommends amending the schedule to provide bi-monthly or weekly disbursements to candidates in this critical period to ensure that candidates have timely access to funds when needed most.

The City Clerk has suggested delegating approval requirements to the City, so that City Staff reviews and verifies a candidate's qualifying contributions. MapLight endorses this amendment, which would speed up the time between a candidate's submission of qualifying contributions and their approval to participate in the system. Having the City verify qualifying contributions, rather than the Commission, would transmit what is largely an administrative and ministerial function to city staff. MapLight understands that in the 2018 election cycle, the Commission followed all of the Staff's recommendations on qualifying contributions, suggesting that the process is already largely administrative and handled by City Staff.

Additionally, review by City Staff would facilitate more disbursements in the critical August/September periods as it would not require scheduling additional meetings of the Commission to approval candidate qualifications and disbursements.

***Amend the Disqualification Rules.*** Several candidates expressed a desire to amend the law's strict disqualification rules. Two candidates were disqualified from receiving public funds owing to minor infractions (one candidate loaned his campaign \$100 prior to seeking public funds, rather than the statutory maximum \$50, and another candidate accepted an \$80 online contribution, which is above the \$50 limit.) Given the overall objective of encouraging more candidates to run for office — especially first-time candidates and political newcomers — MapLight believes the law should be amended to allow candidates to correct *de minimis* mistakes rather than face disqualification.

As one candidate expressed, “given how critical public financing is for many candidates, and how the intent of the system is to expand and democratize access to running, it seems like the penalties for minor errors should be re-evaluated, so that a small mistake would not completely dismantle a candidate's campaign overnight.”

The system could also be amended to allow candidates to loan themselves and/or contribute to their own campaigns in an amount up to \$250 (the limit is currently \$50). This would give candidates quick access to a small amount of seed money for early campaign necessities, such as opening bank accounts (often banks require a minimum initial deposit of \$100), creating a small batch of campaign fliers, buying food for an initial campaign kickoff, and making copies of city forms for matching funds contributions.

***Disclose Public Funds Received.*** As currently formatted, California Form 460, which is the form used for campaign contribution disclosures, does not show how much money in public matching funds a candidate has or has not received on the summary page. While an interested party can determine how much each candidate has received in matching funds, they must flip through multiple forms to verify a total amount received. To encourage transparency, MapLight suggests that the City Clerk publish a list of public funds disbursed to candidates at the close of each disclosure period on the City Website. In the long run, Form 460 should be amended to include a column for “public funds received” per period and cumulatively, but given that the is borrowed from the state this is impractical in the short term.

Overall, most candidates expressed the view that navigating the Fair Elections system was challenging. However, MapLight has no specific reforms to suggest in light of this common concern. Most candidates noted that the City Clerk's office was generous with its time and quick to respond to questions about the program. Given that the program is in its infancy, MapLight believes that in time candidates and treasurers will become more comfortable with the program.

### **Other Changes Suggested by Candidates**

Other changes suggested by candidates, on which MapLight takes no position, include:

- Allowing candidates to loan their campaigns up to 50% of their expected initial disbursement to give them quick access to capital, rather than wait for disbursements from the City.

- Amending the law or regulations to clarify that payments for placement on a slate card do not count as "contributions" under the law and are thus a permissible use of public funds, even if the slate card is published by another committee.

- Changing the donation rules to address these issues described by a candidate:

"The City also wouldn't accept two donations from the same credit card, even if it was a joint card. (They accepted joint checks that were signed by one of the two people on the account). This infuriated a lot of people who tried to donate but couldn't because Paypal (which we used as receipts for the donation) had only one of the couples' names registered. We also had a similar experience, where Paypal indicated that a person's account was tied to their individual business (usually self-employed consultants) and thus their forms were not accepted by the City because they appeared to come from businesses instead of individuals. I'd estimate we lost out on \$200 worth of donations because of these issues- people tried multiple ways of donating only to be told we couldn't accept their money."

- Amending the law to enable successful candidates to keep excess funds while they are in office.

"The issue successful candidates have is that they do not have a committee with political funds available to use during their term. Many electeds have websites or continue communicating with voters in a political way, outside of the parameters of their office, and use the committee and leftover campaign donations to do so. There is no accommodation for this under the current public financing system."

- Amending the law to allow for electronic signatures. Unlike traditional campaign contributions, contributions under the Fair Elections program must be accompanied by supporting paperwork. Amongst the required paperwork, each donation must be accompanied by a donor's signature verifying that the donor is a Berkeley resident. Modern campaigning, however, relies extensively on credit cards, online donations and remote contributions. In light of this reality, the signature requirement proved onerous to some candidates. Some candidates have suggested amending the signature requirement to enable electronic signatures. Maplight takes no position on the issue. While electronic signatures may make the system administratively easier

for campaigns to run, the requirement of submitting an actual signature (or facsimile thereof) ensures that City money is not distributed without proper documentation.

MapLight looks forward to the FCPC's future consideration of amendments to the program and believes Berkeley can continue to lead the nation on this critical reform.

Sincerely,

Daniel G. Newman  
President & Co-Founder  
MapLight

Sam Ferguson  
Advisor  
MapLight



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**From:** Runningwolf Campaign <runningwolf4mayor@gmail.com>  
**Sent:** Thursday, April 11, 2019 8:55 AM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Subject:** Re: Your call this afternoon

Following up re: our call on Monday, please include the full text of this article as additional supplemental material in the packet for the item in question:

<https://sfbayview.com/2019/03/the-future-of-all-life-indigenous-sovereignty-and-the-fukushima-nuclear-disaster/>

Along with a note that more than 100 hyperlink-embedded citations are included in the online version of the article which substantiate the claims made therein.

Thanks,  
Thomas

On Wed, Mar 13, 2019 at 8:15 PM FCPC (Fair Campaign Practices Commission) <[FCPC@cityofberkeley.info](mailto:FCPC@cityofberkeley.info)> wrote:

Mr. Hodgman,

I just received a message that you called the City Attorney's office earlier, asking whether there will be a Fair Campaign Practices Commission meeting next week and whether your November declaration will be on the agenda.

I am the new staff secretary for the commission, having just recently joined the City Attorney's office. I can confirm that there will be a FCPC meeting on March 21. The agenda should be posted online tomorrow evening. Your item will not be on the agenda for the meeting because it is being investigated. (I have been recused from the matter, and someone else is handling it.) I anticipate your item will be on the April agenda.

