



Fair Campaign Practices Commission
Open Government Commission

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

MEETING AGENDA

March 18, 2021

7:00 p.m.

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

Please use the following link to join the meeting:

<https://us02web.zoom.us/j/86316897086>

Or Telephone: +1 (669) 900-6833

Meeting ID: 863 1689 7086

Secretary: Samuel Harvey, Deputy City Attorney

The Commission may act on any item on this agenda

1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Approval of minutes:
 - a. February 18, 2021 FCPC Special Meeting
 - b. February 18, 2021 FCPC-OGC Concurrent Regular Meeting

Fair Campaign Practices Commission (FCPC) Agenda

5. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
6. Mandated Cost of Living Adjustments for Public Financing Program; discussion and possible action

7. Developing policies allowing administrative closure of inactive campaign committees; discussion and possible action.
8. Providing guidance and clarification to candidate slates, potentially including amendments to BERA and FCPC Regulations; discussion and possible action.

Open Government Commission (OGC) Agenda

9. Reports.
 - a. Reports from Chair.
 - b. Reports from Staff.
10. Lobbying enforcement referrals and procedures; discussion and possible action.
11. Handling of public communications submitted to City legislative bodies as part of public record in land use proceedings; discussion and possible action.

Joint FCPC-OGC Agenda

12. Report and discussion re Council Agenda & Rules Committee action on officeholder accounts and councilmember budget ("D-13 Account") grants; discussion and action.
13. Adjournment.

Communications

- Email from Cordell Hindler

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

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



Fair Campaign Practices Commission

DRAFT MINUTES

February 18, 2021

SPECIAL MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION

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

Secretary: Samuel Harvey, Deputy City Attorney

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

Also Present: Samuel Harvey, Staff Secretary

1. Call to Order

Chair Called the meeting to order at 6:00 p.m.

2. Roll Call

Roll call taken.

3. Public Comment (items not on agenda)

No speakers

4. Complaint alleging violations of BERA by Rent Stabilization Board candidates Leah Simon-Weisberg, Mari Mendonca, Andy Kelley, Dominique Walker, and Xavier Johnson

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

Motion to find probable cause of a violation of the Berkeley Election Reform Act and dismiss matter (M/S/C: O'Donnell/Sheahan; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

4. Adjournment

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

The meeting adjourned at 6:27 p.m.



Fair Campaign Practices Commission
Open Government Commission

DRAFT MINUTES

February 18, 2021

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

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

Secretary: Samuel Harvey, Deputy City Attorney

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

Also Present: Samuel Harvey, Staff Secretary

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)**

One speaker.

4. **Approval of minutes:**

a. January 21, 2021 FCPC Special Meeting

- i. Public comment: No speakers.
- ii. Commission discussion and action.

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

b. January 21, 2021 FCPC-OGC Concurrent Regular Meeting

- i. Public comment: No speakers.
- ii. Commission discussion and action.

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

Fair Campaign Practices Commission (FCPC) Agenda

5. **FCPC Reports**

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

6. **Complaint alleging violations of the Berkeley Election Reform Act by Re-Elect Mayor Jesse Arreguin 2020**

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

Motion to dismiss (M/S/C: Sheahan/Metzger) Substitute motion to find probable cause of a violation of the Berkeley Election Reform Act and dismiss (M/S/C: O'Donnell/Ching; Ayes: O'Donnell, Ching, Tsang, Smith; Noes: Metzger, Sheahan, Blome; Abstain: none; Absent: none.)

7. **Enforcement referral from the City Clerk Department re Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502)**

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

Motion to direct Commission Secretary to return with analysis of how Commission could prohibit officers of non-responsive committees from further involvement in City committees (M/S/C: Metzger/Ching; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

8. **Complaint alleging violation of BERA by Compassionate Bay**

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

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

9. **Remitting public financing funds in the event of returned contributions**

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

Motion to adopt regulatory language recommended by City Clerk Department (M/S/C: Blome/Sheahan; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

Open Government Commission (OGC) Agenda

10. **OGC Reports**

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

11. **Lobbying enforcement referrals and procedures**

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

Joint FCPC-OGC Agenda

12. **Report and discussion re Council Agenda & Rules Committee action on officeholder accounts and councilmember budget grants**

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

13. **Election of 2021 Chair and Vice-Chair**

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

Motion to re-elect Brad Smith and Jedidiah Tsang to Chair and Vice-Chair (M/S/C: Metzger/O'Donnell; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

13. **Adjournment**

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

The meeting adjourned at 9:12 p.m.



City Clerk Department

March 5, 2021

To: Fair Campaign Practices Commission
 From: Mark Numainville, City Clerk
 Subject: Mandated Cost of Living Adjustments for Public Financing Program

Under the Fair Elections Act of 2016 (Public Financing), certain data points and dollar amounts are required to be adjusted by the Commission in January of each odd-numbered year (BMC 2.12.545).

