



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 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

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

Regular Meeting  
**May 16, 2013**  
**7:00 p.m.**

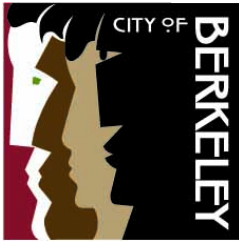
Secretary: Kristy van Herick, Deputy City Attorney

### The Commission may act on any item on this agenda

1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment.
4. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
  - c. Report from Slate Mailer Organization Subcommittee
5. Approval of minutes for the April 18, 2013 Meeting.
6. Review proposed Stipulation, Decision and Order in the Matter of Berkeley Tenants United for Fairness Slate Mailer Organization; discussion and action to approve Stipulation, Decision and Order, or approve with Commission proposed amendments.
7. Review proposed Stipulation, Decision and Order in the Matter of Rent Board Candidates Jay James, Kiran Shenoy, Judy Hunt, and Nicole Drake; discussion and action to approve Stipulation, Decision and Order, or approve with Commission proposed amendments.
8. Review proposed Stipulation, Decision and Order in the Matter of Stand Up for the Right to Sit Down, a Committee in Opposition to Measure S; discussion and action to approve Stipulation, Decision and Order, or approve with Commission proposed amendments.
9. Review draft Council Reports regarding proposed amendments to Berkeley Election Reform Act (BERA) (a) to mandate electronic filing of campaign statements and (b) to provide for general updating BERA to remove or update obsolete provisions and provisions inconsistent with state law; Commission discussion and action regarding same.
10. Adjournment.

FCPC Agenda  
Regular Meeting  
May 16, 2013  
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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 located at 2180 Milvia St., 4<sup>th</sup> Floor, Berkeley, CA.



Fair Campaign Practices Commission

## MINUTES

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

Regular Meeting  
**April 18, 2013**

Members Present: Patrick O'Donnell (Chair), David Ritchie (Vice-Chair), Jay Costa, Jennifer Lombardi, Al Murray, and Brad Smith

Members Absent: Spencer Pritchard

Also Present: Kristy van Herick, Secretary/Staff Counsel; Mark Numainville, City Clerk

1. **Call to Order**

Chair called the meeting to order at 7:04 p.m.

2. **Roll Call**

Roll call taken.

3. **Report from Chair**

None.

4. **Report from Staff**

Staff noted that there will likely be action items on the May meeting agenda related to multiple stipulations.

5. **Public Comment**

No public comment.

6. **Approval of minutes for the March 21, 2013 Meeting**

Staff noted that a meeting participant was inadvertently left off the list of staff attending the meeting, and would be fixed in the final minutes.

*Move to approve March 21, 2013 meeting minutes, as amended: (M/S/C: Murray/Smith. Ayes: Costa, Lombardi, Murray, O'Donnell, and Smith; Noes: None; Abstain: Ritchie; Absent: Pritchard.)*

7. **Review City Clerk Report and proposed Ordinance regarding Electronic Filing of Campaign Statements – Amendment to Berkeley Election Reform Act (BERA); Commission discussion and action regarding same.**

*Move that the amendments to the BERA to provide for electronic filing of campaign statements are approved (Proposed amendment to add 2.12.032, 2.12.033 and 2.12.127, and amend 2.12.025, 2.12.040 and 2.12.295 of the Berkeley Municipal Code). (M/S/C: Smith/Costa. Ayes: Costa, Lombardi, Murray, O'Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Pritchard.)*

8. **Review City Clerk Report and proposed Ordinance regarding proposal to amend BERA to address Obsolete Sections and Changes in State Law; Commission discussion and action regarding same.**

*Motion to approve proposed BERA amendments, to amend Sections 2.12.145, 2.12.250 and 2.12.297 and to repeal 2.12.285 and 2.12.290. (M/S/C: Murray/Smith. Ayes: Costa, Lombardi, Murray, O'Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Pritchard.)*

9. **Staff update on compliance review of Semi-Annual Campaign Report.**

Staff gave a brief oral report. No action taken.