Thank you.

**Emmanuelle Soichet**

Secretary, Fair Campaign Practices and Open Government Commissions

City of Berkeley

2180 Milvia Street, Berkeley, CA 94704

# The future of all life: Indigenous sovereignty and the Fukushima nuclear disaster

March 4, 2019

by *Harun Minhaj*



The vast Pacific Ocean, the largest body of water on earth, has not diluted the radiation from Fukushima Daiichi nuclear power plant meltdown. Instead, it has become **increasingly concentrated** as it approaches the West Coast with eventual peak concentrations likely to reach levels up to **10 times higher** than off the coast of the rest of Japan.

In 2011, an unprecedented series of die-offs began to strike dead hundreds of millions of sea creatures in the northern Pacific Ocean. As one sailor who frequently travels the Pacific **remarked** in October of 2013:

"I've done a lot of miles on the ocean in my life and I'm used to seeing turtles, dolphins, sharks and big flurries of feeding birds. But this time, for 3,000 nautical miles, there was nothing alive to be seen."

What precipitated such a dramatic devastation of marine life in the Pacific Ocean?

Just a few months before the die-offs began, the meltdown of three nuclear reactors at the Fukushima Daiichi Complex in Japan caused **the greatest** pollution of the marine environment by radioactive contaminants in history. Far from over, these releases are still ongoing.

**More than 400 tons of radioactive water have been flowing into the Pacific every day since the meltdowns began.**

**More than 400 tons** of radioactive water have been flowing into the Pacific every day since the meltdowns began. Although the full extent of the damage from Fukushima Daiichi has yet to be determined, the volume of these releases alone shows that we are dealing with something unprecedented in history.

**Indigenous elders and scientific community sound the alarm**

I was first alerted to the severity of the Fukushima disaster by Bay Area Indigenous Elder Zachary RunningWolf. A full-time activist and community leader in the Bay Area, RunningWolf has long campaigned for racial and environmental justice in a myriad of ways.

In 2001, RunningWolf ran thousands of miles across the country for political prisoner and journalist Mumia Abu-Jamal's **freedom**, from San Francisco all the way to Philadelphia. From 2006-2008, he led the longest urban tree-sit in history to prevent UC Berkeley from cutting down the Memorial Oak Grove to expand its football stadium on an Ohlone burial site.

Journalist and Political Prisoner Mumia Abu-Jamal has been incarcerated for over three decades despite **long-standing evidence** that he was falsely convicted as a target of extensive institutional racism.

For the last nine years, he has also led a four-day monthly **stop driving** boycott to combat global warming. RunningWolf sat on Berkeley's Peace and Justice Commission, helped get Oakland's Intertribal Friendship House out of debt, and was **referred to** by the San Francisco Chronicle as an "omnipresent activist."

When RunningWolf ran for mayor of Berkeley in 2016, he made addressing Fukushima a central component of his campaign. For RunningWolf and many Indigenous elders concerned about the ongoing violence against Mother Earth, stopping the Fukushima nuclear crisis is of the highest priority.

Consider this **call for action** released in 2013 by a council of Indigenous elders called the Caretakers of Mother Earth:

"The People of the Earth understand that the Fukushima nuclear crisis continues to threaten **the future of all life**. We understand the full implications of this crisis even with the suppression of information and the filtering of truth by the corporate owned media and nation states. We strongly urge the media, corporations and nation states to acknowledge and convey the true facts that threaten us, so that the international community may work together to resolve this crisis, based on the foundation of truth" (emphasis added).

The deep concern expressed by RunningWolf and the Caretakers of Mother Earth about the impact of Fukushima's radiation on the Pacific is shared by thousands of scientists. For instance, the **platform** adopted by the more than 5,000 scientists who make up the Society for Environmental Toxicology and Chemistry declared in 2014 that "the Fukushima nuclear accident on 11 March 2011 emerged as a global threat to marine biodiversity in the Pacific Ocean and human health in coastal communities."

Other scientific organizations such as the Nordic Probabilistic Safety Assessment Group have gone even further. This institution – which is by no means “anti-nuclear” as it was founded by the nuclear utilities of Finland and Sweden – **predicted** in 2011 based on official estimates of radioactivity released into the Pacific that around 50-100 million fish would die from just one of the most deadly and prolific isotopes which had been released.

## Unprecedented ecocide in the Pacific following Fukushima disaster

Purple sea urchins found off the coast of California are pictured before and after the summer 2011 mortality event, or die-off. – Photo: Laura Jurgens, UC Davis Bodega Marine Laboratory

And indeed, such mass deaths started to occur in the summer of 2011, when the largest series of unprecedented die-offs of marine life ever began in the northern Pacific Ocean. On the West Coast, the first event was observed in August of 2011, when the radiation was still solely a consequence of unevenly distributed airborne fallout.

The mass die-offs began with marine invertebrates such as sea stars, which are known (both **in general** and **specifically**) to be especially susceptible to the effects of radiation. As **documented** by scientists from UC Davis, Santa Cruz, and Merced:

“Scientists tallied almost 100 percent mortality of purple sea urchins and six-armed sea stars throughout the 62-mile study area ... Researchers found only 10 purple sea urchins in the area once

home to millions ... [The] mortality rate was therefore >99.99 percent over 100 km ... [N]o previously documented mortality event has been so severe over such a large region."

Yet this would prove to be just the beginning. After 2011, as water-borne radiation became increasingly widespread as it traveled east from Japan, the die-offs grew even more intense. By 2014, the die-off of sea stars was characterized by a marine epidemiologist from Cornell as "the largest disease outbreak that we know of ever in the oceans."

By 2015, it was known that "hundreds of millions" of sea stars had died. The populations of approximately 20 sea star species had been decimated, many of which are keystone species that play an essential role in ensuring the health of their ecosystems.

As horrific as this epidemic has been, it was not just marine invertebrates that were dying in mass numbers, but also many other species living in the Pacific Ocean including marine mammals, fish and sea birds:

In 2013, record numbers of sick sea lion pups were declared a "crisis of epic proportions" by the National Marine Foundation, and record numbers continued in 2014 and 2015 with sea lion deaths "unprecedented in scale," which were still not declining even in August of 2016. Other marine mammals such as whales also had unprecedented die-offs, with record numbers of dead baleen and humpback whales reported in 2013, 2015 and 2017, while surges in marine mammal strandings for large numbers of otters and dolphins have been reported as well.

