

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 (1st Floor)

Regular Meeting
June 20, 2019
7:00 p.m.

Secretary: Emmanuelle Soichet, Deputy City Attorney

The Commission may act on any item on this agenda

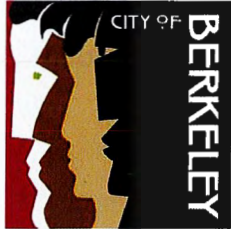
1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
5. Approval of minutes for the May 16, 2019 regular meeting.
6. Draft negotiated stipulation with Greg Magofna for City Council 2018; discussion and possible action.
7. Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts; discussion and possible action.
8. Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by the Commission on March 21, 2019; discussion and possible action.
9. Adjournment.

Communications

- None.

Communications to Berkeley boards, commissions or committees are public record and will become part of the City's

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



Fair Campaign Practices Commission

DRAFT MINUTES

Civic Center
2180 Milvia Street
Cypress Room (1st Floor)

Regular Meeting
May 16, 2019

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

Members Absent: Greg Harper (excused)

Also Present: Emmanuelle Soichet, Staff 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.

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

3. Public Comment (items not on agenda)

Two speakers for public comment on matters not on agenda.

4. Reports

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

Staff notified Commissions of number of pending complaints and forthcoming response to Commission's request regarding loan disclosures adopted at its March 21, 2019 meeting.

5. Approval of Minutes for the April 18, 2019 Regular Meeting

- a. Public comment: 1 speaker.
- b. Commission discussion and action.

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

6. Amendments to the Berkeley Election Reform Act related to Public Financing and General Amendments to the FCPC Regulations; discussion and possible action

- a. Public comment: 3 speakers.
- b. Commission discussion and action.

Motion to adopt amendments, regulations, and text of the report to Council (M/S/C: Smith/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

7. **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.**

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

Motion to find probable cause of a violation of BERA (BMC section 2.12.530). (M/S/C: Smith/Tsui; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

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

8. **Complaint of alleged violation of the Berkeley Election Reform Act by Harrison for City Council 2018 submitted by L. Menard; discussion and possible action.**

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

Motion to find probable cause of a violation of BERA (BMC section 2.12.530). (M/S/C: Smith/Blome; Ayes: Blome, Ching, O'Donnell, Saver, Smith, Tsui; Noes: McLean, Metzger; Abstain: None; Absent: Harper (excused)).

Motion to not find probable cause of allegations in the original complaint (M/S/C: Blome/Tsui; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

Motion to dismiss the complaint and take no further action (M/S/C: Smith/Ching; Ayes: Ching, McLean, Metzger, O'Donnell, Saver, Smith; Noes: Blome, Tsui; Abstain: None; Absent: Harper (excused)).

———— Meeting temporarily adjourned at 8:05 p.m., reconvened at 9:19 p.m. —————

9. **Proposed amendment to Berkeley Election Reform Act related to limiting the number of candidates to whom a donor may contribute; discussion and possible action.**

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

Motion to not adopt proposed BERA amendment (M/S/C: Blome/Tsui; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

10. **Proposed amendment to Berkeley Election Reform Act related to Officeholder Accounts; discussion and possible action.**

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

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

11. **Proposal for Commission to address issues regarding Discretionary Council Office Budgets; discussion and possible action.**

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

Motion to refer to Open Government Commission for a future meeting (M/S/C: McLean/Smith; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

12. **Adjournment**

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

The meeting adjourned at 10:15 p.m.

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Berkeley, CA 94704
TEL.: (510) 981-6998
3 FAX: (510) 981-6960

SBN 201227
SBN 209754

4 Attorneys for FAIR CAMPAIGN PRACTICES COMMISSION

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7 **BEFORE THE FAIR CAMPAIGN PRACTICES COMMISSION**
8 **CITY OF BERKELEY**
9

10 In the Matter of

11 Greg Magofna for Berkeley City Council
12 2018,

13 Respondent.

STIPULATION,
14 DECISION AND ORDER

15
16 This Stipulation, Decision and Order (“Stipulation”) is entered into by and between the
17 Complainant, Fair Campaign Practices Commission (“Commission” or “FCPC”), and
18 Respondent, Greg Magofna for Berkeley City Council 2018 (“Respondent,” collectively
19 “Parties”), through its treasurer, Benjamin Choi, and its assistant treasurer and the candidate,
20 Greg Magofna.

21 The following is a true and accurate summary of the facts in this matter:

22 1. Respondent is a candidate controlled committee created to support the election of
23 Greg Magofna for the office of City Council for the City of Berkeley during the November 2018
24 election. It filed its initial Form 410 to open a campaign committee on May 17, 2018.
25 Respondent filed a Form 410 terminating the committee on February 21, 2019.

26 2. On July 19, 2018, Mr. Magofna was certified to participate in the Berkeley public
27 campaign-financing program known as the Fair Elections Act of 2016. The program requirements
28

1 are enumerated in article 8 of the Berkeley Elections Reform Act (BERA), which is codified at
 2 title 2, chapter 12 of the Berkeley Municipal Code (BMC).

3 3. On November 5, 2018, Respondent filed an amended Form 460 for the period of
 4 Sept. 23 to Oct. 20, 2018. The amended Form 460 listed a \$150 payment to ActBlue that was
 5 described as “Admission fee for Democratic fundraiser.”

6 4. Also on November 5, 2018, Mr. Magofna contacted the City Clerk’s office by
 7 email. In the email, Mr. Magofna indicated that he had been contacted by a third party about the
 8 ActBlue expenditure and explained to the Clerk’s office that the payment was for “a ticket to the
 9 Alameda County Democratic Unity Dinner.” The dinner, which took place on September 29,
 10 2018, was a fundraising event for the Alameda County Democratic Party and whose proceeds
 11 were collected by the Alameda County Democratic Central Committee.

12 5. In his November 5 email, Mr. Magofna stated that he did not know that the
 13 payment constituted a violation of the BERA, but that, if it did constitute a violation, it was
 14 “completely by mistake” and was not committed knowingly. He stated he wanted to rectify any
 15 violation immediately and asked how to proceed.

16 6. On November 6, 2018, the City Clerk sent Respondent a letter identifying the
 17 expenditure as a contribution potentially in violation of BMC section 2.12.530.B.2.d, which
 18 prohibits public-financing candidates from using Fair Elections funds for contributions to party
 19 committees. The Clerk referred the matter to the Commission

20 7. At its May 16, 2019 meeting, the Commission found probable cause of a violation
 21 of BERA.