The adjustment for the dollar amounts is Consumer Price Index for the San Francisco Area. The formula established by the State Fair Political Practices Commission for adjusting contribution limits for state candidates is the formula that was used for the adjusting the limits for Berkeley's Public Financing Program. The factors labeled "2016 Dollar Amounts" and "2016 Annual CPI" will remain constant when the formula is applied in all subsequent odd-numbered years because those reflect the original amounts in the ballot measure. The numerator will change to reflect the year in which the adjustment is calculated.

$$2016 \text{ Dollar Amounts} \times \frac{2020 \text{ Annual CPI}}{2016 \text{ Annual CPI}} = 2021 \text{ Dollar Amounts}$$

The CPI numbers used are the December 2016 number (269.5) and the December 2020 number (302.9). The December number is used because the State Department of Finance does not calculate the standard CPI-U in January.

The chart in Attachment 1 shows all of the amounts that are subject to the inflator, the original amount, the new amount (raw and rounded), and the code reference.

Since its inception in 2016, the Public Financing Program has had an initial contribution cap at \$50.00, with a matching contribution from the City of \$300.00, for a total of

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-6900 • TDD: (510) 981-6903 • Fax: (510) 981-6901
 E-Mail: clerk@cityofberkeley.info Website: <http://www.cityofberkeley.info/clerk>

\$350.00 from a single donor. This election cycle is the first time that there is an increase in the contribution limit, from \$50.00 to \$60.00 based on the CPI inflator. As the City matches the contribution on a 6-to-1 basis, a \$60.00 contribution will now increase to \$360.00. A public financing candidate is now eligible to receive \$420.00 from a single donor.

Upon approval by the Commission, all manuals and materials related to Public Financing will be updated to reflect the new dollar amounts.

Item Subject to Inflator	Starting Amount (Dec 2016)	Inflator	Adjusted Amount 2021	Rounding	Rounded Amount 2021	Timing of Adjustment	Amount Reference	Inflator Reference
Population	120,972	Census Update	121,353	Up to nearest whole number	121,353	Not stated	Art. III, Sec.6.2 (2)(a)	Art. III, Sec.6.2 (3)
Admin Costs (four year cycle)	\$250,000	302.9/260.3	290914.33	None	\$290,914.33	Not stated	Art. III, Sec.6.2 (1)(b)	Art. III, Sec.6.2 (3)
Per Resident Allocation	\$4.00	302.9/260.3	4.65	None	\$4.65	Not stated	Art. III, Sec.6.2 (1)(b)	Art. III, Sec.6.2 (3)
Cap in Fund Balance	\$2,000,000	302.9/260.3	2327314.64	None	\$2,327,314.64	Not stated	Art. III, Sec.6.2 (1)(b)	Art. III, Sec.6.2 (3)
Qualified Contribution	\$50.00	302.9/260.3	58.18	Nearest \$10	\$60.00	January of odd-year	2.12.167	2.12.545
Initial Qualified Contributions	\$10.00	302.9/260.3	11.64	Nearest \$10	\$10.00	January of odd-year	2.12.500.A.3.	2.12.545
Initial Qualified Contributions - Total	\$500.00	302.9/260.3	581.83	Nearest \$10	\$580.00	January of odd-year	2.12.500.A.3.	2.12.545
Aggregate Totals for Fund Payments - Mayor	\$120,000	302.9/260.3	139638.88	Nearest \$1,000	\$140,000.00	January of odd-year	2.12.505.B.	2.12.545
Aggregate Totals for Fund Payments - Council	\$40,000	302.9/260.3	46546.29	Nearest \$1,000	\$47,000.00	January of odd-year	2.12.505.B.	2.12.545
Capital Asset Cap	\$500.00	302.9/260.3	581.83	Nearest \$10	\$580.00	January of odd-year	2.12.530.B.2.c	2.12.545



Fair Campaign Practices Commission

Date: March 18, 2021
To: Fair Campaign Practices Commission
From: Samuel Harvey, Secretary
Subject: Administrative Closure of Inactive Campaign Committees

The City Clerk Department recently referred to the Commission multiple campaign committees which had been inactive and unresponsive to Clerk Department requests to resolve outstanding campaign reports. In one case, it was determined that the candidate had moved out of the City and was unaware of ongoing filing obligations which had resulted from the Secretary of State's rejection of the committee's closing Statement of Organization. In another case, one or more of the committee's officers continue to be active in City campaigns but have not consistently responded to Clerk Department requests to resolve outstanding filing obligations.

As part of its evaluation of these committees, the Commission requested that the Secretary review the possibility of creating a process by which the Commission could administratively close inactive, unresponsive campaign committees.

