



Fair Campaign Practices Commission
Open Government Commission

MINUTES

November 19, 2020

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), Jessica Blome, Janis Ching, Dean Metzger, Patrick O'Donnell, Patrick Sheahan, Mark McLean

Also Present: Samuel Harvey, Staff Secretary / Deputy City Attorney
Brendan Darrow, Deputy City Attorney
Sarah Bunting, Assistant City Clerk
April Richardson, Assistant City Clerk

1. **Call to Order**

Chair Called the meeting to order at 7:05 p.m.

2. **Roll Call**

Roll call taken.

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

One speaker.

4. **Approval of minutes for the October 15, 2020 concurrent regular meeting**

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

Motion to approve minutes (M/S/C: O'Donnell/Ching; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, 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 BERA by Committee for Ethical Housing.**

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

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

7. **Investigation re Berkeley Community for Police Oversight Committee Supporting Police Commission Oversight Charter Amendment (ID # 1403502).**

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

8. **Investigation re Maria Poblet for Rent Board 2022 (ID # 1407904).**

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

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

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

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

Motion to dismiss complaint and direct staff to return with a legal analysis of BERA section 2.12.335 (M/S/C: Sheahan/Metzger; Ayes: Metzger, Sheahan, Blome; Noes: O'Donnell, Ching, McLean, Tsang, Smith; Abstain: none; Absent: none.)

Motion to direct staff to continue investigation of the facts and return at future meeting with report as well as analysis of BERA section 2.12.335 to inform FCPC's review of this complaint and other complaints concerning section 2.12.335. [Secretary's note: other complaints affected by section 2.12.335 are (1) Ahmadi et al. and (2) Simon-Weisberg

et al.] (M/S/C: O'Donnell/McLean; Ayes: O'Donnell, Ching, McLean, Tsang, Smith; Noes: Metzger, Sheahan, Blome; Abstain: none; Absent: none.)

10. **Complaint regarding painted sidewalk signs advocating for Councilmember Cheryl Davila.**

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

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

11. **Complaint alleging violation of BERA by Rent Board candidates Leah Simon-Weisberg, Mari Mendonca, Andy Kelley, Dominique Walker, and Xavier Johnson**

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

Motion to direct staff to investigate and report back along with an analysis of BERA section 2.12.335 to inform FCPC's enforcement on this and other matters concerning section 2.12.335 [Secretary's note: other complaints concerning section 2.12.335 are (1) Ahmadi et al. and (2) Re-Elect Mayor Jesse Arreguin 2020] (M/S/C: O'Donnell/Blome; Ayes: O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: Metzger, Sheahan; Abstain: none; Absent: none.)

12. **Complaint alleging violations of BERA by Wayne Hsiung for Mayor 2020 and Compassionate Bay.**

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

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

13. **Referrals from the Office of the City Clerk re Public Finance Program campaigns.**

- a. **Andrew for Berkeley Council 2020**
- b. **Wayne Hsiung for Mayor 2020**

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

Motion to continue to the January meeting at which point the Commission can make a determination on next steps based on whether the committees have returned any

outstanding public funds (M/S/C: Metzger/Blome; Ayes: Metzger, O'Donnell, Ching, Sheahan, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

Open Government Commission (OGC) Agenda

14. **OGC Reports**

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

15. **Referral from the Office of the City Clerk re failure by multiple City lobbyists to file quarterly reports; possible creation of rules, procedures and regulations to guide the Lobbyist Registration Act enforcement process**

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

Motion to direct staff to work with Clerk Department to send additional letter to lobbyists informing them that OGC has initiated a review of lobbyists' failure to file and seeking information about whether lobbyists are still employed, and for the matter to be brought back to the OGC in January for determination of next steps possibly to include creation of a subcommittee on lobbyist enforcement (M/S/C: Ching/O'Donnell; Ayes: Metzger, O'Donnell, Ching, Sheahan, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

Commissioner Blome recused due to mutual employer of referred lobbyist.

16. **Complaint filed by Martin and Olga Schwartz alleging violations of the Open Government Ordinance relating to Zoning Adjustments Board proceedings**

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

Motion to direct staff to return to the OGC with a proposal to change City policy regarding inclusion of public communications with online project records (M/S/C: Metzger/Tsang; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: none.)

Commissioner Sheahan recused due to conflict as member of Zoning Adjustments Board.

17. **Scheduling next concurrent meeting and drafting 2021 regular meeting schedule**

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

Motion to schedule next concurrent meeting of the FCPC and OGC for Thursday, January 21, 2021 at 7 p.m. and direct staff to return with a proposed meeting schedule for 2021 (M/S/C: McLean/Ching; Ayes: Metzger, O'Donnell, Ching, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: Sheahan.)

13. **Adjournment**

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

The meeting adjourned at 10:55 p.m.