22 **VIOLATION OF SECTION 2.12.530**

23 8. BERA restricts how public-financing candidates may use the funds they receive
 24 and makes it unlawful for candidates to “misuse” these funds. (BMC § 2.12.550.B.)

25 9. BMC section 2.12.530.A provides that “[a] participating candidate shall use Fair
 26 Elections funds and contributions only for direct campaign purposes.” BMC section 2.12.530.B
 27 further prohibits participating candidates from using the funds for “indirect campaign purposes,
 28

1 including . . . [a] contribution or loan to the campaign committee of another candidate or to a
2 party committee or other political committee.” (BMC § 2.12.530.B.2.d.)

3 10. “Contribution” is defined in BERA to include any gift “made directly or indirectly
4 in aid of or in opposition to the nomination or election of one or more candidates,” and
5 specifically “includes the purchase of tickets for events such as dinners, luncheons, rallies and
6 similar fund-raising events.” (BMC § 2.12.100 [definition of “contribution”]; BMC §
7 2.12.530.C [applying definition in section 2.12.100 to section 2.12.530].)

8 11. Respondent’s expenditure of \$150.00 for a ticket to the Alameda County
9 Democratic Unity Dinner, as identified in its amended Form 460, violated BMC section
10 2.12.530.B.

11 **FACTORS IN MITIGATION**

12 12. This is Mr. Magofna’s first violation and occurred during his first campaign for
13 City office. The November 2018 election was also the first time the Fair Elections Act was
14 implemented by the City.

15 13. Respondent cooperated with City staff. Mr. Magofna is the individual who
16 brought the potential violation to the City’s attention and did so on the same day as Respondent
17 filed the amended Form 460 identifying the problematic expenditure. Mr. Magofna offered to
18 correct any potential violation and voluntarily provided information regarding the expenditure to
19 both the City Clerk’s office and FCPC staff.

20 14. There was also no attempt to conceal or mislead, and the violation appears
21 inadvertent. The expenditure was disclosed to the public before the election in Respondent’s
22 Form 460, which described the expenditure as a payment for admission to a Democratic Party
23 fundraiser.

24 **ADMISSIONS AND STIPULATIONS**

25 THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the
26 parties as follows:
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1 1. Respondent violated BERA Sections 2.12.530.B, as set forth in paragraphs 1
2 through 11 above.

3 2. Based on the facts, law, and the factors in mitigation detailed above, the Parties
4 agree that Mr. Magofna shall pay the sum of one hundred and fifty dollars (\$150) as a stipulated
5 monetary penalty, payable to the City of Berkeley for deposit into the City's Fair Elections Fund,
6 no later than August 1, 2019.

7 3. Respondent (should it be continue as an open committee), its treasurer, and
8 assistant treasurer agree to take necessary and prudent precautions to comply with all provisions
9 of the BERA and FCPC regulations in the future. Further, Respondent will seek advice, as
10 needed, from the City Clerk and FCPC staff on compliance with BERA and FCPC regulations
11 prior to filing deadlines to aid in future compliance.

12 4. The Parties agree to enter into this Stipulation to resolve all factual and legal
13 issues raised in this matter and to reach a final disposition without the necessity of holding an
14 administrative hearing to determine the liability of the Respondent. Respondent understands and
15 hereby knowingly and voluntarily waives any and all procedural rights under BERA and FCPC
16 procedures in regards to this matter.

17 5. The FCPC agrees that if Respondent executes this Stipulation, it will forego any
18 further enforcement action against Respondent, and if approved by the FCPC, this stipulation
19 will resolve all factual and legal issues raised in this matter and will be the final disposition of
20 this matter for purposes of BERA sections 2.12.450, 2.12.455, and 2.12.550. Nothing in this
21 section shall be read to preclude the Commission's consideration of any complaint or other
22 action for any false statements stemming from any of Respondent's representations in this
23 Stipulation.

24 6. The Parties agree that in the event the FCPC refuses to accept this Stipulation, it
25 shall become null and void. Respondent stipulates and agrees that in the event a full evidentiary
26 hearing before the Commission becomes necessary, no member of the Commission or FCPC
27 staff shall be disqualified because of their consideration of this Stipulation and Order.

ORDER

1 The foregoing Stipulation of the Parties In the Matter of Greg Magofna for Berkeley City
2 Council 2018 is hereby accepted as the final decision and order of the Fair Campaign Practices
3 Commission effective upon execution below by the Chairperson. Further, it is hereby ordered
4 that this Stipulation, Decision and Order be appended to Greg Magofna for Berkeley City
5 Council 2018's campaign statements on file with the Office of the City Clerk, City of Berkeley.
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8 IT IS SO ORDERED.

9 Dated: _____, 2019

10 DEAN METZGER, Chairperson
11 Fair Campaign Practices Commission
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Fair Campaign Practices Commission

PUBLIC HEARING

[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission;
Emma Soichet, Secretary, Fair Campaign Practices Commission

Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts (See [Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission](#)).

SUMMARY

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

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC) at its regular meeting of June 20, 2019.

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

Vote:

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

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

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BACKGROUND

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

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

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

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

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

Definition of an Officeholder Account

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

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

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

Contributions to Officeholder Accounts

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

Expenditures from Officeholder Accounts

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

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. For example, the Consent Calendar of City Council Meeting Agendas will often contain one or more items from one or more Councilmembers making a donation to nonprofit organizations “from the discretionary council office budget” of the Councilmember. This is an account funded from the General Fund, which incidentally was increased from \$50,938 in FY 2017 to \$113,526 in FY 2018 ([City of Berkeley Fiscal Years 2018 & 2019 Adopted Biennial Budget](#), Services and Materials, p. 200) (Attachment 5). The Council office budget from which donations are being made is not the same as the Officeholder Account fund under discussion here, but serves as an example of the kind of expenditures that can be made from Officeholder Account funds that are not technically a “campaign expense,” but certainly would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds linked to the Councilmembers sponsoring the donation. A person running against this incumbent would have to draw on their own resources to match the contributions given in the name of an elected official.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder’s position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the

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incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

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

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

Recommendation

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

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

Part 8 - OFFICEHOLDER ACCOUNTS

12.06.810 - Officeholder account prohibited.