10. **Initial discussion of 2013 Commission work plan item regarding local Slate Mailer Organizations (SMOs) in Berkeley elections, including whether there are amendments to the BERA or its regulations needed; possible action to form an ad hoc subcommittee on the issue of local SMOs in Berkeley elections.**

*Move that the Commission create an ad hoc subcommittee on Slate Mailer Organizations in Berkeley consisting of Commissioners Smith, Murray and Costa : (M/S/C: Costa/Murray. Ayes: Costa, Lombardi, Murray, O'Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Pritchard.)*

11. **Adjournment**

*Motion to adjourn. (M/S/C: Smith/Murray. Ayes: Costa, Lombardi, O'Donnell, Murray and Smith; Noes: None; Abstain: None; Absent: Ritchie.)*

The meeting adjourned at 8:42 p.m.

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2 KRISTY VAN HERICK, Deputy City Attorney SBN 178685  
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3 TEL.: (510) 981-6998  
4 FAX: (510) 981-6960

Attorneys for FAIR CAMPAIGN PRACTICES COMMISSION

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

10 In the Matter of

11 BERKELEY TENANTS UNITED FOR  
12 FAIRNESS; RITA COPELAND,  
TREASURER,

**[DRAFT] STIPULATION,  
DECISION AND ORDER**

14 Respondents.

15  
16 This stipulation is entered into by and between the Fair Campaign Practices  
17 Commission (“Commission” or “FCPC”) and Respondents, Berkeley Tenants United for  
18 Fairness (“Berkeley TUFF”) and its treasurer, Rita Copeland (jointly referenced as  
19 “Respondents”). The following is a true and accurate summary of the facts in this matter:

20 1. On October 5, 2012, Respondents filed a Form 400, creating a local Slate  
21 Mailer Organization (“SMO”) with filing obligations with the City of Berkeley. Respondents  
22 listed Jay James as the primary officer and Rita Copeland as treasurer. While not listed as an  
23 officer of the Form 400, Sid Lakireddy, Berkeley property owner and President of the Berkeley  
24 Property Owner’s Association did fundraising for Berkeley TUFF.

25 2. Berkeley TUFF identified four 2012 candidates for the Berkeley Rent  
26 Stabilization Board as “authorizing the content of slate mailers” being produced by Berkeley  
27 TUFF: Jay James, Nicole Drake, Kiran Shenoy, and Judy Hunt.  
28

1           3.       Over the course of the election, Berkeley TUFF produced five slate mailers, all  
2 of which featured the four slate candidates, and also used a portion of the mailer to  
3 communicate against Measure U, the “Sunshine Ordinance.”

4           4.       On October 25, 2012, the FCPC received a Complaint filed by Patti Dacey  
5 alleging multiple violations of the Berkeley Election Reform Act (“BERA”) by Berkeley  
6 TUFF and the four candidates. While many of the issues raised in the initial complaint did not  
7 raise violations of the BERA, the violations detailed herein were discovered through staff’s  
8 investigation of the complaint.

9           5.       A "slate mailer" is defined under BERA and state law as a mass mailing (over  
10 200 substantially similar pieces of mail) which supports or opposes four or more candidates or  
11 ballot measures. (BERA Section 2.12.272.A; Government Code Sections 82041.5, 82048.3.)  
12 A "slate mailer organization" means any person who, directly or indirectly, does all of the  
13 following: (1) is involved in the production of one or more slate mailers and exercises control  
14 over the selection of the candidates and measures to be supported or opposed in the slate  
15 mailers, and (2) receives or is promised payments totaling five hundred dollars or more in a  
16 calendar year for the production of one or more slate mailers. (Government Code Section  
17 82048.4; BERA 2.12.272.B.)

18           6.       BERA does not regulate the activities of a slate mailer organization (“SMO”),  
19 other than to require an SMO producing mailers for or against Berkeley candidates or measures  
20 to file a copy of campaign statements with the City Clerk. (BERA Section 2.12.272.) As  
21 discussed below, an SMO may also be a committee. BERA does regulate the activities of  
22 “committees,” which are defined as follows:

23  
24           "Committee" means any person or combination of persons that directly or  
25 indirectly receives contributions which total more than two hundred fifty dollars  
26 in a calendar year or makes expenditures exceeding more than two hundred fifty  
27 dollars in a calendar year for the purpose of influencing or attempting to  
28 influence the action of voters for or against the nomination or election of one or  
more candidates, or the passage or defeat of any measure, including any  
committee or subcommittee of a political party. (BERA Section 2.12.095.)