Millions of sardines, anchovies and white croaker fish died within three weeks during three consecutive incidents in 2014 off the coast of California. The die-off of white croaker fish at Manresa State Beach is pictured above. – Photo:

Greg Henning

In 2013, chinook salmon returns were at a "record low"; in 2014 the declines of salmon, herring, cod, halibut and pollock amounted to a 90 percent die-off, worse than anything ever seen by lifelong fishers; by 2015 sardines and crayfish had "pretty much disappeared from the Pacific Ocean" and "vanished from California waters," with forage fish, like herring, having declined by 98 percent or more, while the anchovy population had "truly collapsed" and 13 million salmon had "just disappeared." Even into 2017, the "unprecedented fisheries collapse" of chinook salmon was still ongoing.

Meanwhile, an unprecedented number of swallows which had starved to death were reported in Oregon in 2013, with the toll for other birds such as Cassin's auklets reaching "massive, unprecedented" levels by 2015. By 2016, scientists were reporting that the "seabird die-off is the

biggest ever recorded," "unprecedented in size, scope and duration," and that "we've never had complete reproduction failure before."

Even into 2017 the reports continued, with 500,000 or more common murrets dead, "like nothing we've ever observed before," with scientists identifying the reason as the fact that "there're no fish out there, anywhere, over a very large area."

Along with the unprecedented die-offs, a consistent set of symptoms frequently occurring together was observed across species:

- **unprecedented epidemics of cancer**
- **rare and widespread genetic mutations**
- **widespread immune system deficiencies**
- **open sores, lesions and seizures**
- **bleeding**
- **hair loss**
- **abnormally high levels of parasites.**

Some of these symptoms (such as cancer, hair loss, and mutations) are well-known consequences of radiation sickness, while other more obscure ones such as high levels of parasites have been confirmed in **studies** of sea life to occur as a consequence of radiation. Altogether, only radiation sickness can produce such a widespread, prolonged epidemic exhibiting all these symptoms.

## The genocidal impact of Fukushima radiation in the Pacific

It would be extremely foolish to assume this devastation in the Pacific Ocean will not profoundly impact human life. It is widely recognized that for numerous reasons our **very survival depends on the health of the oceans**, most notably because they produce the majority of the oxygen that we must breathe to live.

Native peoples, whose traditional livelihoods are often intimately bound up with the health of the ocean, are on the front line of this struggle. For instance, the Indigenous Yurok tribe, which lives in Northern California, has been deeply affected by these die-offs, as fishing salmon has traditionally been their livelihood and "the soul of our being."

Further north, **nearly a dozen Indigenous tribes** are partners of the Salish Sea Marine Survival Project, which **has been investigating** the relationship between plankton depopulation and the salmon die-offs, while the **Alaska Native Tribal Health Consortium** set up a network for reporting mortality and disease events in Pacific marine life. These are just some of the many Indigenous communities affected by and working to protect the health of the Pacific Ocean and all the life that depends on it.

As aboriginal advocates have argued, the violence of nuclear contamination in desecrating their lands and culture must be recognized as a kind of **cultural genocide**. In this case, where the Pacific Ocean itself has been desecrated, Fukushima's radiation must be recognized as constituting a genocidal assault on numerous Indigenous peoples' cultures and livelihoods.

This is an Alaska king crab caught in Alaska waters of the Pacific in 2014, its color mutated from bright red to blue. If radiation can change its color, is it safe to eat? –

Photo: ENENews

Furthermore, the radiation in Pacific seafood poses a significant health risk to the people who consume it. Estimates calculated by a wide variety of experts in nuclear power, chemistry and medicine show that this risk has been **severely underestimated**, and in fact **more than 1 million people** would die from cancer and other diseases if the consumption of radioactive Pacific seafood continues unabated.

In the Bay Area, Indigenous Blackfeet Elder RunningWolf has long been warning the public to avoid consuming Pacific seafood since even before the 2016 Berkeley mayoral race, while calling for the University of California – with its flagship campus located in Berkeley – to be held accountable for issuing no health warnings in turn.

**As aboriginal advocates have argued, the violence of nuclear contamination in desecrating their lands and culture must be recognized as a kind of cultural genocide.**

As the Caretakers of Mother Earth have warned, the nuclear establishment has been working tirelessly to cover up and downplay the consequences of this nuclear disaster. The University of California has long played an essential role in this establishment, as it designed the **core physical package** of every single nuclear warhead in the U.S. arsenal. And now, formerly secret documents show that UC played an indispensable role in the federal response to – and cover-up of – the Fukushima nuclear disaster.

## The UC cover-up of West Coast fallout

Far from being incidentally related to the case, the University of California's Lawrence Livermore National Lab (LLNL) was in fact the federal contractor given the **responsibility** of projecting the damage or "dose" from Fukushima Daiichi's fallout to Japan, the Pacific Ocean and U.S.-occupied Turtle Island.

The estimates **secretly forecasted** by the LLNL's model predicted very high doses to children in California from radioactive iodine, which is **known** to cause serious thyroid illnesses. Subsequent measurements found that this model's predictions of radiation exposure in California were **far more accurate** than lower estimates and **actually underestimated** the radiation found 30 km off the coast of Japan.

Yet the UC never issued a single health warning to anyone living on the West Coast prior to their exposure to this deadly radiation. Instead, at the very time that the UC's LLNL **was modeling**

"estimates of possible plume arrival times and dose for U.S. locations," UC Berkeley scientists were at the forefront of corporate media coverage on outlets such as ABC7 proclaiming brazen falsehoods such as "there is no plume."

The LLNL's model was continually being refined and updated "based on meteorological analyses and available field data" to ensure its predictions were maximally accurate, yet UC Berkeley scientists were simultaneously telling the public that "you cannot predict how the weather is going to carry radiation particles over the West Coast, if anything at all."

Even worse was the initial UC Berkeley claim that the radiation reaching California was "not harmful at all" and posed "no risk to California," despite the LLNL's forecast of very high doses to children in California from radioactive iodine.

Meanwhile, the head of UC Berkeley's Nuclear Engineering Department secretly admitted that "it is possible that we will find that some people have received doses ... that could exceed the levels that current Protective Action Guidelines are designed to prevent." The Protective Action Guidelines (PAGs) are legal limits on radiation exposure set by the EPA designed to minimize the risk of harm, and this professor subsequently suggested that, should they be exceeded, "this could provide a basis for immediate action to change PAGs."