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

The following additions to BERA are proposed:

2.12.157 Officeholder Account

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

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

2.12.441 Officeholder account prohibited

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

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

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

ALTERNATIVE ACTIONS CONSIDERED

Amending BERA to mitigate possible advantages incumbents with an Officeholder Account have over challengers.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission’s Report. [OR] Refer to the budget process.

Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, “See companion report.”

CONTACT PERSON

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

Amendments to the Berkeley Election Reform Act
to prohibit Officeholder Accounts

PUBLIC HEARING

Emma Soichet, Commission Secretary, Fair Campaign Practices Commission, 981-6998

Attachments:

- 1: Proposed Ordinance
- 2: Government Code section 85316
- 3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations
- 4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)
- 5: *City of Berkeley Fiscal Years 2018 & 2019 Adopted Biennial Budget, Services and Materials*, p. 200

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

OFFICERHOLDER ACCOUNT PROHIBITED

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

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

BMC 2.12.157 Officeholder account

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

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

BMC 2.12.441 Officeholder account prohibited

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

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

AGENDA ITEM 7 - Attachment 2

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Amend 2 Cal. Code Regs., Section 18531.62 to read:

2 **§ 18531.62. Elected State Officeholder Bank Accounts.**

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

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

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

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

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

11 (b) Establishing the Officeholder Account: For purposes of ~~Government Code~~ Section
12 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate
13 from any other bank account held by the officeholder.

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

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

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

23 (3) Filing Requirements: The controlled committee shall file campaign statements and

1 reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the
2 Government Code at the same times and in the same places as it otherwise would be required to
3 do for any other controlled committee formed by the officeholder for election to state office.

4 (4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject
5 to recordkeeping requirements under ~~Government Code~~ Section 84104. The officeholder account
6 and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of
7 the Government Code. Any audit of the officeholder, or any of his or her controlled committees,
8 under ~~Government Code~~ Section 90001 shall include all officeholder accounts and officeholder
9 controlled committees maintained by the officeholder during the audit period as described in
10 ~~Government Code Section 90002(c)~~ Regulation 18996(a)(1).

11 (d) Prohibitions:

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

15 (2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined
16 in ~~2-Cal. Code of Regulations Section~~ 18525(a).

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

19 (e) Contributions to the Officeholder Account:

20 (1)(A) Required Notices: In addition to the requirements of ~~2-Cal. Code of Regulations~~
21 ~~Section~~ 18523.1, a written solicitation for contributions to the officeholder account shall include
22 the following: "For purposes of the Political Reform Act's contribution limits, a contribution to
23 an officeholder account is also considered to be a contribution to all campaign committees for

1 future elective state office the officeholder seeks during his or her current term of office."

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

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

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

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

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

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

23 (A) Contributions from a single contributor that, when cumulated for all the accounts,

1 exceed the maximum amount the contributor could give to the officeholder account having the
2 highest per person contribution limit under ~~Government Code~~ Section 85316(b)(1).

3 (B) Contributions from all contributors that, when cumulated for all the accounts, exceed
4 the maximum amount in total contributions the officeholder could receive in the officeholder
5 account having the highest aggregate contribution limit under ~~Government Code~~ Section
6 85316(b)(2).

7 (f) Contributions Over the Limits:

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

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

18 (g) Terminating Officeholder Accounts and Committees.

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

21 (2) The officeholder may redesignate the officeholder account as an officeholder
22 controlled committee for a future term of the same office by amending the statement of
23 organization for the committee to reflect the redesignation for the future term of office prior to

1 the date the officer's term of office ends.

2 (3) An officeholder may redesignate officeholder funds in the redesignated officeholder
3 account as officeholder funds for the new term of office, subject to the limitations in subdivision
4 (e)(4).

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

7 (A) Paying outstanding officeholder expenses.

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

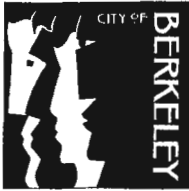
9 (C) Making a donation to a bona fide charitable, educational, civic, religious, or similar
10 tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material
11 financial effect on the officeholder, a member of his or her immediate family, or his or her
12 committee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

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

15 (5) The officeholder shall terminate the officeholder controlled committee within 90 days
16 of the date the officer's term of office ends or he or she leaves that office, whichever is earlier.

17 The Executive Director may for good cause extend the termination date or permit the candidate
18 to reopen the account.

19 Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and
20 90000-90007, Government Code.



Office of the
City Attorney

DATE: December 28, 1999

TO: BARBARA GILBERT,
Aide to Mayor Shirley Dean

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

SUBJECT: APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICEHOLDER ACCOUNTS

ISSUE:

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

CONCLUSION:

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

ANALYSIS:

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

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

Barbara Gilbert

Re: Application of Berkeley Election Reform Act To Officeholder Accounts

December 28, 1999

Page 2

apply to true officeholder accounts.

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

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

Attachment

cc: Fair Campaign Practices Commission
Sherry Kelly, City Clerk

City Attorney Opinion Index: II.E.1. and III.G.

CC:bl

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

CITY OF BERKELEY AGENDA ITEM 7 - Attachment 4

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynoso,  Secretary & Staff Counsel

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

BACKGROUND AND ISSUE

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

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

CONCLUSION

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

ANALYSIS

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

The BERA defines contribution, in part, as follows:

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

FCPC COMMISSIONERS
December 9, 1991
Page 2

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

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

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

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

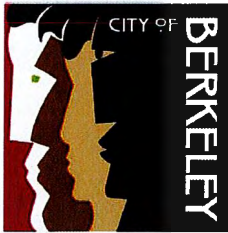
Attachment

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

MAYOR AND CITY COUNCIL FINANCIAL SUMMARY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Actual	FY 2018 Adopted	FY 2019 Adopted
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,624,043	1,833,734	1,880,031
Services and Materials	36,942	43,407	50,938	113,526	113,526
Capital Outlay	1,953	7,674	4,936		
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,761,098</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Division:					
Mayor's Office	515,095	558,137	511,184	554,389	566,917
Council Offices	1,273,561	1,334,744	1,249,914	1,474,052	1,507,821
Exiting Officials					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,761,098</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Fund:					
General Fund	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,761,098</u>	<u>2,028,441</u>	<u>2,074,738</u>
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,761,098</u>	<u>2,028,441</u>	<u>2,074,738</u>

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



Fair Campaign Practices Commission

DATE: June 12, 2019

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: EMMA SOICHET, Commission Secretary

SUBJECT: Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by the Commission on March 21, 2019

At its March 21, 2019 meeting, the Commission discussed three proposals put forth by the Ad Hoc Subcommittee on Independent Expenditures. (**Attachment 1**.) The Commission requested that the secretary “provide recommended implementation of proposals one and two” and to recommend guidance “regarding implementing the spirit of proposal three.” (**Attachment 2**.) This report responds to the Commission’s request.