The Commission Secretary has reviewed the following "administrative closure" or "administrative termination" practices in other jurisdictions:

- The California Fair Political Practices Commission (FPPC) (Attachment 1)
- Federal Election Commission (Attachment 2)

The administrative closure regimes generally contain the following elements:

1. A set of factors or reasons one or more of which must exist to justify closure, including:
 - a. Failure to file campaign statements for a certain period of time (e.g., 12 months, 48 months)
 - b. Failure to respond to one or more efforts by staff to contact the committee about outstanding reports or filing fees
 - c. Maximum thresholds for cash balances (e.g., no more than \$3,000 cash balance).
 - d. Minimal economic activity (e.g., no more than \$5,000 in financial activity).
 - e. Committee has only made filings recently to disclose outstanding debts
 - f. Committee filed a Statement of Organization in error

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- g. Person responsible for the committee is deceased or incapacitated
2. A set of procedures for closure:
 - a. Written notice of proposed termination
 - b. Opportunity for committee to object to termination
 - c. Process for Commission to evaluate staff request to close
 - d. Opportunity for reinstatement of a closed committee

The Commission has broad authority under the Berkeley Election Reform Act (BERA) to “adopt, amend and rescind rules and regulations to carry out the purposes of [BERA], and to govern the procedures of the commission.” (BMC § 2.12.210.) The Commission Secretary therefore concludes it would be permissible for the Commission to promulgate regulations to create an administrative “closure” or “termination” process if the Commission chooses to do so.

Staff recommends the Commission discuss whether to promulgate such regulations and if so to discuss the provisions that should be contained in such regulations. Staff can then return at a future meeting with draft regulations for Commission consideration.

Attachments:

1. California Fair Political Practices Commission Regulations – 2 CCR § 18404.2 – Administrative Termination.
2. Federal Election Commission Regulations – 11 CFR § 102.4 – Administrative Termination.

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

§ 18404.2. Administrative Termination.

(a) Bases for Administrative Termination. The Chief of the Enforcement Division may terminate a recipient committee for any of the following reasons:

(1) The committee failed to file a campaign statement in the previous 12 months, and the committee had an ending cash balance of \$3,000 or less on its last campaign statement;

(2) The committee failed to file a campaign statement in the previous 12 months, the committee had an ending cash balance of \$5,000 or less on its last campaign statement, and the committee owes \$2,000 or more to the controlling candidate;

(3) The committee filed a Statement of Organization in error;

(4) The committee failed to file a campaign statement in the previous 48 months; or

(5) The committee failed to respond to the Enforcement Division's reasonable efforts to contact the committee regarding the committee's failure to file campaign statements or pay annual fees. "Reasonable efforts to contact the committee" means sending a written notice by certified mail to the committee treasurer at the treasurer's address listed on the committee's statement of organization, and attempting to contact an individual identified as a controlling candidate, principal officer, treasurer, or assistant treasurer on the committee's most recent campaign statement or statement of organization at the telephone number or email address listed on the statement.

(6) The Chief of the Enforcement Division obtains evidence to show the person responsible for the committee is deceased or incapacitated.

(b) 45 Day Notice of Termination. The Enforcement Division must provide a committee with written notice of a proposed termination 45 days prior to terminating the committee.

(c) Objection to Termination. The Enforcement Division will not terminate a committee if the committee files a written objection to a proposed termination. If no written objection is received within 45 days, the committee automatically terminates without further notice.

(d) Reinstatement. The Executive Director must reinstate a terminated committee if the committee files a written request for reinstatement with the Commission, files any delinquent statements required by the Enforcement Division, and pays any outstanding fees or fines.

(e) Prohibited Activity after Termination. A committee may not receive contributions or make expenditures exceeding the ending cash balance on the committee's last campaign statement after the Enforcement Division terminates the committee, except to pay outstanding filing fees or fines.

(f) Notice to Filing Officers. The Commission will provide notice of a termination or reinstatement of a committee within 90 days to the filing officers with whom the committee was required to file its last campaign statement.

Note: Authority cited: Sections 83112 and 84212, Government Code. Reference: Sections 82013 and 84212, Government Code.

HISTORY

1. New section filed 1-5-2012; operative 2-4-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not

subject to procedural or substantive review by OAL) (Register 2012, No. 1). For prior history of section 18404.2, see Register 2002, No. 7.

2. Repealer and new section filed 7-15-2015; operative 8-14-2015. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2015, No. 29).

3. Amendment of subsections (a)-(a)(2), new subsections (a)(3) and (a)(6), subsection renumbering and amendment of newly designated subsections (a)(4)-(5) filed 11-16-2020; operative 1-1-2021 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2020, No. 47).

Code of Federal Regulations
Title 11. Federal Elections
Chapter I. Federal Election Commission
Subchapter A. General
Part 102. Registration, Organization, and Recordkeeping by Political Committees (52 U.S.C. 30103)
(Refs & Annos)

11 C.F.R. § 102.4

§ 102.4 Administrative termination (52 U.S.C. 30103(d)(2)).