This is the U.S. government agency National Oceanic and Atmospheric Administration (NOAA) HYSPLIT Model of the plume of airborne radiation (cesium-137) from Fukushima Daiichi.

When UC Berkeley began testing for radioactive iodine from the Fukushima fallout in California, it found levels in rainwater up to 181 times the EPA's safe drinking water standards. And although rainwater and tap water should not be conflated, radioactive isotopes climb their way up the food chain in increasing concentrations in numerous ways, such as the soil of produce farms and the pastures of milk-giving cattle.

And, indeed, radioactive materials from Fukushima were detected across California's food web, while UC Berkeley's own measurements showed that food items such as milk were regularly exceeding the EPA's PAGs in both 2011 and 2012 until they stopped taking these measurements.

The response to these findings was once again denial and distortion. The EPA soon increased its PAG "safe limit" by more than 400 times, to such a high level that all of these findings would retroactively cease to be considered health risks.

In the meantime, UC Berkeley engineers once again asserted there was no cause to worry and falsely minimized these readings by conflating external radiation as received from plane travel with the more dangerous internal radiation received through ingesting radioactive particles, which remain in the body emitting radiation for much longer and have the ability to concentrate in specific vulnerable organs such as the thyroid.

But the initial epidemiological evidence is in, and it already shows a variety of illnesses and deaths across the West Coast significantly correlated with the arrival and presence of Fukushima fallout, such as over 100 additional fetal deaths and birth abnormalities in the state of Washington in 2011 and increased rates of congenital hyperthyroidism in California infants born shortly after the meltdowns – around 1,500 additional borderline and severe cases.

**The EPA soon increased its PAG "safe limit" by more than 400 times, to such a high level that all of these findings would retroactively cease to be considered health risks.**



The University of California totally failed to make public the initial LLNL projections of “very high doses” to California infants and provide adequate health warnings – such as avoiding contaminated milk or taking **natural iodine supplements** – despite having this legal responsibility both as a federal contractor and as the operator of California’s **Poison Control System**, which administers such warnings **on behalf** of the California Emergency Medical Services Authority for the entire state.

## The UC cover-up of Pacific fallout and seafood contamination

As serious as the consequences of the fallout on California were, the radiation California and the West Coast received was only a small fraction (<2 percent) of the total, of which the majority (~80 percent) fell into the Pacific.

From the very beginning, UC scientists were involved in studying the Pacific die-offs. Indeed, it was UC scientists who declared when studying the 2011 marine invertebrate mass die-offs that “[N]o previously documented mortality event has been so severe over such a large region ...” Yet these UC scientists who had been studying this epidemic from the very beginning have failed to ever monitor the sick and dead animals for radiation, despite one of the lead scientists **admitting** that Fukushima could not be ruled out as a cause.

When their **major study** was published in 2018, it included no consideration of Fukushima or radiation whatsoever. Apparently, it was a moot point – the UC’s website on the die-offs had already been claiming for years there was “**no evidence**” of Fukushima radiation having an impact, even though they had never looked for any despite having already admitted it couldn’t be ruled out.

To make matters worse, one of the principal UC authors of this study falsely claimed that Fukushima radiation could not have precipitated the die-off, because “many more creatures would be affected.” By this time, the unprecedented and concurrent die-offs of fish, marine mammals and sea birds had already been reported.

In denying the impact of Fukushima on the Pacific, these scientists are hardly alone. **Over and over again**, UC professors – frequently in leadership positions and with government ties – have minimized the impact by relying on the widely debunked fallacy of “dilution.”

Yet dilution has been known to be a false solution to radiation for over 50 years now. In 1955, a once-secret memo from the U.S. Atomic Energy Commission (AEC) – then headquartered in Berkeley – **noted** that the “dissipation of radioactive fallout in ocean waters is not a gradual spreading out of the activity from the region with the highest concentration to uncontaminated regions, but that in all probability the process results in scattered pockets and streams of higher radioactive materials in the Pacific.”

This is due to a variety of reasons, including the flow of currents and the role played by sediment and **debris** in transporting radiation. Furthermore, studies have shown that the bioconcentration of radioactive particles up the food chain **increasingly amplifies** its prevalence in smaller and larger marine organisms by factors ranging from 3 to 300.

While this memo may have previously been secret, the “no threshold” model of radiation has been well-established for almost as long, and is the accepted foundation of radiation protection for the **Environmental Protection Agency**, **National Academy of Sciences**, and many other institutions.

In the 1960s, UC Berkeley Nuclear Scientist John Gofman established the Biomedical Research Division of the UC’s LLNL, when he was **employed by the AEC** to discredit findings which showed that “low level” radiation from nuclear weapons tests was exposing infants in surrounding areas to dangerous amounts of radiation.

Instead, **Gofman's research** confirmed these dangers, and at the end of the decade he gave a report showing that there is no threshold beneath which radiation exposure is "safe": lower levels correspond to a lower – but very real – risk of disease. Consequently, dilution does nothing more than spread the impact of radiation amongst a larger population vulnerable to disease, with each individual facing a lower risk but the overall aggregate impact remaining the same.

The AEC disliked these findings and forced Gofman out of the LLNL, illustrating the reprisals nuclear scientists often face for challenging the pro-nuclear establishment.

This model was published by G.J. Han et al in the August 2013 edition of Science China Earth Sciences, projecting the increasing concentration of radioactive pollution off the West Coast in the first two years after the Fukushima catastrophe.

Numerous projections of the spread of Fukushima radiation in the Pacific Ocean have predicted that, far from becoming increasingly diluted, once the radiation leaves the immediate vicinity of the Fukushima shoreline it would actually become **increasingly concentrated** as it approaches the West Coast due to the dynamics of ocean currents, with eventual peak concentrations reaching levels up to **10 times higher** than off the coast of the rest of Japan.

**There is no threshold beneath which radiation exposure is "safe": lower levels correspond to a lower – but very real – risk of disease.**

What measurements are available not only confirm these projections, showing **increasing concentrations** traveling east across the Pacific Ocean roughly correlating to these models, they also show that the vast quantities of radioactive particles the Nordic PSA Group predicted would kill at least 50-100 million fish were **indeed present** throughout large areas of the Pacific Ocean.

In other words, a vast array of scientific knowledge, regulatory precedent, expert models, and empirical data directly contradicts the denials of the UC nuclear establishment that Fukushima's radiation is of no concern in the Pacific due to "dilution."