Proposal 1: “Expand filing requirements for complaints of alleged violations by independent expenditure committees”

The first proposal, for which the Commission asked the secretary to provide “recommended implementation,” deals with the Commission’s complaint intake form titled the Complaint of Noncompliance form. (**Attachment 3** [current form].) Under the proposal, a revised complaint form would seek the following additional categories of information as relate to independent committees¹ only:

- a. Individuals and points of contact that complainant believes have violated BERA and any additional laws relevant to campaign finance.
- b. The relevant law or authority that complainant believes has been violated
- c. Explicit evidence of alleged violation (we hope to make this inclusion of evidence a requirement).

(Attachment 1, p. 1.)

¹ This report uses the term “independent committee” as defined by Berkeley Municipal Code (“BMC”) section 2.12.140. This includes any committee “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 of solicitation of contributions or the making of expenditures.” (BMC § 2.12.140.)

FCPC - June 20, 2019 Meeting

Re: Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by FCPC on 3/21/2019
Page 2

The secretary offers the following comments in response to the proposal:

As relates to the additional information sought in (a) and (b), this information may be beyond the scope of the Commission's jurisdiction and could confuse members of the public. The proposal asks for the names of all individuals who "have violated BERA *and any additional laws relevant to campaign finance*" and for the complaint to list all of the campaign laws violated. The Commission has jurisdiction to enforce BERA only and not other campaign finance laws. While violations of other laws may be related to a BERA violation, asking for this information in the complaint form may cause more confusion than clarity. (A complainant may assume that the Commission will investigate the alleged violations of state or federal law.)

There are also a number of issues with (c)'s recommendation that the form require complainants to submit "explicit evidence of [the] alleged violation" for complaints against independent committees.²

First and foremost, this type of change simply makes it harder to file a complaint and thus undermines enforcement of BERA. There is no current requirement that a complaint contain any "evidence" beyond the complainant's sworn statement. (See [Procedures for the Fair Campaign Practices Commission, Section V.A.](#)) Requiring "explicit evidence" for a complaint to be filed shifts the initial investigation of BERA violations from the secretary to members of the public, who are not necessarily in a position to collect evidence. This is particularly true given the nature of some claims against independent committees. For instance, the complaint that led to the subcommittee's formation alleged that expenditures made by an independent committee were actually "contributions" to a candidate committee. (See [Packet](#) and [Minutes](#) of Feb. 15, 2018 meeting.) For those allegation to have been true, there must have been coordination between the candidate and the individual making the independent expenditure. (See, e.g., BMC §§ 2.12.100, 2.12.140, 2.12.142.) But a member of the public will almost never have "explicit evidence" of coordination between an independent committee and a candidate, which is why the state Fair Political Practices Commission has actually lowered the evidentiary bar required to find a violation of coordination and created rebuttable presumptions of coordination under state law based on particular circumstances and not direct evidence. (See [Cal. Code Regs., tit. 2, § 18255.7.](#)) Requiring "explicit evidence" for BERA complaints *just to be filed* may make it impossible for members of the public to bring these some of these complaints.

² The subcommittee stated it intended this change "will elevate the burden of proof that complainants are required to possess and submit for complaints of alleged violations." (Attachment 1, p. 1.) "Complaints on issues regarding independent expenditure committees submitted to the Secretary will thus be more serious in character and content, and will provide increased information from the complainant with which the FCPC can draw upon in its review of a complaint of alleged violation." (*Id.*, pp 1-2.)

FCPC - June 20, 2019 Meeting

Re: Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by FCPC on 3/21/2019

Page 3

There are also several issues relating to the particulars of recommendation, as written:

- The Commission cannot heighten the requirements for filing a complaint simply by amending the complaint form. To make such a change, the Commission would need to amend its procedures, at minimum. (See [Procedures for the Fair Campaign Practices Commission, Section V.A.](#))
- The term “explicit evidence” could be interpreted in different ways and should be defined, either in the FCPC procedures or by regulation.
- Many BERA provisions apply to all committees, and there is no obvious reason to require “explicit evidence” of those violations based only on the nature of the committee. For instance, section 2.12.245.B prohibits any committee from receiving contributions without the consent of the committee treasurer. This proposal would arbitrarily apply a different standard at the complaint intake stage for violations of 2.12.245.B for independent committees.
- Relatedly, independent committees are not the only committees that may violate BERA provisions specific to independent expenditures, and imposing different requirements based on the type of the committee is similarly arbitrary. For instance, the complaint referenced above—alleging that expenditures made by an independent committee were actually “contributions” to a candidate committee—was initially filed against the candidate committee and not the independent expenditure committee. (See [Packet](#) of Feb. 15, 2018 meeting.) This type of violation requires conduct by both committees, who allegedly work in partnership. But the subcommittee’s proposal would impose a different standard for a complaint to proceed against each of the two committees, meaning that the complaint could proceed against the candidate committee in this situation even if the same complaint could not be brought against the independent committee for its role in the same violation. Treating the committees differently is problematic.

A revised Complaint of Noncompliance form that accounts for these concerns is included here as **Attachment 4**.

Proposal 2: “Provide greater guidance to the public in navigating the campaign finance violation process by presenting a compilation of all laws relevant to campaign finance restrictions on independent committees in the complaints of alleged violations form.”

The second proposal, for which the Commission asked the secretary to provide “recommended implementation,” would create “an addendum” to the revised complaint form that includes a “compilation of all laws relevant to campaign finance restrictions on independent committees.” (Attachment 1, p. 2.) The subcommittee also provided a copy of this proposed addendum, Appendix B. (*Id.*, pp. 5-7.)

FCPC - June 20, 2019 Meeting

Re: Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by FCPC on 3/21/2019

Page 4

This proposal also raises some concerns. As a general matter, the Commission's jurisdiction extends only to violations of BERA, and including an addendum of other laws that the Commission has not authority to enforce could cause confusion. In particular, the proposed appendix includes an FPPC regulation that may be used as *guidance* in interpreting BERA provisions dealing with independent expenditures, but is not binding on the Commission's interpretation of BERA.