1 Campaign statements shall be filed in accordance with the filing dates prescribed by state law.  
2 ....”

3 12. While Berkeley TUFF qualified as a committee on or around September 27,  
4 2012, and did file timely Form 401 SMO campaign statements throughout the election cycle,  
5 Respondents did not file committee statements as required by BERA Section 2.12.270.A.  
6 Respondents therefore violated BERA Section 2.12.270 by failing to file Form 460 recipient  
7 committee campaign statements for the periods ending September 30, October 21, and  
8 December 31, 2012.

9 13. The information required to be disclosed on SMO forms is similar to the  
10 information required by BERA Section 2.12.280 on committee forms, although BERA requires  
11 itemized reporting at lower thresholds (\$50 for contributions and expenditures). Thus, while  
12 Berkeley TUFF did not file the Form 460, most of the information about Berkeley TUFF’s  
13 receipts and expenditures required by BERA was still publicly disclosed before the election.

14 **ISSUE TWO: CONTRIBUTIONS FROM PROHIBITED SOURCES**

15 (Three Counts)

16 14. BERA Section 2.12.440 restricts contributions to committees from business  
17 sources if the contribution is made to support or oppose a candidate, noting “No proprietorship,  
18 firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-  
19 profit corporations, or labor union shall make a contribution to any candidate or committee  
20 (supporting or opposing any candidate) directly *or indirectly*, and no campaign treasurer (of  
21 any such committee) shall solicit or accept such contribution.”

22 15. FCPC Regulation R2.12.440(a) further clarifies the treasurer’s obligations under  
23 Section 2.12.440, stating: “The campaign treasurer must make all reasonable inquiries con-  
24 cerning, and is responsible for insuring the propriety of, the source of all campaign contribu-  
25 tions in support of or opposition to any candidate for Berkeley elective office, especially those  
26 obviously not from individuals. If the treasurer knows or should reasonably know that the  
27 contribution is from a prohibited source, it must be refunded to the donor promptly.”  
28



1           16. Respondents accepted contributions from prohibited business sources, Diablo  
2 Holdings, Ltd. (“Diablo Holdings”) and Premium Property Management and Development,  
3 Inc. (“Premium Property”) which were used for the benefit of the four candidates.

4           a. Diablo Holdings (total \$5000) and Premium Property (total of \$1000) provided  
5 unallocated payments to Berkeley TUFF. Diablo Holdings made an  
6 unearmarked payment of \$5000 on September 27, 2012. The payor confirmed  
7 that he was asked by a representative of Berkeley TUFF to make a contribution  
8 to support mailings, which were both in support of a slate of Rent Board  
9 Candidates and in Opposition of Measure U. Berkeley TUFF also received an  
10 unearmarked payment of \$1000 on September 28 from Premium Property.

11           b. Berkeley TUFF, by and through its treasurer Rita Copeland, violated 2.12.440  
12 by accepting these payments without a clear written allocation.

13           c. Diablo Holdings filed a Form 465, representing the business had made the  
14 payment as an independent expenditure committee, but it later determined that  
15 the Form 465 was filed erroneously as the payment had not been intended as an  
16 independent expenditure.

17           d. Diablo Holdings and Premium Property violated 2.12.440 by providing  
18 contributions to Berkeley TUFF.

19           17. Contributions from three businesses were accepted for the benefit of candidates  
20 in violation of Section 2.12.440: (a) Ellis Street Properties 10/16/12 (\$660), (b) Stuart Street  
21 Properties 10/12/12 (\$220), and (c) Lower Carlton Properties 10/16/12 (\$560). Respondents  
22 knew or should have known that the three payments were from a prohibited business source.  
23 These three businesses violated BERA by making payments to the SMO for the benefit of the  
24 four Berkeley TUFF slate candidates. However, Respondents took reasonable steps to mitigate  
25 the three violations identified in this paragraph, refunding the three payments in full on  
26 November 1, 2012.