Once again, these denials have serious consequences not just in terms of the ecocidal impact of Fukushima Daiichi's radiation on Pacific sea life. Based on the **thoroughly disproven** dilution fallacy, several prominent UC scientists have also denied that there are **any health impacts** from Fukushima radiation in the Pacific, **including** the risks entailed in eating contaminated seafood.

The Nordic Probabilistic Safety Assessment Group, however, founded by the nuclear utilities of Finland and Sweden and therefore not at all "anti-nuclear," concluded in its 2011 report that even if seafood radiation levels from Fukushima stay below legal limits, more than 1 million people would die from just one of the elements of concern, cesium-137. They wrote:

"The fish, seafood, whale meat and seaweed consumed may have concentrations below legal limits, but the radioactive content will be increased from normal levels. As noted in Section 3.6.3, the ingestion dose could be substantial even if the legal limits for the foodstuff are preserved. This cycle will last for many generations, because of the food chain of fish and other marine fauna, and the radioactivity will be recycled and in fact the meat content will increase rather than decreasing by decay. Even if only one one-hundredth of the radioactivity (more than  $1e15$  Bq of CS137) were to enter this recirculation pattern, the collective whole body ingestion dose over many generations would exceed  $1e7$  Sv, sufficient to kill more than 1,000,000 people."

As predictions of mass die-offs and increasingly concentrated radiation crossing the Pacific to the West Coast have already come true, ignoring the scientific evidence about the dangers this radiation poses to us too promises to have deadly consequences. With over 1 hundred million sea creatures having already perished as predicted by the nuclear utility-founded Nordic PSA Group, this institution's estimate that **more than 1 million people** could also die if human consumption of Pacific seafood continues unabated is supported by a solid track record based on the scientific method, unlike the UC's ongoing denials and distortions of even the most basic facts of the Fukushima disaster.

## The UC cover-up of the fallout in Japan

Further illustrating the international stakes and genocidal consequences of the UC cover-up is the role the university has played in Japan, where approximately 18 percent of the radioactive fallout landed.

Once again, the UC failed to warn the Japanese people of how serious the dangers posed by Fukushima's fallout were, even as its secret model **indicated the need** to evacuate Tokyo, the largest metropolitan area in the world.

This recommendation was subsequently given by others such as **Dr. Shigeru Mita**, a physician who relocated his practice from Tokyo after observing symptoms of radiation sickness since 2011, and advises that inhabitants should leave the city due to the health consequences of the radiation there.

**With over 1 hundred million sea creatures having already perished as predicted by the nuclear utility-founded Nordic PSA Group, this institution's estimate that more than 1 million people could also die if human consumption of Pacific seafood continues unabated is supported by a solid track record based on the scientific method, unlike the UC's ongoing denials and distortions of even the most basic facts of the Fukushima disaster.**

Dr. Mita's warning is buttressed by **the epidemiological evidence**, which indicates that the health consequences of Fukushima radiation are already taking a serious toll in Japan – and not just in Fukushima prefecture – including:

- Thyroid cancer incidence more than doubling in Fukushima and several neighboring prefectures
- A range of heart diseases increasing throughout Japan, with a 50 percent overall increase of heart attacks and 80 percent increase in Tokyo
- Leukemia incidence more than doubling in Fukushima and several neighboring prefectures, with a 42 percent overall increase for Japan.

Backing up this epidemiological evidence is extensive radiation measurement, including **one study** which found that every one of its soil samples taken from a variety of places in Tokyo were so toxic that they would all be legally treated as radioactive waste by the U.S. government.

And yet once again, the UC is at the forefront of denying that there are any serious health risks for the Japanese population, even for those with the greatest exposure still living in Fukushima.

Consider the event hosted by the Lawrence Berkeley National Lab and the Japanese Ministry of the Environment at UC Berkeley in 2017. Together, UC Berkeley and the Japanese government **claimed** that Fukushima had been 97 percent decontaminated of radiation, and insisted that the real issue to worry about was that "negative perception still persists across Japan and the world, causing economic and psychological damage within the region."

Radioactive soil from bags like these that should be disposed as nuclear waste is being re-used for roads and farmland despite the protests of Fukushima residents. – Photo: The Mainichi

Not mentioned by either party was the epidemic increase of disease or the protests this Japanese Ministry has **continuously faced** in Fukushima for forcing residents to accept toxic radioactive soil repurposed for developing farmland and constructing roads. Evacuees are now being **forced to return to Fukushima**, despite radiation levels in their homelands measured at **up to 100x the international legal limit**.

**One study ... found that every one of its soil samples taken from a variety of places in Tokyo were so toxic that they would all be legally treated as radioactive waste by the U.S. government.**

That the UC's priority is not the well-being of Japan was tacitly admitted in a **press release** issued by the UC-managed Los Alamos National Lab (LANL), which includes a mere single sentence acknowledging that with the disaster, "At stake are Japan's reputation, its public health and the health of its environment." The next three paragraphs then elaborate in great detail the UC's grave concern about the risk the disaster poses to Japan's nuclear industry, while highlighting the cleanup's priority of "rebuild[ing] public acceptance of nuclear power."

The report ends with a celebration of “the arc of Los Alamos’s history with Japan” as being “truly awesome,” neglecting entirely to mention the central role this UC lab played in committing **genocide** against the Japanese people with the nuclear bombing of Hiroshima and Nagasaki. Hundreds of thousands of civilians were killed then by UC-designed nuclear weapons.

Today, the UC is once again playing a central role in denying and covering up the deadly effects of the Fukushima nuclear disaster, which continues today as yet another **genocide**.

Although UC Berkeley was **recently** ranked the “No. 1 public university” by US News in 2018, corporate media refuses to recognize how it has served as the foremost academic partner of the **largest military empire** in history. This shameful reality is a manifestation of the twisted vision outlined in Dr. Gray Brechin’s “Imperial San Francisco,” which describes in detail how the white supremacist founders of UC Berkeley envisioned it playing a pivotal role in extending American Empire, with the construction of Berkeley’s nuclear laboratory as the crowning fixture of its “annexation” of the Pacific.

As the U.S. military occupation of Japan **continues to this day** – with tens of thousands of soldiers and several bases still stationed in the country – the imperial and colonial dimension of the Fukushima disaster cannot be ignored. Fukushima Daiichi’s fuel was **supplied** by uranium **forcibly extracted** from aboriginal peoples’ land by permission of the Australian government.