In addition, it seems arbitrary for the general FCPC complaint form to contain an addendum setting forth the laws for a subset of possible violations, but not others.

The proposed appendix is also incomplete as to the BERA provisions potentially governing independent committees. It includes only two definition sections, but no substantive provisions of BERA that regulate committee actions or use the definitions. As discussed above, there are a number of BERA provisions that apply to all committees, including independent committees, as well as some provisions that apply to candidate committees but that indirectly regulate independent expenditures. (See, e.g., BMC §§ 2.12.100 [definition contribution], 2.12.415 [contribution limits], 2.12.500.A.7 [contribution restrictions for candidates participating in Fair Elections Act program].)

To the extent the Commission seeks to provide a copy of applicable laws with the FCPC complaint form, the secretary recommends either:

- (1) Compiling the full BERA chapter of the Berkeley Municipal Code into the PDF file of the complaint form available on the Commission's website, or
- (2) Including a hyperlink on the Commission's webpage immediately below the complaint form that would lead to the City Clerk's "Campaign Finance Laws and Information" webpage, which provides links to BERA, state law, and guidance materials (see **Attachment 5** [screenshot of current [FCPC webpage](#)]; **Attachment 6** [screenshot of [City Clerk "Campaign Finance Laws and Information" webpage](#)]).

Proposal 3: "Require that all independent committees complete an affidavit that clearly and explicitly asserts the committee's faithfulness to campaign finance laws applicable to the city of Berkeley, and adherence to independence from political candidates or campaigns."

The Commission also sought the secretary's advice "regarding implementing the spirit of proposal three," which would require all independent committees to submit a signed affidavit that would be posted online in "a database of affidavits." (Attachment 1, p. 2.) The subcommittee report stated that this form would "consolidate[] the obligations of an independent committee" and "provide more accessible and explicit information on the individual(s) responsible for ensuring the independence of independent committees." (*Ibid.*) The subcommittee report proposed specific language for this affidavit. (*Ibid.*)

FCPC - June 20, 2019 Meeting

Re: Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by FCPC on 3/21/2019

Page 5

The secretary offers the following comments in response to this proposal:

- As proposed by the subcommittee, the affidavit states that the committee “will be in absolutely and incontrovertibly be in [sic] no way tied to any political organization.” This requirement, albeit undefined, does not appear to come from BERA and is questionable in its current phrasing. The secretary recommends that any required affidavit adhere to the specific requirements found in BERA.
- Relatedly, should the Commission seek to require particular documents be filed by independent committees (presumably through Netfile and available to the public through the City’s main public portal for campaign filings), the Commission should issue a regulation to this effect. (See, e.g., [FCPC regulation R2.12.270](#) [“Independent Expenditures: Individuals and Organizations Required to File Campaign Disclosure Statements”].)
- To the extent the proposal’s goal is to have the proposed form “provide more accessible and explicit information on the individual(s) responsible for ensuring the independence of independent committees,” the secretary recommends the Commission review the forms that various committees are already required to submit. (See FPPC, Campaign Forms, <http://www.fppc.ca.gov/learn/campaign-rules/campaign-forms.html>; see also, FPPC, Campaign Disclosure Manuals [manuals 3, 4, 5 and 6], <http://www.fppc.ca.gov/learn/campaign-rules/campaign-disclosure-manuals.html>.) Based on the subcommittee’s proposed language, it is unclear to the secretary what new information would be generated by a supplemental form.
- The affidavit seems to erroneously include the language “or candidate for an elected office in the city of Berkeley” (line two) and “or political candidate” (line four), which would relate to candidate controlled committees and not independent committees.

Attachments:

1. Report by Ad Hoc Subcommittee on Independent Expenditures (included in packet of March 21, 2019 meeting)
2. Minutes of March 21, 2019 FCPC meeting
3. Current Complaint of Noncompliance form
4. Revised Complaint of Noncompliance form
5. Screenshot of FCPC webpage
6. Screenshot of City Clerk’s “Campaign Finance Laws and Information” webpage

FROM: Fair Campaign Practices Commission (FCPC) Ad Hoc Subcommittee on Independent Expenditures

SUBJECT: Report to the Fair Campaign Practices Commission (FCPC), October 2018

The FCPC Ad Hoc Subcommittee on Independent Expenditures, formed on February 15, 2018,¹ would like to submit three proposals for the review and judgment of the FCPC.

GOALS: Through the proposals attached, we seek to:

1. Facilitate a more structured, judicious, and efficient process for members of the public to file complaints of violations by independent committees to the FCPC.
2. Increase public awareness of obligations that an independent committee both needs to and seeks to abide by.
3. Centralize information for FCPC commissioners to more capably review and assess violations regarding independent committees.

PROPOSAL 1: Expand filing requirements for complaints of alleged violations by independent expenditure committees.²

We hope to include that complainants provide information on:

- a. Individuals and points of contact that complainant believes have violated BERA and any additional laws relevant to campaign finance.
- b. The relevant law or authority that complainant believes has been violated
- c. Explicit evidence of alleged violation (we hope to make this inclusion of evidence a requirement)

We would like to add the above requirements by either creating a new complaint form³ or by supplementing the existing complaint form with specific requirements for complaints of alleged violations by independent committees.⁴ The complainant requirements in the current Complaint of Noncompliance form is provided in Appendix A.

Benefit: We believe the current Complaint of Noncompliance may be too broad or imprecise for the public to use in addressing violations by independent committees. The proposed revision to BERA will elevate the burden of proof that complainants are required to possess and submit for complaints of alleged violations. Complaints on issues regarding independent expenditure committees submitted to the Secretary will thus be more serious in character and content, and

¹ Minutes of February 15, 2018 Fair Campaign Practices Commission Meeting: [https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission_on_Fair_Campaign_Practices/JM's%2002%2015%2018%20FCPC%20Minutes\(1\).pdf](https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission_on_Fair_Campaign_Practices/JM's%2002%2015%2018%20FCPC%20Minutes(1).pdf)

² "Independent committees" are also known as "independent expenditure committees". For purposes of brevity, our proposal will maintain the use of the more concise phrasing "independent committees".

³ Specifically for complaints of alleged violations by independent committees

⁴ *V. Complaints of Alleged Violations, Procedures for the Fair Campaign Practices Commission:* https://www.cityofberkeley.info/uploadedFiles/Attorney/Commissions/Commission_on_Fair_Campaign_Practices/Procedures%20for%20FCPC%20-%20Revised%20July%202014.pdf

will provide increased information from the complainant with which the FCPC can draw upon in its review of a complaint of alleged violation.