27           18. Berkeley TUFF received payments totaling \$45,520 to fund the five mailers. A  
28 majority of the funds, totaling \$32,000, were received from a county political action

1 committee, East Bay Rental Housing Association PAC (“EBRHA”), consisting of payment of  
2 \$18,000, \$12,000, and \$1000, in opposition of Measure U, and payments of \$250 each  
3 allocated to the four candidates. EBRHA received most of its contributions from business  
4 sources. EBRHA has provided documentation dating back to October 15 evidencing that  
5 EBRHA and its treasurer intended the payments to Berkeley TUFF as independent  
6 expenditures against Measure U and in support of the four candidates, and that the payments  
7 were not directly coordinated with the four candidates. EBRHA also filed Form 465  
8 statements identifying these payments as independent expenditures.

9 19. As noted above, once Berkeley TUFF accepted unarmarked payments totaling  
10 \$1,000 or more, it technically converted to a "committee" and Jay James's involvement as  
11 officer created a presumption that he controlled the committee. Additionally, all four  
12 Respondents authorized the content of slate mailers being produced by Berkeley TUFF and  
13 funded in part by EBRHA’s payments. Based on both James’ role as officer and the four slate  
14 candidates’ review and approval of the contents of the mailings, the payments made to  
15 Berkeley TUFF from EBRHA PAC allocated directly to the candidates were presumably at the  
16 behest of the candidates rather than “independent.” As such, Respondents’ acceptance of the  
17 \$1000 payment (\$250 each allocated to the four candidates) violated 2.12.440<sup>1</sup>.

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21 <sup>1</sup> FCPC Regulations, R2.12.440(b) and (c), specify steps needed to accept a contribution from a PAC:  
22 (b) No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation,  
23 including non-profit corporation or labor union may contribute to any candidate or committee  
24 supporting or opposing any candidate. A contributor who has received contributions from this type of  
25 organization is not precluded from making contributions to candidates for Berkeley elective office or  
26 their campaigns provided either: (1) the contributor establishes a separate bank account into which  
27 monies not contributed by this type of organization are deposited and from which contributions to  
28 Berkeley elective office campaigns are made, or (2) the contributor maintains reasonable accounting  
methods so as to demonstrate that any contributions made to Berkeley elective office campaigns  
originate from sufficient funds not contributed by this type of organization. (c) The campaign treasurer  
who receives contributions from a contributor receiving contributions from this type of organization  
must receive a written statement which indicates that the contributor complies with either (b)(1) or  
(b)(2), above, before depositing such contributions.

1 **FACTORS IN AGGRAVATION**

2 20. As a paid, professional treasurer, Rita Copeland knew or should have known  
3 that local municipalities have separate campaign finance ordinances, and should have inquired  
4 of her obligations as a treasurer related to the Berkeley Election Reform Act.

5 21. Jay James served as an officer of Berkeley TUFF SMO, during which time  
6 Berkeley TUFF accepted “independent expenditure” payments which benefited his own  
7 committee. His involvement as an officer calls into question the uncoordinated or independent  
8 nature of the payments from EBRHA and other donors making “independent expenditures.”

9 22. Sid Lakireddy did fundraising for Berkeley TUFF, but did not take steps to  
10 obtain allocations in compliance with slate mailer rules, and solicited payments which violated  
11 BERA as discussed above.

12 **FACTORS IN MITIGATION**

13 23. Respondents, through legal counsel, have been cooperative with the  
14 Commission and Commission staff throughout the investigation process. Business donors  
15 Diablo Holdings and Premium Property, directly and through counsel, have also been  
16 cooperative and forthcoming in their communications in this matter.

17 24. Berkeley TUFF relied on a professional treasurer to assist with the requisite  
18 reporting and filing obligations.

19 25. Berkeley TUFF hired a professional political consultant to prepare the slate  
20 mailers.

21 26. Berkeley TUFF attempted to comply with all SMO provisions, and had it done  
22 so, the organization would have been legal under both state and local law.

23 27. Berkeley TUFF’s treasurer complied with filing deadlines for an SMO, so that  
24 all receipts and expenditures by Berkeley TUFF were disclosed to the public prior to the  
25 election.