**Although UC Berkeley was recently ranked the “No. 1 public university” by US News in 2018, corporate media refuses to recognize how it has served as the foremost academic partner of the largest military empire in history.**

And today, **pressure** from the U.S. government has played an important role in the Japanese government’s involvement in the cover-up, including legislation recently passed in Japan which criminalizes **sharing epidemiological data** and **reporting or whistleblowing** on the “state secrets” of the Fukushima disaster.

## **Illegal election interference in Berkeley’s 2016 mayoral race**

Meanwhile, in the Bay Area, a similar crackdown and criminalization of whistleblowing has suppressed the campaign to provide real health warnings and solutions, and to hold the UC accountable for the ecocidal and genocidal consequences of covering up the Fukushima nuclear disaster.

As a volunteer with RunningWolf’s campaign during Berkeley’s 2016 election, I saw firsthand the level of illegal election interference and media censorship he faced in his journey to become this country’s first Indigenous mayor. Of all the candidates, only he **pledged** to redress the Fukushima nuclear crisis, as well as many other important issues, such as the institutionalized racism of the Berkeley Police Department, the dispossession of the Bay Area’s Native Ohlone peoples, and the billions of dollars the UC Regents continue to invest in the fossil fuel industry to this day.

But just before the cycle’s mayoral debates were set to begin, RunningWolf was arrested and incarcerated by the Oakland Police Department for 31 days for participating in a march in solidarity with the then ongoing **strikes against prison slavery**, as well as for a small amount of cannabis which had been collected six months earlier by the California Highway Patrol.

It was only after undertaking a 13-day hunger strike while incarcerated – likely becoming the only electoral candidate in the nation to join the strike in prison – that RunningWolf was finally able to secure his release.

Allowed to participate only in Berkeley's fifth mayoral debate, RunningWolf emphasized in his concluding remarks the importance of addressing the Fukushima nuclear crisis and holding the UC accountable for providing no solutions or health warnings. Ever since, he has been struggling against a complicit media which has refused to cover his story and corrupt local institutions which refuse to address or even investigate this election interference and the violation of not just numerous local and national laws, but many international laws as well.

To give just one example, the right to participate in elections free from racial discrimination is **guaranteed** in Article 5 of the UN Convention on the Elimination of All Forms of Racial Discrimination. This right was explicitly violated when RunningWolf was politically targeted using cannabis strategically withheld for six months to prevent him from participating in the mayoral debates, then incarcerated under a false alias – "Freddie Lee Smith," a name which he has never used – to distance him from his Indigenous name RunningWolf.

The UN Declaration of Indigenous Rights goes **even further** in establishing the international laws which guarantee the rights of Indigenous people to participate in the political process, especially elders such as RunningWolf. In total, at least 19 articles of this Declaration were violated through the systematic denial of RunningWolf's legal rights, including the right to equally participate in the mayoral debates, fairly seek employment, have access to non-Indigenous media and, crucially, to protect the environment and livelihood of Indigenous peoples.

### **Solutions suppressed: Human survival means Indigenous sovereignty**

At a sixth "extra" mayoral debate, RunningWolf was again barred from participating as only city councilmembers – deemed the "presumptive frontrunners" – were allowed to speak.

Many **recent studies** have confirmed what Native peoples have long been teaching, that Indigenous sovereignty is essential to ensuring a healthy relationship with Mother Earth. The protection of the largest body of water on our planet is clearly of the highest importance in this regard.

By interfering with the election to keep RunningWolf out of office, local and state police departments have joined the UC in the cover-up of the continued threat Fukushima Daiichi poses through contaminated seafood and the ongoing impacts and leakage of radioactive fallout.

As a result, Fukushima Daiichi continues to leak deadly radiation into the Pacific, while RunningWolf is illegally being prevented from working towards a real solution and holding the UC responsible for its genocidal cover-up.

RunningWolf, along with nuclear experts such as whistleblower Arnie Gunderson, has long advocated that the first **necessary solution** is for the Fukushima Daiichi plants to be encased in a concrete sarcophagus like at Chernobyl, along with **preparatory measures** to prevent further contamination of the surroundings and end the ongoing leakage into the Pacific Ocean.

But as a number of Japanese experts **have testified**, this solution is being rejected "to avoid taking responsibility," as it would require "admitting that no one can live near the plant for a generation."

Once again, the UC is deeply complicit, by enabling the Japanese government and TEPCO (Fukushima Daiichi's operator) to continue pursuing false solutions which do not stop the leakage or require "admitting defeat."

The UC is intimately involved in an ongoing effort which has cost **more than \$100 million** of Japanese tax revenue on a two-pronged effort using the Los Alamos National Laboratory (LANL)'s Muon Imaging Technology alongside expensive robots to find and remove melted fuel from inside the reactors. Yet after nearly eight years, much of this fuel has not yet been located and none of it has been removed, while the radiation continues to leak into the Pacific Ocean every day.

And once again, the UC's priorities are clear, as this "solution" was showcased in the same LANL press release overwhelmingly concerned with "rebuild[ing] public acceptance of nuclear power" and protecting the Japanese nuclear industry, rather than with the impact on public health or the environment.

### **Rectifying the theft of Berkeley's election is essential for justice**

Conversely, RunningWolf's priorities are first and foremost the health of both the people and the environment, of Mother Earth and all life – for we all depend on her well-being for our survival.

The election interference he faced, buttressed by the continued refusal to investigate the violations he has presented, was a criminal violation of international laws including the UN Convention on the Elimination of All Forms of Racial Discrimination and the UN Declaration of Indigenous Rights.

But the Berkeley Commission tasked with ensuring the city's elections are conducted fairly – the Fair Campaign Practices Commission (FCPC) – will not investigate this election interference.

And even when the FCPC **unanimously concluded** that rival candidate Jesse Arreguin had committed 18 campaign finance violations to become the current occupier of the mayor's seat, Arreguin was let off with no more than a fine. Despite the fact that Arreguin had already been **warned** in 2016 by the deputy city attorney not to commit the exact violation he went on to commit, 18 more times, the FCPC refuses to enforce the letter of the law.

The double standard committed with respect to criminal justice and institutional racism in the treatment of RunningWolf and Arreguin could not be clearer. The criminalization of RunningWolf's political activism was deliberately timed to prevent him from exercising his legal rights to participate in the electoral process, and the crimes he was accused of in no way could have unfairly affected the results of the election.