PROPOSAL 2: Provide greater guidance to the public in navigating the campaign finance violation process by presenting a compilation of all laws relevant to campaign finance restrictions on independent committees in the complaints of alleged violations form. The laws we would like to provide are attached in appendix B.

Benefit: We seek to untangle complex legal authorities for the public's convenience, and to provide greater support for public participation in holding independent committees and political candidates accountable. A consolidated collection of relevant laws will elucidate to the public the laws relevant to concerns regarding independent committees. We propose to provide the laws in an addendum to the complaint form discussed in Proposal 1.

PROPOSAL 3: Require that all independent committees complete an affidavit that clearly and explicitly asserts the committee's faithfulness to campaign finance laws applicable to the city of Berkeley, and adherence to independence from political candidates or campaigns.

We plan to require that all currently registered independent committees sign the affidavit, and to mandate the signing of the affidavit as a requirement for the formation of future independent committees. A rudimentary sample of a possible affidavit is provided below. We welcome all of your advice, thoughts, and edits to the language and content of the proposed affidavit:

The undersigned individual hereby states that the purpose, means, and ends of the following independent expenditure committee, or candidate for an elected office in the city of Berkeley will be in absolutely and incontrovertibly be in no way tied to any political organization. The independent expenditure committee or political candidate will abide by all sections of BERA 2.12.140 and S18225.7 of the Fair Political Practices Commission in the California Code of Regulations, and affirm that no contributions have been "made at the behest" of another "individual?" or "entity".

Rules and stipulations of laws relevant to Independent Expenditure Committees will also be provided in the affidavit.

Benefit 1: We hope to provide a database of affidavits by independent committees to be accessible online by the public and usable in complaints. A declaration that consolidates the obligations of an independent committee will allow the public, complainants, and any relevant parties to more conveniently understand the comprehensive range of laws and obligations that an independent committee seeks to abide by.

Benefit 2: The affidavit will provide more accessible and explicit information on the individual(s) responsible for ensuring the independence of independent committees for the FCPC and the city attorney's office.

OVERVIEW OF APPENDICES:

Appendix A: Current form provided for complainants to bring forth charges of BERA violations against independent expenditure committees: *Complaint of Noncompliance Berkeley Election Reform Act ('BERA')*⁵

Appendix B: List of relevant laws we plan to provide to the public in the complaint form for violations by independent committees (discussed in proposal 2)⁶

Appendix C: Reference material for the FCPC on legal limits to monetary campaign contributions.⁷

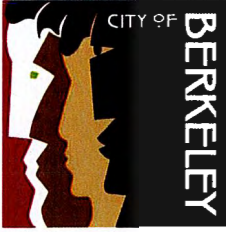
SUPPLEMENTARY POINTS OF CONCERN:

1. The subcommittee believed that the phrasing of BERA 2.12.140 "Independent committee" may be vulnerable to misinterpretation. BERA 2.12.140 states, "A committee may be controlled with respect to one or more candidates and independent with respect to other candidates."
 - a. *Should BERA 2.12.140 be revised or truncated in any way?*
2. Should an individual, company, or organization be allowed to contribute to a candidate for an elected office and then also contribute to an independent committee (PAC) that supports the same candidate?
 - a. *Does a contribution made to a candidate constitute support for that candidate in a way that renders a subsequent contribution to an independent committee/PAC illegal?*

⁵ This is the only form that the *FCPC Ad Hoc Subcommittee on Independent Expenditures* is aware of in addressing complaints related to independent committees.

⁶ This may not be a comprehensive list, and are simply the laws that the *FCPC Ad Hoc Subcommittee on Independent Expenditures* are aware of and believe to be relevant. We implore the FCPC to provide further feedback if possible.

⁷ Information the subcommittee believed was relevant to compile and provide for the FCPC's situational awareness: BERA and related state and federal laws on monetary contribution limits.



Fair Campaign Practices Commission

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

Full Name: _____
Date: _____
Address: _____
E-mail (optional but suggested): _____
Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA:

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

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

Date

*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*.

APPENDIX B of
Fair Campaign Practices Commission Ad Hoc Subcommittee on Independent Expenditures Report (October 2018)

Berkeley Election Reform Act:

2.12.140 Independent committee.

"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. (Ord. 4700-NS § 214, 1974)

2.12.142 Independent expenditure.

"Independent expenditure" means 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. (Ord. 6096-NS § 2 (part), 1991)

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

§ 18225.7. Made at the Behest; Independent versus Coordinated Expenditures.

(a) Application.

(1) The term "made at the behest" is used in four contexts in the Act: (i) for "contributions" and "expenditures" defined in Sections 82015 and 82025; (ii) for "independent expenditures" defined in Sections 82031 and 85500, to differentiate between expenditures that are made in coordination with a candidate or committee versus those that are made by a person independent of the candidate or committee; (iii) for "behested payments" reports filed by an elected officer or a Public Utilities Commissioner who solicits funds for charitable, legislative or governmental purposes as specified in Section 82015(b)(2)(B); and (iv) for communications identifying a state candidate as specified in Section 85310.

(2) The definition of "made at the behest" in subdivision (b) applies to all uses of that term in the Act. The provisions in subdivisions (c)-(g) apply for coordinated expenditures. Refer to Regulation 18215.3 for rules on reporting payments elected officers and Public Utilities Commissioners solicit for charitable, legislative or governmental purposes. (b) Made at the Behest. "Made at the behest" of a candidate or committee means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the candidate or committee. Throughout this regulation, the terms "candidate" and "committee" include their agents, when the agent is acting within the scope of his or her authority.

(c) Independent vs Coordinated Expenditures. For purposes of Sections 82031, 85500 and 85310, an expenditure is made at the behest of a candidate or committee, and is not considered independent, if the expenditure funds a communication that is made under any of the following circumstances:

(1) General Coordination. The expenditure is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert or coordination with, the candidate or committee on whose behalf, or for whose benefit the expenditure is made. To be considered coordinated, such prearrangement must occur prior to the making of a communication.

(2) Involvement in Communication. The expenditure funds a communication that is created, produced or disseminated either:

(A) After the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placing the communication; or

(B) After discussion between a creator, producer, or distributor of a communication, or the person paying for that communication, and the candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placing that communication.