Effective: December 29, 2014
Currentness

(a) The Commission, on its own initiative or upon the request of the political committee itself, may administratively terminate a political committee's reporting obligation on the basis of the following factors:

- (1) The committee's aggregate reported financial activity in one year is less than \$5000;
- (2) The committee's reports disclose no receipt of contributions for the previous year;
- (3) The committee's last report disclosed minimal expenditures;
- (4) The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations;
- (5) The committee has failed to file reports for the previous year;
- (6) The committee's last report disclosed that the committee's outstanding debts and obligations do not appear to present a possible violation of the prohibitions and limitations of 11 CFR parts 110 and 114;
- (7) The committee's last report disclosed that the Committee does not have substantial outstanding accounts receivable;
- (8) The committee's outstanding debts and obligations exceed the total of the committee's reported cash on hand balance.

(b) The Commission shall send a notification to the committee treasurer of its intent to administratively terminate that committee and may request the treasurer to submit information with regard to the factors set forth at 11 CFR 102.4(a). The treasurer shall respond, in writing, within 30 days of receipt of the Commission's notice or request and if the committee objects to such termination, the committee's response shall so state.

(c) The Commission shall administratively terminate a committee if such committee fails to object to the Commission's action under 11 CFR 102.4(b) and the Commission determines that either:

- (1) The committee has complied with the debt settlement procedures set forth at 11 CFR part 116.
- (2) The Commission has approved the forgiveness of any loan(s) owed the committee which would have otherwise been considered a contribution under the Act in violation of 11 CFR part 110;
- (3) It does not appear from evidence available that a contribution in violation of 11 CFR parts 110 and 114 will result.

Credits

[60 FR 64273, Dec. 14, 1995; 61 FR 10269, March 13, 1996; 79 FR 77846, Dec. 29, 2014]

SOURCE: 45 FR 15104, March 7, 1980; 65 FR 38422, June 21, 2000; 75 FR 31, Jan. 4, 2010; 79 FR 77845, Dec. 29, 2014, unless otherwise noted.

AUTHORITY: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

Current through March 4, 2021; 86 FR 12549.

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Fair Campaign Practices Commission

Date: March 18, 2021
 To: Fair Campaign Practices Commission
 From: Samuel Harvey, Secretary
 Subject: Candidate Slates

During the most recent election cycle, the Commission considered two complaints against slates of Rent Board candidates for potential violations of the Berkeley Election Reform Act (“BERA”). While the Commission has resolved those complaints, a number of questions were raised by respondents about how BERA treats candidate slates. Additionally, at least one respondent requested increased guidance from the Commission and staff for candidate slates in the future. The purpose of this report is to provide an overview of the current practice by some candidates of splitting expenditure costs through candidate “slates” and to solicit thoughts and guidance from the Commission.

The term “slate” in this context refers to multiple candidates – generally each running for office in the same elected body (e.g., Rent Board) – who split costs by, for example, maintain a single website and circulating joint advertisements.¹ BERA does not address these types of “slates” and does not contemplate candidates cooperating in this manner. However, BERA also does not expressly prohibit this practice. Staff has reviewed BERA and general campaign law concepts with an eye toward topics relevant to candidates’ “slate” practices.

1. Berkeley candidates must split costs proportionally to avoid making in-kind contributions.

BERA does not address splitting of campaign costs by multiple candidates. However, BERA limits contributions to a candidate to \$250 from a single source. (BMC § 2.12.415.) Additionally, BERA prohibits contributions to candidates from non-individual entities. (BMC § 2.12.440.)

Where a person makes an expenditure that benefits a candidate, that expenditure can become an in-kind contribution to the candidate. However, as the California Fair Political Practices Commission (“FPPC”) has advised, where candidates engage in a joint expenditure, “if the cost is equally divided among the candidates and each candidate will receive the same amount of benefit . . . the candidates are not deemed to

¹ This is distinct from a “slate mailer organization,” which circulates mailers voicing support for multiple candidates and measures and is covered by BERA section 2.12.272.

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be making contributions to each other.” (Attachment 1, FPPC Advice Letter to Robert F. Wieser, No. I-92-560.)

However, the splitting of costs must be proportional to the benefit received by each candidate. For example, where two candidates spend a total of \$1,000 on an advertisement featuring both candidates, they must split the costs evenly, otherwise the candidate making the larger payment will have made an in-kind contribution to the other candidate in the amount in excess of 50%.

Similarly, if the advertisement provides a greater benefit to one candidate over others (e.g., a two-sided mailer with one candidate entirely taking up one side and two other candidates splitting the other side), the costs must be split proportionally. In this example, the candidate featured alone on one side of the mailer would pay 50% and the two candidates splitting the opposite side would pay 25% each.

2. Expenditure payments raise practical questions.

Although a slate of candidates may proportionally split the costs of an expenditure, in practice, vendors generally require payment from a single source. As a result, one candidate committee will often make the full payment to the vendor and then receive proportional reimbursement from the other candidates.