26 28. Respondents also made efforts to return certain contributions which were  
27 violative of BERA prior to the election.  
28



1 understand and hereby knowingly and voluntarily waive any and all procedural rights under the  
2 BERA and the FCPC Procedures.

3 7. The FCPC agrees that if the parties listed below execute this Stipulation, it will  
4 forego any further enforcement actions against the parties, and if approved by the FCPC, this  
5 stipulation will resolve all factual and legal issues raised in this matter and will be the final  
6 disposition of this matter for purposes of BERA Sections 2.12.450 and 2.12.455. Nothing in  
7 this section shall be read to preclude the Commission's consideration of any complaint or other  
8 action for any false statements stemming from any of Respondent's representations in this  
9 Stipulation.

10 8. The parties agree that in the event the FCPC refuses to accept this Stipulation, it  
11 shall become null and void. Respondents stipulate and agree that in the event a full evidentiary  
12 hearing before the Commission becomes necessary, no member of the Commission or FCPC  
13 staff shall be disqualified because of their consideration of this Stipulation and Order.

14 9. Respondents acknowledge that the FCPC retains jurisdiction over this  
15 Stipulation and Order, and is acting under Section VI.C.2.d of the FCPC Procedures, enacted  
16 pursuant to the Commission's authority to enact rules and procedures under BERA Section  
17 2.12.210.

18  
19 Dated: May , 2013

20 \_\_\_\_\_  
21 ZACH COWAN, City Attorney  
22 KRISTY VAN HERICK, Deputy City Attorney  
23 Attorneys for Fair Campaign Practices Commission

24 Dated: May , 2013

25 \_\_\_\_\_  
26 JAY JAMES, Officer, Berkeley Tenants  
27 United for Fairness

28 Dated: May , 2013

\_\_\_\_\_ RITA COPELAND, Treasurer, Berkeley Tenants  
United for Fairness

1 Dated: May , 2013

\_\_\_\_\_  
SID LAKIREDDY, Berkeley Tenants  
United for Fairness

2

3

4 Dated: May , 2013

\_\_\_\_\_  
JOHN LINEWEAVER, President, Diablo  
Holdings, Ltd.

5

6

7 Dated: May , 2013

\_\_\_\_\_  
SAM SOROKIN, President, Premium Property  
Management and Development, Inc.

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9

10

**Approved as to form:**

11 Dated: May , 2013

\_\_\_\_\_  
JAMES SUTTON, The Sutton Law Firm,  
Counsel for Berkeley Tenants United for Fairness,  
Rita Copeland, Diablo Holdings, Ltd, and  
Premium Property Management and  
Development, Inc.

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**ORDER**

The foregoing Stipulation of the parties In the Matter of Berkeley Tenants United for Fairness and Rita Copeland, Treasurer, is hereby accepted as the final decision and order of the Fair Campaign Practices Commission effective upon execution below by the Chairperson. Further, it is hereby ordered that this Stipulation, Decision and Order be appended to the Berkeley Tenants United for Fairness’s statements on file with the Office of the City Clerk, City of Berkeley-.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
PATRICK O’DONNELL, Chairperson  
FAIR CAMPAIGN PRACTICES COMMISSION

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Attorneys for FAIR CAMPAIGN PRACTICES COMMISSION

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

9  
10 In the Matter of

11 JAY JAMES, KIRAN SHENOY, JUDY  
12 HUNT, AND NICOLE DRAKE,

13 Respondents.

[DRAFT] STIPULATION,  
DECISION AND ORDER

14  
15 This stipulation is entered into by and between the Fair Campaign Practices  
16 Commission (“Commission” or “FCPC”), and Respondents (1) Jay James, candidate and  
17 treasurer, Committee to Elect Jay James for Rent Board Commissioner 2012 (James  
18 Committee), (2) Kiran Shenoy, candidate and treasurer, Kiran Shenoy for Rent  
19 Stabilization Board 2012 (Shenoy Committee), (3) Judy Hunt, candidate and treasurer,  
20 Judy Hunt- 2012 Rent Stabilization Board Commissioner (Hunt Committee), and (4)  
21 Nicole Drake, candidate and assistant treasurer, Re-Elect Nicole Drake to Rent Board 2012  
22 (Drake Committee) (jointly referenced as “Respondents”).