(d) Expenditures Presumed to be Coordinated/Made at the Behest. For purposes of subdivision (c) of this regulation, there is a rebuttable presumption that an expenditure funding a communication is made at the behest of a candidate or committee and not independent of the candidate or committee on whose behalf, or for whose benefit, the expenditure is made, under any of the following circumstances:

(1) Campaign Needs. The expenditure is based on information about the candidate's or committee's campaign needs or plans that the candidate or committee provided to the expending person directly or indirectly, such as information concerning campaign messaging, planned expenditures or polling data.

(2) Agent. The expenditure is made by or through any agent of the candidate or committee in the course of the agent's involvement in the current campaign. For purposes of this regulation, the "current campaign" means (i) for a candidate, the period beginning 12 months prior to the date of the primary or special election in which the candidate is on the ballot for an elective office and ending on the date of the general or special runoff election for that office; or (ii) for a measure, 12 months prior to the date of the election in which the measure is on the ballot.

(3) Common Consultants. The person making the expenditure for a communication relating to a clearly identified candidate or ballot measure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the current campaign.

(4) Republication. The communication relating to a clearly identified candidate or ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication, including video footage, designed, produced, paid for or distributed by the candidate or committee.

(5) Fundraising. The committee making the expenditure is primarily formed to support the candidate or oppose their opponent and in the course of the current campaign, the candidate who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for the committee making the expenditure, thereby participating in the committee's fundraising strategy. 4

(6) Former Staff. The person making the expenditure is established, run, or staffed in a leadership role, by an individual who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff within the current campaign in which the expenditure is made.

(7) Candidate's Family. The person making the expenditure is established, run, staffed in a leadership role, or principally funded by an individual who is an immediate family member of the candidate.

(e) Expenditures Not Considered Coordinated/Made at the Behest. An expenditure is not considered to be coordinated or made at the behest of a candidate or committee based solely on any of the following circumstances:

(1) Interview. A person interviews a candidate on issues affecting the person making the expenditure.

(2) Photograph or Press Release. The person making the expenditure has obtained a photograph, biography, position paper or press release from the candidate or the candidate's agents.

(3) Prior Contribution. The person making the expenditure has made a contribution to the candidate or committee.

(4) General Request for Support. The person making the expenditure is responding to a general, non-specific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure.

(5) Meeting with Members or Employees. The person making the expenditures has invited the candidate or committee to make an appearance before the person's members, 5 employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure.

(6) Informed after the Fact. A person informs a candidate or committee that the person has made an expenditure, provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure.

(7) Expenditure Benefits Another Candidate or Committee. An expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.

(8) Hyperlink. The communication includes a hyperlink to the Internet website or other social media page of a candidate or measure committee.

(f) Certain Committee Communications. Notwithstanding any other provision of this regulation, if two or more committees exchange information between or among themselves, subsequent expenditures by each committee are not, merely by reason of that exchange, considered to be coordinated with or "made at the behest" of the other committee(s), where the committees are (i) all general purpose committees, (ii) all committees primarily formed to support or oppose the same candidate or candidates, or (iii) all committees primarily formed to support or oppose the same measure or measures.

(g) Coordinated Expenditures are Treated as Contributions. An expenditure that is made at the behest of or in coordination with a candidate or committee, is considered a contribution to the candidate or committee, unless it is otherwise exempted from the definition of "contribution" by any provision of the Act or its regulations. Note: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025, 82031, 85310 and 85500, Government Code

**APPENDIX C of
Fair Campaign Practices Commission Ad Hoc Subcommittee on Independent
Expenditures Report (October 2018)**

BERKELEY ELECTION REFORM ACT:

2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to **exceed two hundred fifty dollars**. For purposes of this section single election is a primary, general, special, runoff or recall election. (Ord. 5895 § 1, 1988: Ord. 4700-NS § 600, 1974)

FEDERAL GOVERNMENT:

1. "Political committees may support (or oppose) candidates by making independent expenditures. Independent expenditures are **not contributions and are not subject to contribution limits.**"

CALIFORNIA FPPC:

1. Candidates seeking a state office and committees that make contributions to state candidates are subject to contribution limits from a single source. (Sections 85301 - 85303.)
 - a. Contributions from affiliated entities are aggregated for purposes of the limits. (Regulation 18215.1.)

Contribution Limits to State Candidates Per Election

Candidate or Officeholder	Contributor Sources		
	Person (individual, business entity, committee/PAC)	Small Contributor Committee (see definition on page 2)	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

Contributions to Other State Committees Per Calendar Year

Committee	Contributor Sources
	Person (individual, business entity, committee/PAC)
Committee (Not Political Party) that Contributes to State Candidates (PAC)	\$7,300
Political Party Account for State Candidates	\$36,500
Small Contributor Committee	\$200
Committee Account NOT for State Candidates (Ballot Measure, PAC, Political Party)	No Limit*

*State committees (including political parties and PACs) may receive contributions in excess of the limits identified above as long as the contributions are NOT used for state candidate contributions. (Regulation 18534.)

Contributions to State Officeholder Committees Per Calendar Year

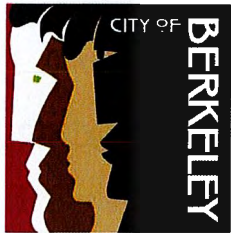
Committee	Contributor Sources	
	Any Source (Person, Small Contributor Committee or Political Party)	Aggregate From All Sources
Senate and Assembly	\$3,600	\$60,600
CalPERS/CalSTRS	\$3,600	\$60,600
Lt. Governor, Secretary of State, Attorney General, Treasurer, Controller, Supt. of Public Instruction, Insurance Commissioner, and Board of Equalization	\$6,000	\$121,100
Governor	\$24,200	\$242,300

OAKLAND CAMPAIGN REFORM ACT:

1. 3.12.050 - Limitations on contributions from persons.
 - A. No person shall make to any candidate and the controlled committee of such a candidate, and no candidate and the candidate's controlled committee shall receive from any such person, a contribution or contributions totaling **more than one hundred dollars (\$100.00)**, adjusted annually pursuant to Subsection F., for each election except as stated in Subsection B. of this Section. B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate and the controlled committee of such candidate, and no such candidate and the controlled committee of such candidate shall receive contributions totaling **more than five hundred dollars (\$500.00)**, adjusted annually pursuant to Subsection F., from any person for each election.