Candidates have asked about the proper method for reporting these expenditures. Staff believe the proper approach is for the candidate making the initial payment to report payment of the entire amount as a payment on Schedule E of Form 460. The candidate would report the reimbursements received from the other candidates as “Miscellaneous Increases to Cash” on Schedule I, with a description: “Reimbursement for [mailer printing, website etc.]”

The reimbursing candidates would report the reimbursement payment to the other candidate as a payment (Form 460, Schedule E) and then report proportional payment to the vendor as a “Payment made by an Agent” (Form 460, Schedule G). (See Form 460 Schedules E, G and I, Attachment 2.)

Committees will need to maintain records reflecting these transactions. This includes copies of checks and paystubs and other documentation clarifying the purpose of payments given to or received from other candidates. It is no clear to staff that candidate slates have been properly reporting these transactions or maintaining sufficient records.

3. The practice of candidate “slates” is partly driven by the City’s public financing laws.

The practice of candidate slates has been most common among Rent Board candidates. Based on discussions with candidates, one of the driving forces behind this practice is the fact that Rent Board candidates cannot participate in the City’s public financing program. Candidates have indicated that splitting expenditure costs has been

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seen as the best way to overcome what some candidates have indicated is a fundraising challenge.

At this time, staff do not believe that changes to BERA or FCPC Regulations are needed to enable candidates to create “slates” for the purpose of splitting expenditures. However, candidates have expressed a desire for City staff to provide more guidance on the best practices for splitting expenditure costs. Staff believe that incorporating brief descriptions of proper expenditure reporting and recordkeeping practices into future training materials would be fairly easy.

Attachments:

1. FPPC Advice Letter to Robert F. Wieser, No. I-92-560
2. Form 460 excerpts

CA FPPC Adv. I-92-560 (Cal.Fair.Pol.Prac.Com.), 1992 WL 795153

California Fair Political Practices Commission

ROBERT F. WIESER

FPPC File No. I-92-560

September 3, 1992

*1 Cand wishes to distribute literature for another cand, share the cost of renting a booth at a fair, and ask supporters to contribute to another cand.

82015, 84211, 84302

Robert F. Wieser
573 Woodland Dr.
Los Osos, CA 93402

Re: Your Request for Informal Assistance

Dear Mr. Wieser:

You have requested advice concerning the campaign disclosure provisions of the Political Reform Act (the "Act").¹ Because your request is a general inquiry, we treat it as a request for informal assistance pursuant to Regulation 18329(c).²

QUESTIONS

1. May a candidate distribute campaign literature for another candidate and would this activity be reportable?
2. May three candidates share the expense of renting a booth at a street fair farmers market and would such payments be reportable?
3. May a candidate who does not wish to accept contributions suggest that supporters make their contributions payable to another candidate and would this activity be reportable?

CONCLUSIONS

1. The Act does not prohibit a candidate from manually distributing campaign literature for another candidate and neither candidate would be required to disclose the activity. However, if a candidate makes a payment for distribution of another candidate's campaign literature, the payment would be a reportable contribution.³
2. The Act does not prohibit candidates from sharing the cost of renting a booth at a street fair farmers market. The payments are reportable expenditures. However, if the cost is equally divided among the candidates and each candidate will receive the same amount of benefit from rental of the booth, the candidates are not deemed to be making contributions to each other for the remaining cost of the booth.
3. The Act does not prohibit a candidate from suggesting or requesting that supporters make contributions to other candidates. As long as the candidate making the request or suggestion does not act as an intermediary for the contributions, he or she is not required to disclose the activity.

ANALYSIS

The Act requires candidates for state and local elective offices to open a campaign bank account into which all contributions, including the candidate's personal funds to be used in connection with his or her campaign, must be deposited and from which all campaign expenditures must be made. (Section 85201.) In addition, candidates are required to file periodic reports disclosing contributions received and expenditures made. (Section 84100, et seq.)⁴

The term "contribution" is defined in the Act and Commission regulations as any payment received by--or made at the behest of--a candidate unless the candidate provides equal or greater consideration for the payment or the payment was for personal purposes unrelated to his or her candidacy or status as an officeholder. (Section 82015; Regulation 18215.) The Act specifically excludes from the definition of "contribution" volunteer personal services. A candidate who manually distributes another candidate's campaign literature is providing volunteer personal services and, therefore, such activities need not be reported.

*2 The term "expenditure" is defined in the Act and Commission regulations as any payment made by a candidate unless the payment was for personal purposes unrelated to his or her candidacy or status as an officeholder. (Section 82025; Regulation 18225.) A candidate who makes a payment to distribute another candidate's campaign literature is making a reportable expenditure in the form of a contribution to the other candidate.