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

24 1. Jay James filed the initial Form 410 to open his campaign committee on  
25 August 23, 2012 to run as part of a slate of four candidates for the Berkeley Rent  
26 Stabilization Board. James had not run for office or served as treasurer in any prior City of  
27 Berkeley elections. The James Committee filed a termination statement for the committee  
28 on January 24, 2013, terminating the committee effective December 31, 2012. The James



1 Committee raised \$2450 in monetary contributions as well \$1222.50 in nonmonetary  
2 contributions (through the Berkeley Tenants United for Fairness (“Berkeley TUFF”)  
3 SMO), \$360 of which was refunded to the contributor.

4 2. Shenoy filed the initial Form 410 to open his campaign committee on  
5 September 5, 2012 to run as part of the slate of four candidates for the Berkeley Rent  
6 Stabilization Board. Shenoy had not run for office or served as treasurer in any prior City  
7 of Berkeley elections. The Shenoy Committee filed a termination statement for the  
8 committee on January 31, 2013, terminating the committee effective December 31, 2012.  
9 Respondent Shenoy raised \$2825 in monetary contributions as well as well \$1222.50 in  
10 nonmonetary contributions (through the Berkeley TUFF SMO), \$360 of which was  
11 refunded to the donor.

12 3. Respondent Hunt filed the initial Form 410 to open her campaign committee  
13 on September 6, 2012 to run as part of the slate of four candidates for the Berkeley Rent  
14 Stabilization Board. Hunt had not run for office or served as treasurer in any prior City of  
15 Berkeley elections. The Hunt Committee filed a termination statement for the committee  
16 on January 14, 2013, terminating the committee effective December 31, 2012. She raised  
17 \$2390 in monetary contributions as well as \$1112.50 in nonmonetary contributions  
18 (through the Berkeley TUFF SMO), \$360 of which was refunded to the donor.

19 4. Respondent Drake filed the initial Form 410 to open her campaign  
20 committee on September 12, 2012 to run as part of the slate of four candidates for the  
21 Berkeley Rent Stabilization Board. Jamie Krovontka served as treasurer for the Drake  
22 Committee, and Drake served as assistant treasurer. Respondent Drake was an incumbent  
23 on the Rent Board, having been previously elected in 2008. To date, the Drake Committee  
24 has not filed a termination statement. She raised \$2350 in monetary contributions as well  
25 as \$1112.50 in nonmonetary contributions (through the Berkeley TUFF SMO), \$360 of  
26 which was refunded to the donor.

27  
28

1           5.       As a result of the November 6, 2012 election, Hunt was elected to one of  
2 four open seats on the Rent Stabilization Board. James, Shenoy, and Drake were not  
3 elected.

4           6.       On October 5, 2012, Berkeley TUFF) filed a Form 400, creating a local  
5 Slate Mailer Organization (“SMO”) with filing obligations with the City of Berkeley.  
6 Berkeley TUFF SMO listed Jay James as the primary officer and Rita Copeland as  
7 treasurer. Respondents Drake, Shenoy and Hunt are not listed as officers of Berkeley  
8 TUFF. Berkeley TUFF identified the four Respondents as “authorizing the content of  
9 slate mailers” being produced by Berkeley TUFF.

10          7.       Over the course of the election, Berkeley TUFF produced five slate mailers,  
11 all of which featured the four slate candidates, and also used a portion of the mailer to  
12 communicate against Measure U, the “Sunshine Ordinance”. Berkeley TUFF received  
13 payments totaling \$45,520 to fund the five mailers, of which \$38,540 was identified as  
14 payments to oppose Measure U. The remaining payments were allocated to support the  
15 four candidates.