SAN JOSE CODE OF ORDINANCES:

1. Beginning January 1, 2011, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
 - Five hundred dollars for the primary election;
 - Five hundred dollars for the general election, if any;
 - Five hundred dollars for any special election;
 - Five hundred dollars for any special run-off election, if any.



Fair Campaign Practices Commission

MINUTES

Civic Center
2180 Milvia Street
Cypress Room (1st 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, Tsui; Noes: Smith; 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.

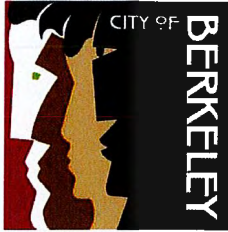
No action taken.

11. **Adjournment**

FCPC
March 21, 2019

(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.



Fair Campaign Practices Commission

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

Full Name: _____

Date: _____

Address: _____

E-mail (optional but suggested): _____

Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA:

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

Documents: Attach any documentation supporting the facts alleged.

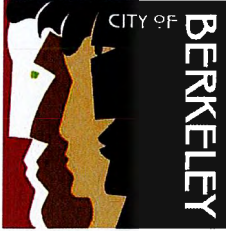
Statements that are not based upon personal knowledge should identify the source of information that gives rise to the complainant's belief in the truth of such statements.

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

Date

*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*.



Fair Campaign Practices Commission

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

Full Name: _____
Date: _____
Address: _____
E-mail (optional but suggested): _____
Phone (optional but suggested): _____

Party or parties alleged to have committed or are about to commit a violation of BERA
(for independent committees, list all individuals believed to have violated BERA):

Clear, concise and accurate statement of the facts that constitute the violation of BERA.
If possible, please identify the BERA section(s) violated. If additional space is needed,
you may attach additional pages: _____

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 _____ **Date** _____

*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*.

CITY CLERK

City Clerk



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Fair Campaign Practices Commission

Agendas and Minutes: [Current Year](#) | [Previous Years](#)

Mission:

Ensures that monies received or spent in municipal campaigns are fully disclosed in accordance with the Berkeley Elections Reform Act. Members serve the same term as the council member appointing them, may not be reappointed by the same councilmember, and shall serve until successor is appointed when term has expired. No limit to number of terms served. Members shall be registered to vote; and shall not hold or seek office, be an officer of a political organization, contribute in any way to Berkeley election campaign; and shall be impartial toward any person who is subject to a commission investigation.

Meetings:

2180 Milvia Street
1st Floor, Cypress Room
3rd Thursday, 7:00 p.m.

Please check the [community calendar](#) to verify.

Contact:

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.

The Secretary of the commission is responsible for relaying all communications from the public to the members of the commission. The Secretary's contact information is listed below.

Secretary:

Emma Soichet
Secretary

Mailing Address:

Fair Campaign Practices
Commission

Office of the City Attorney
 (510) 981-6998
 E-mail:
FCPC@CityofBerkeley.info

2180 Milvia Street, 4th Floor
 Berkeley, CA 94704

Enabling Legislation:

[BMC Chapter 2.12](#) (2014), Ordinance No. 4,700-N.S. (Initiative)

Additional Information:

[Complaint Form](#) (March 2017)
[FCPC Regulations](#) (Updated September 2017)
[Procedures for FCPC - Updated July 2014](#)
[ExParte Contact Disclosure Form](#) (March 2018)
[Notice of 2019 Commission Meeting Dates](#)
[Commission Vacancies](#)

Meeting Agendas & Minutes:

Agendas & Minutes are presented in PDF format. To view PDF files, download a free copy of [Adobe Acrobat Reader](#).

Agendas and Minutes: [Current Year](#) | [Previous Years](#)

2019 Agendas, Minutes and Packets:

Please refresh your browser for the most up-to-date information.

Note: Documents will open in a new browser window.

Agendas	Minutes	Packets
1-17-19 (Cancelled)		
2-21-19 (Cancelled)		
3-21-19	3-21-19	3-21-19 3-21-19 (Corrected) 3-21-19 (Supp Rprt)
4-18-19 (Revised)	4-18-19	4-18-19 (Revised)
5-16-19	5-16-19 (Draft)	5-16-19

Ad Hoc Subcommittee on Independent Expenditures
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[Back to Top](#)

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[City Clerk](#), 2180 Milvia Street, Berkeley, CA 94704

Questions or comments? Email: clerk@cityofberkeley.info Phone: (510) 981-6900

(510) 981-CITY/2489 or 311 from any landline in Berkeley

TTY: (510) 981-6903

CITY CLERK

City Clerk



Election Information: Campaign Information

Campaign statements must be filed pursuant to the state Political Reform Act and the Berkeley Election Reform Act. The filing requirements are determined by the amount of money raised and spent and the type of filer (candidates, ballot measure committees, petitions, independent expenditures, etc). Please review the information below to determine your filing obligations or obtain information on the filings for local candidates and committees.

The Berkeley Election Reform Act (BERA) was adopted by the voters of Berkeley in 1974. It contains requirements for local campaign committees that go beyond the requirements in state law. It also created the Fair Campaign Practices Commission to enforce its provisions.

Online Portal for Campaign Finance Reports: [Campaign Statements - Contributions and Expenditures](#)

Public Financing Program: [Information and Handbook](#)

Local Campaign Law and Forms (BERA)

[Berkeley Election Reform Act \(BMC Chapter 2.12\)](#)

[Fair Campaign Practices Commission \(FCPC\)](#)

[FCPC Regulations \(PDF 55 KB\)](#) - Amended September 2017 (Current)

[FCPC Campaign Filing Manual \(PDF 178 KB\)](#) - Amended March 2016

[Mass Mailings Index and Forms](#)

[FCPC Statement of Organization Form \(PDF 65 KB\)](#)

[State Campaign Law and Forms \(FPPC\)](#)

Workshops

The state Fair Political Practices Commission (FPPC) holds several workshops for candidates and treasurers throughout the year. All scheduled workshops are listed on the state [FPPC website](#).

In advance of each city election, City staff schedules workshops to review the Berkeley Election Reform Act (BERA) and how it differs from state law.

[Home](#) | [Web Policy](#) | [Text-Only Site Map](#) | [Contact Us](#)

[City Clerk](#), 2180 Milvia Street, Berkeley, CA 94704

Questions or comments? Email: clerk@cityofberkeley.info Phone: (510) 981-6900

(510) 981-CITY/2489 or 311 from any landline in Berkeley

TTY: (510) 981-6903