A payment made by a candidate to rent a booth at a street fair farmers market for campaign purposes is also a reportable expenditure. However, if three candidates pay \$5 each toward the cost of renting the booth and each one receives the same amount of benefit from the rental of the booth, the candidates are not deemed to be making contributions to each other.

Section 84302 requires a person who acts as an intermediary for another person's contribution to provide the recipient of the contribution with the name, address, occupation and name of employer, if any, of the true source of the funds as well as his or her own name, address, occupation and name of employer. A person is an intermediary if the recipient of the contribution would consider the person to be the contributor if the identity of the true source of the funds were not disclosed. (Regulation 18432.5.)

If you act as an intermediary for contributions to other candidates, you must disclose the activity on your campaign statements. If you merely suggest to supporters that they make contributions directly to other candidates, or if they give you contribution checks which are made payable and which you merely deliver to other candidates, you are not acting as an intermediary and are not required to disclose the activity.

For disclosure purposes, the Act requires candidates to disclose all contributions received and expenditures made. Contributions totaling \$100 or more from a single source and expenditures of \$100 or more must be itemized on the campaign disclosure statements. (Section 84211.) In addition, candidates must keep detailed records of each contribution received and each expenditure made of \$25 or more. (Regulation 18401.)

For detailed information concerning the Act's campaign disclosure requirements, you should obtain the "Information Manual on Campaign Disclosure Provisions of the Political Reform Act" for candidates and their controlled committees (Manual A) from the county elections department.

I trust this information answers your questions. Please contact me at (916) 322-5662 if you have additional questions.⁵
Sincerely,

Carla Wardlow
Chief
Technical Assistance and Analysis Division

Footnotes

- 1 Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.
- 2 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)
- 3 Candidates subjects to valid contribution limitation ordinances are prohibited from transferring funds or otherwise making contributions to other candidates (Section 85304.) You have not indicated whether candidates in your jurisdiction are subject to contribution limitations. Therefore, the conclusions provided in this letter are based on the assumption that no contribution limitations exist in connection with your election.
- 4 Candidates who will not receive contributions from others and who will spend personal funds totaling less than \$1,000 during a calendar year for campaign purposes are not required to open a campaign bank account. (Section 85201(g).) In addition, candidates who will receive contributions totaling less than \$1,000 and who will make expenditures totaling less than \$1,000 during a calendar year may file a single short form campaign statement (Form 470) for that year. Candidates eligible to file Form 470 are not required to disclose contributions received and expenditures made. (Regulation 18406.)
- 5 Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.

CA FPPC Adv. I-92-560 (Cal.Fair.Pol.Prac.Com.), 1992 WL 795153

End of Document

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**Schedule E
Payments Made**

Amounts may be rounded
to whole dollars.

Statement covers period from _____ through _____	CALIFORNIA FORM 460
Page _____ of _____	I.D. NUMBER

SEE INSTRUCTIONS ON REVERSE
NAME OF FILER

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

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

NAME AND ADDRESS OF PAYEE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID

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

SUBTOTAL \$

Schedule E Summary

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

Instructions for Schedule E Payments Made

Report payments on Schedule E (other than loans).

For each payment of \$100 or more made during the period, report the name and street address, city, state, and zip code of the payee or creditor, and the amount paid during the period. Payments of less than \$100 during the period are reported as a lump sum on Line 2 of the Schedule E Summary. However, if two or more payments under \$100 were made for a single product or service and the total paid during the period was \$100 or more, itemize the total amount paid during the period.

Report payments made on accrued expenses. Also report the required information on Schedule F.

Code or Description of Payment:

If one of the codes listed on Schedule E fully describes the payment, enter the code. A full description of each code is provided on the back of the Schedule E-Continuation Sheet. If none of the codes fully explains the payment, leave the "Code" column blank and enter a brief description of the goods or services purchased in the "Description of Payment" column.

Credit Card Payments:

Disclose the name, address, and amount paid to the credit card company during the period. Also disclose the name, address, amount paid, and code or description of payment for each vendor paid \$100 or more. You may disclose the vendor payments on Schedule E or Schedule G.

Payments by Agents and Independent Contractors:

When an agent or independent contractor (e.g., campaign worker, advertising agency, campaign management firm) makes payments on your behalf ("subvendor payments"), disclose the name, address, amount paid, and code or description of payment for each vendor paid \$500 or more. Disclose payments to the agent or independent contractor on Schedule E. You may disclose the subvendor payments on Schedule E or Schedule G.

Loans:

Report interest paid on loans received on Line 3 of the Schedule E Summary (from Schedule B, Part 1, Column (e)).

Report payments made on loans received on Schedule B and loans made to others on Schedule H. Do not report on Schedule E.

Savings Accounts/Certificates of Deposit/Money Market Accounts:

Do not report transfers of campaign funds into savings accounts, certificates of deposit, money market accounts, or the purchase of any other asset that can readily be converted to cash on Schedule E. Continue reporting these amounts as part of your cash on hand on the Summary Page.