Conversely, even after Arreguin was found guilty of having committed 18 violations of the election laws designed to ensure that the election is fair, despite being warned, he still has not been arrested or had any criminal proceedings brought against him. In short, Arreguin's theft of the election is being treated as a harmless mistake, while the illegal criminalization of RunningWolf rigged the election against him from the very start.

As the Caretakers of Mother Earth have warned us, the future of all life is at stake in our response to the Fukushima nuclear disaster. The consequences of allowing this illegal election interference and racist double standard to keep RunningWolf out of the mayor's seat could not be more serious.

*Harun Minhaj is a freelance writer and volunteered as Blackfeet Elder Zachary RunningWolf's campaign manager during Berkeley's 2016 mayoral election. He can be reached at [Harun.Minhaj@protonmail.com](mailto:Harun.Minhaj@protonmail.com).*

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**From:** Mary Kay Lacey <mklacey@comcast.net>  
**Sent:** Thursday, April 11, 2019 2:59 PM  
**To:** FCPC (Fair Campaign Practices Commission); Brown, Farimah F.; Leslie, Tylene  
**Cc:** ; 'Stephen F. Henry'  
**Subject:** CORRECTION TO PACKET SUBMITTED BY CITY ATTORNEY re Referral to the FCPC for Investigation - Meeting on April 18, 2019  
**Attachments:** 2018 11 09 Letter to FCPC.pdf

Dear FCPC Commission Secretary,

I am writing to ask that you please correct an omission to the packet of information sent to the FCPC for the April 18, 2019 meeting involving the *Lacey for City Council 2018* referral. As reflected in the emails below, a response from the campaign was submitted to the Commission on November 9, 2018 — per the request of the FCPC Commissioners — but that response was omitted from the packet attached to your April 8, 2019 correspondence.

A request to correct the omission was made on April 9, 2019, and reiterated on April 10, 2019. Having received no response to the requests, I am writing to again ask that the campaign's November 9, 2018 response, attached above, be included in the packet you provide to the Commissioners to ensure the record is complete.

The importance of correcting this omission cannot be understated, as the campaign's response shows (1) BERA does not preclude loans of \$50 or less to candidates who accept public financing; (2) candidates were never informed that BERA precludes loans of \$50 or less to candidates who accept public financing; (3) the Lacey for City Council 2018 campaign never requested or received matching funds for the \$50 loan it accepted from Stephen Henry (which was used to open the campaign account); (4) the Lacey for City Council campaign paid back the \$50 loan it received from Stephen Henry before it accepted a \$50 donation from Stephen Henry; (5) the Lacey for City Council campaign demonstrated that it never had more than \$50 from Stephen Henry available for its use (since it repaid the loan and then accepted the donation); and (6) because Stephen Henry made only one \$50 donation to the campaign for which matching funds were requested and received, and because the aggregate limit of \$50.00 available to the campaign from Stephen Henry was never exceeded, there was no violation of BERA.

Thank you for your attention to this matter. Please acknowledge receipt of this request and send it to each Commissioner along with the attachment above. Also, please note that Dean Metzger, as Chair of the FCPC, is included as a recipient of this email.

Sincerely,

Mary Kay Lacey

**From:** Mary Kay Lacey <mklacey@comcast.net>  
**Sent:** Wednesday, April 10, 2019 2:54 PM  
**To:** 'Stephen F. Henry' <stephen@shenrylaw.com>; 'Leslie, Tylene' <TLeslie@cityofberkeley.info>  
**Cc:** 'Brown, Farimah F.' <FBrown@cityofberkeley.info>  
**Subject:** RE: Immediate Confirmation Requested re: Referral to the FCPC for Investigation - Meeting on April 18, 2019

Dear Ms. Brown,

I am following up on the email below from Stephen Henry. As Mr. Henry indicated, a response to the referral was submitted to the Commission on November 9, 2018, but was omitted from the packet attached to the April 8, 2019 email sent on your behalf.

Mr. Henry asked for this omission to be corrected and forwarded the entire document that should have been part of the packet.

Would you please confirm receipt of this request and make sure that Mr. Henry and I are copied on the correspondence that corrects the omission.

Thank you,

Mary Kay Lacey

Mary Kay Lacey  
[mklacey@comcast.net](mailto:mklacey@comcast.net)  
510 919 2160

**From:** Stephen F. Henry <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>  
**Sent:** Tuesday, April 9, 2019 9:18 AM  
**To:** Leslie, Tylene <[TLeslie@cityofberkeley.info](mailto:TLeslie@cityofberkeley.info)>  
**Cc:** Brown, Farimah F. <[FBrown@cityofberkeley.info](mailto:FBrown@cityofberkeley.info)>  
**Subject:** RE: Referral to the FCPC for Investigation - Meeting on April 18, 2019

In response to this, we already submitted a letter with attachments in rebuttal to this referral.

That letter appears to have been omitted from the packet attached to your email.

I am attaching the letter and its attachments to be included in the packet to be provided to the commission.

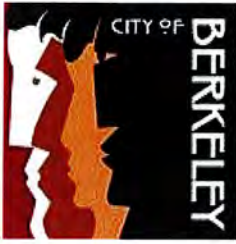
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1-510-295-2516 (fax)  
[shenry@shenrylaw.com](mailto:shenry@shenrylaw.com)

Business and Employment Law  
Consultation and Litigation

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**From:** Leslie, Tylene [<mailto:TLeslie@cityofberkeley.info>]  
**Sent:** Monday, April 08, 2019 5:25 PM  
**To:** Stephen F. Henry  
**Cc:** Brown, Farimah F.  
**Subject:** Referral to the FCPC for Investigation - Meeting on April 18, 2019

Per Farimah Brown, please see attached.



**Tylene Leslie**

Senior Legal Secretary  
City Attorney's Office  
2180 Milvia Street, 4th fl.  
Berkeley, CA 94704

**Direct:** 510.981.6992 **Fax:** 510.981.6960

**From:** FCPC (Fair Campaign Practices Commission)  
**Sent:** Thursday, April 11, 2019 4:40 PM  
**To:** 'Mary Kay Lacey'; FCPC (Fair Campaign Practices Commission); Brown, Farimah F.; Leslie, Tylene  
**Cc:** 'Stephen F. Henry'; 'Mariam Morley'  
**Subject:** RE: CORRECTION TO PACKET SUBMITTED BY CITY ATTORNEY re Referral to the FCPC for Investigation - Meeting on April 18, 2019

Ms. Lacey,

I am the FCPC secretary. I have been recused from participation in this matter, which was referred to outside counsel. However, I want to respond your email to reassure you that Mr. Henry's Nov. 9, 2018, letter is not being omitted from the FCPC April 18 meeting packet.