Candidates:

- Candidates must briefly describe the political, legislative, or governmental purpose of an itemized expenditure for gifts, meals, and travel payments. FPPC Regulation 18421.7 sets out the requirements.
- Candidate controlled ballot measure committee funds may only be used to make payments related to a state or local measure or potential measure (including qualification activities) anticipated by the committee. See FPPC regulation 18521.5.

Ballot Measure Committees

A ballot measure committee that makes a payment to any business entity (1) which is owned 50 percent or more by any of the individuals listed below, or (2) in which any of the individuals listed below is an officer, partner, consultant or employee, must report that individual's name, relationship to the committee, and a description of the ownership interest or position with the business entity. Individuals covered by (1) and (2) above include:

- A candidate or person controlling the committee; or
- An officer or employee of the committee; or
- The spouse of any of the above.

**Instructions for
Schedule E (Continued)
Payments Made**

Codes:

CMP: Campaign paraphernalia/misc. Lawn signs, buttons, bumper stickers, T-shirts, potholders, etc. Includes costs of election night event.

CNS: Campaign consultants. Fees and commissions paid to professional campaign management or consulting firms.

CTB: Contributions. Contributions made to other candidates and committees. Use "CTB" for direct monetary contributions. For nonmonetary (in-kind) contributions, use "CTB" and, if one of the other codes accurately describes the expenditure, you may enter that code also. Otherwise, describe the payment. Also provide the name of the candidate or committee that received the nonmonetary contribution in the "Description of Payment" column.*

CVC: Civic donations. Donations to civic, nonprofit or education organizations; payments for community events.

FIL: Candidate Filing/Ballot Fees. Payments to election officials for candidate filing fees and fees charged for publication of a ballot statement.

FND: Fundraising events. Expenditures associated with holding a fundraising event, including payments for event space to hotels or halls, payments for food and beverages to restaurants, caterers and other vendors, and payments for speakers, entertainment, and decorations. Includes costs of house parties. (Use "LIT" for costs of invitations, brochures, and solicitations associated with fundraising events.)

IND: Independent expenditures. Payments for communications that support/oppose other candidates or measures that are not made in consultation or coordination with the candidates or a ballot measure committee. Use "IND" and, if one of the other codes accurately describes

the independent expenditure, you may enter that code also. Otherwise, describe the payment. Also provide the name of the candidate or ballot measure supported or opposed by the expenditure.*

LEG: Legal Defense. Attorney or other fees paid for legal defense.

LIT: Campaign literature and mailings. Preparation, production, and distribution of campaign literature, direct mail pieces, fundraising solicitations, and door hangers. Includes costs of mailing lists, design/graphics, copy and layout, printing and photocopying. Includes payments to be on a slate mailer, and for absentee ballot mailers.

MBR: Member Communications. Payments for communications to members, employees, or shareholders of an organization, or their family members, for the purpose of supporting or opposing a candidate or ballot measure.

MTG: Meetings and appearances. Costs associated with meetings, press conferences, town halls, constituent meetings, etc.

OFC: Office expenses. Expenditures for office rent; utilities (including cellular phone service); purchase or rental of office equipment (computer, fax, photocopier, etc.) and furniture; office supplies, etc.

PET: Petition circulating. Includes payments for printing petitions and payments to signature gathering firms for ballot measure qualification drives.

PHO: Phone banks. Costs of phone banks.

POL: Polling and survey research. Costs of designing and conducting polls, reports on election trends, voter surveys, etc.

POS: Postage, delivery and messenger services. Includes U.S. Postal Service, Federal Express, United Parcel Service, and other delivery and courier services.

PRO: Professional services. Includes legal, accounting, and bookkeeping services.

PRT: Print space and production costs. Includes advertising space in newspapers, magazines and other publications, and billboard ads.

RAD: Radio airtime and production costs.

RFD: Returned contributions.

SAL: Campaign workers salaries. Includes state and federal payroll taxes.

TEL: Television or cable airtime and video production costs.

TRC: Candidate travel. Payments or reimbursements for travel, lodging, and meals of a candidate.

TRS: Staff/spouse travel. Payments or reimbursements for travel, lodging, and meals of a candidate's representative (staff), or member of the candidate's household.

TSF: Transfers. Only use this code to report the transfer of funds to another authorized committee of the same candidate or sponsoring organization. Report funds this committee gives to other committees on Schedule E, as contributions ("CTB") to those committees, not as transfers.

VOT: Voter registration costs.

WEB: Information technology costs. Includes payments for website design, e-mail, internet access, production of website and e-mail advertising.

***Payments that are contributions or independent expenditures to support or oppose other candidates, measures, and committees must also be summarized on Schedule D.**

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

Amounts may be rounded to whole dollars.