I want to clarify what seems to be a source of confusion here. The letter that Mr. Henry received on April 8 was a notice that this matter would be heard by the FCPC at the April 18 meeting. As a courtesy, the April 8 letter attached the staff report from the FCPC's Oct. 18, 2018, meeting to provide you with the relevant background (in case you needed it). It goes without saying that Mr. Henry's Nov. 9 letter to the FCPC was not included in the Oct. 18 meeting packet (and thus not attached to the April 8 notice letter) because the letter was sent several weeks after the meeting. The April 8 letter did not attach, nor did it represent that it attached, the staff report for the April 18, 2019, meeting. That staff report has been included in the packet distributed to Commissioners today. You will receive a courtesy copy tomorrow.

And although your 3 p.m. email came in past the deadline for communications to be included in the packet, as a courtesy, I had support staff pull the printed agendas and packets in order to add your late-arriving communication to the packet.

If you have any further questions, I would request that you communicate with outside counsel on this matter, Mariam Morley, who is cc-ed to this email.

Emma

**Emmanuelle Soichet**

Secretary, Fair Campaign Practices and Open Government Commissions  
City of Berkeley  
2180 Milvia Street, Berkeley, CA 94704

**From:** Mary Kay Lacey [mailto:mklacey@comcast.net]  
**Sent:** Thursday, April 11, 2019 2:59 PM  
**To:** FCPC (Fair Campaign Practices Commission) <FCPC@cityofberkeley.info>; Brown, Farimah F. <FBrown@cityofberkeley.info>; Leslie, Tylene <TLeslie@cityofberkeley.info>  
**Cc:** drm1a2@sbcglobal.net; 'Stephen F. Henry' <stephen@shenrylaw.com>  
**Subject:** CORRECTION TO PACKET SUBMITTED BY CITY ATTORNEY re Referral to the FCPC for Investigation - Meeting on April 18, 2019

Dear FCPC Commission Secretary,

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campaign was submitted to the Commission on November 9, 2018 — per the request of the FCPC Commissioners —but that response was omitted from the packet attached to your April 8, 2019 correspondence.

A request to correct the omission was made on April 9, 2019, and reiterated on April 10, 2019. Having received no response to the requests, I am writing to again ask that the campaign's November 9, 2018 response, attached above, be included in the packet you provide to the Commissioners to ensure the record is complete.

The importance of correcting this omission cannot be understated, as the campaign's response shows (1) BERA does not preclude loans of \$50 or less to candidates who accept public financing; (2) candidates were never informed that BERA precludes loans of \$50 or less to candidates who accept public financing; (3) the Lacey for City Council 2018 campaign never requested or received matching funds for the \$50 loan it accepted from Stephen Henry (which was used to open the campaign account); (4) the Lacey for City Council campaign paid back the \$50 loan it received from Stephen Henry before it accepted a \$50 donation from Stephen Henry; (5) the Lacey for City Council campaign demonstrated that it never had more than \$50 from Stephen Henry available for its use (since it repaid the loan and then accepted the donation); and (6) because Stephen Henry made only one \$50 donation to the campaign for which matching funds were requested and received, and because the aggregate limit of \$50.00 available to the campaign from Stephen Henry was never exceeded, there was no violation of BERA.

Thank you for your attention to this matter. Please acknowledge receipt of this request and send it to each Commissioner along with the attachment above. Also, please note that Dean Metzger, as Chair of the FCPC, is included as a recipient of this email.

Sincerely,

Mary Kay Lacey

**From:** Mary Kay Lacey <[mklacey@comcast.net](mailto:mklacey@comcast.net)>

**Sent:** Wednesday, April 10, 2019 2:54 PM

**To:** 'Stephen F. Henry' <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>; 'Leslie, Tylene' <[TLeslie@cityofberkeley.info](mailto:TLeslie@cityofberkeley.info)>

**Cc:** 'Brown, Farimah F.' <[FBrown@cityofberkeley.info](mailto:FBrown@cityofberkeley.info)>

**Subject:** RE: Immediate Confirmation Requested re: Referral to the FCPC for Investigation - Meeting on April 18, 2019

Dear Ms. Brown,

I am following up on the email below from Stephen Henry. As Mr. Henry indicated, a response to the referral was submitted to the Commission on November 9, 2018, but was omitted from the packet attached to the April 8, 2019 email sent on your behalf.

Mr. Henry asked for this omission to be corrected and forwarded the entire document that should have been part of the packet.

Would you please confirm receipt of this request and make sure that Mr. Henry and I are copied on the correspondence that corrects the omission.

Thank you,

Mary Kay Lacey

Mary Kay Lacey

[mklacey@comcast.net](mailto:mklacey@comcast.net)

510 919 2160

**From:** Stephen F. Henry <[stephen@shenrylaw.com](mailto:stephen@shenrylaw.com)>  
**Sent:** Tuesday, April 9, 2019 9:18 AM  
**To:** Leslie, Tylene <[TLeslie@cityofberkeley.info](mailto:TLeslie@cityofberkeley.info)>  
**Cc:** Brown, Farimah F. <[FBrown@cityofberkeley.info](mailto:FBrown@cityofberkeley.info)>  
**Subject:** RE: Referral to the FCPC for Investigation - Meeting on April 18, 2019

In response to this, we already submitted a letter with attachments in rebuttal to this referral.

That letter appears to have been omitted from the packet attached to your email.

I am attaching the letter and its attachments to be included in the packet to be provided to the commission.

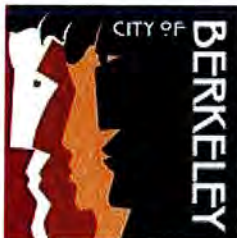
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Business and Employment Law  
Consultation and Litigation

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**From:** Leslie, Tylene [<mailto:TLeslie@cityofberkeley.info>]  
**Sent:** Monday, April 08, 2019 5:25 PM  
**To:** Stephen F. Henry  
**Cc:** Brown, Farimah F.  
**Subject:** Referral to the FCPC for Investigation - Meeting on April 18, 2019

Per Farimah Brown, please see attached.



**Tylene Leslie**  
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