Statement covers period
from _____
through _____

ITEM 8
Attachment 2 SCHEDULE G

CALIFORNIA FORM 460

Page _____ of _____

I.D. NUMBER _____

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER

NAME OF AGENT OR INDEPENDENT CONTRACTOR

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

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

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

NAME AND ADDRESS OF PAYEE OR CREDITOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CODE	OR	DESCRIPTION OF PAYMENT	AMOUNT PAID

Attach additional information on appropriately labeled continuation sheets.

TOTAL* \$

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

**Instructions for
Schedule G
Payments Made by an Agent or
Independent Contractor**

Report payments made on your behalf during the reporting period by an agent or independent contractor (such as a campaign management firm or an advertising agency) on Schedule G.

Schedule G may be completed by the agent or independent contractor and provided to you or Schedule G may be completed by you from information provided by the agent or independent contractor.

Report expenditures of \$500 or more (other than expenditures for the agent's or independent contractor's overhead and normal operating expenses) made on your behalf during the reporting period.

Once a subvendor payment has been itemized on Schedule E, F, or G, it does not need to be itemized again. For example, if a subvendor payment is reported on Schedule F or G as part of an accrued expense, the subvendor information does not need to be reported again on subsequent reports.

Code or Description of Payment:

If one of the expenditure codes listed on Schedule G fully describes the payment, enter the code. A full description of each code is provided on the back of the Schedule E Continuation Sheet. If none of the codes fully explains the expenditure, enter a brief description of the payment instead.

Important: Officeholders and candidates may reimburse an agent or independent contractor for expenditures made on their behalf only if all of the following criteria are met:

- There is a written contract between the officeholder or candidate and the agent or independent contractor that provides for the reimbursement;
- The treasurer is provided with a dated receipt and written description of each expenditure prior to reimbursement; and
- Reimbursement is paid within 45 calendar days after the agent or independent contractor makes the expenditures.

Generally, if reimbursement is not paid within 45 calendar days, report the expenditure as a nonmonetary contribution on Schedule C.

Refer to the FPPC Campaign Disclosure Manual for your type of committee for additional instructions.

**Schedule I
Miscellaneous Increases to Cash**

Amounts may be rounded
to whole dollars.

Statement covers period from _____ through _____	CALIFORNIA FORM 460
Page _____ of _____	I.D. NUMBER

SEE INSTRUCTIONS ON REVERSE

NAME OF FILER _____

DATE RECEIVED	FULL NAME AND ADDRESS OF SOURCE (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	DESCRIPTION OF RECEIPT	AMOUNT OF INCREASE TO CASH

Attach additional information on appropriately labeled continuation sheets.

SUBTOTAL \$ _____

Schedule I Summary

1. Itemized increases to cash this period. \$ _____
2. Unitemized increases to cash of under \$100 this period. \$ _____
3. Total of all interest received this period on loans made to others. (Schedule H, Column (e).) \$ _____
4. Total miscellaneous increases to cash this period. (Add Lines 1, 2, and 3. Enter here and on the Summary Page, Line 14.) **TOTAL \$** _____

**Instructions for
Schedule I
Miscellaneous Increases to Cash**

Report any transaction that increases the cash position of the officeholder, candidate, or committee, but is not a monetary contribution, loan, or loan repayment, on Schedule I.

Itemize the sources of \$100 or more received during the reporting period.

Examples include:

- Interest received or credited to checking or savings accounts or other time deposits.
- Proceeds from the sale of property, such as paintings, furniture, or other items sold at garage sales or auctions, etc., when the amount received is the “fair market value” of the item. Amounts received over the fair market value are reported on Schedule A. (Report donated items as nonmonetary contributions on Schedule C.)
- Proceeds from the sale of campaign property, such as office furniture or equipment.
- Refunds received on deposits, such as telephone deposits.
- Refunds received from overpayment of bills.

- Transfers received from another authorized committee of the same candidate. (Candidates for elective state office should refer to FPPC Campaign Disclosure Manual 1 for information about reporting transferred funds that must be attributed to specific contributors of the committee making the transfer.)

Report on Line 3 of the Schedule I Summary the lump sum of interest payments received on loans made to others. Do not itemize. This amount is transferred from Schedule H, Column (g).

COMMUNICATIONS

Pinole Council Meeting Procedures

Cordell Hindler <cordellhindler@ymail.com>

Tue 2/23/2021 10:15 PM

To: FCPC (Fair Campaign Practices Commission) <FCPC@cityofberkeley.info>

WARNING: This email originated outside of City of Berkeley.

DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

hello Sam, i have the Procedures on how the city of Pinole conducts their Council Meetings

Comments received before the close of the public comment period for that item will be read into the record and limited to 3 minutes. Please include your full name, city of residence and agenda item you are commenting on. Any comments received after the close of the public comment period will be distributed to Council and relevant staff after the meeting and filed with the agenda packet .

Sincerely
Cordell