16          8.       Berkeley TUFF SMO identified on its pre-election filings the following  
17 payments made to aid in the election of the four Berkeley TUFF slate candidates:

<b>Donor</b>	<b>James</b>	<b>Hunt</b>	<b>Shenoy</b>	<b>Drake</b>
David Arnold (9/26)	50	50	50	50
William Fingado (9/27)	75	75	75	75
Stewart Johnston (9/27)	62.50	62.50	62.50	62.50
David Meyers(9/28)	250	250	250	250
Wayne Black (10/16)	50	50	50	50
Jeffrey De Puy (10/16)	125	125	125	125
Ellis Street Properties (10/16) <b>(Refunded on 11/1)</b>	165	165	165	165

<b>Donor</b>	<b>James</b>	<b>Hunt</b>	<b>Shenoy</b>	<b>Drake</b>
Hamid Hashemi(10/16)	62.50	62.50	62.50	62.50
Lower Carleton Properties (10/16) <b>(Refunded on 11/1)</b>	140	140	140	140
Kathryn Snowden Parman (10/12)	50	50	50	50
Kathryn Snowden Parman (10/12)	62.50	62.50	62.50	62.50
Stuart Street Properties (10/12) <b>(Refunded on 11/1)</b>	55	55	55	55
Claude Zamanian	75	75	75	75
<b>Totals</b>	<b>1222.50</b>	<b>1222.50</b>	<b>1222.50</b>	<b>1222.50</b>

9. The payments listed above were not initially disclosed by any of the Respondents on their First Pre-Election Statement for the Period of 7/1/12 through 9/30/12 and due by 10/5 (4 contributions), or Second Pre-Election statement for the period of 10/1/12 through 10/20/12 and due by 10/25 (10 contributions, 3 of which were returned).

10. The violations detailed herein were uncovered through an investigation of the Berkeley Tenants United for Fairness Slate Mailer Organization.

**ISSUE ONE-FAILURE TO REPORT CONTRIBUTIONS**

11. Berkeley Election Reform Act (“BERA”) includes the following statement of purpose: “A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.” (BERA § 2.12.015.A.)

12. BERA requires campaign statements to include both the total sum of contributions \$50 or more and those under \$50. (BERA §§ 2.12.280(B) and 2.12.280(C).) Contributions include gifts and other payments “made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates.” (BERA § 2.12.100.) For those contributions of \$50 or more, the campaign committee must disclose each contributor’s personal information, including name, address, occupation, employer, the

1 date and amount of the contribution, and the cumulative amount of contributions for the  
2 year. (BERA § 2.12.280(G).)

3 13. A slate mailer organization can receive funds from third parties on behalf of  
4 candidates, but all contributions coordinated with the candidates are considered non-monetary  
5 contributions to the candidates, and must be reported on the candidate's campaign committee  
6 Form 460 (or Form 497 during the last 16 days of the election). "If a committee makes a  
7 payment to a slate mailer organization at the behest of a candidate, the committee would be  
8 making a non-monetary contribution to the candidate." *Sivesind Advice Letter*, No. I-96-27,  
9 1996 Cal. Fair-Pract. LEXIS 191 (1996), citing *Green Advice Letter*, No. I-93-376.

10 14. On October 30, 2012, Berkeley TUFF's attorney represented to the  
11 Commission that Berkeley TUFF had contacted the candidates to make certain that they are  
12 aware that the above-listed payments must be disclosed as in-kind contributions. The  
13 payments were also listed on Berkeley TUFF SMO's filings, which were publicly accessible  
14 documents.

15 15. The payments listed above were not initially disclosed by any of the  
16 Respondents on their First Pre-Election Statement for the Period of 7/1/12 through 9/30/12  
17 and due by 10/5 (4 contributions), or Second Pre-Election statement for the period of 10/1/12  
18 through 10/20/12 and due by 10/25 (7 contributions and 3 refunded payments).

19 16. Before end of business on November 5, 2012, the day before the election,  
20 Respondent Hunt disclosed the above-listed contributions. Ms. Hunt asserted that she first  
21 received a list of contributions to disclose from Berkeley TUFF's treasurer on or around  
22 November 3, 2012.

23 17. The remaining three respondents, James, Drake and Shenoy, disclosed the  
24 nonmonetary contributions weeks after the election, on December 3, 4 and 5, respectively,  
25 after being contacted by Commission staff.

26 18. Respondents assert that omission of the nonmonetary contributions from their  
27 first and second pre-election campaign statements was primarily due to the failure of Berkeley  
28

1 TUFF SMO’s treasurer to timely notify them that the contributions were received or that they  
2 had any obligation to disclose the payments as nonmonetary contributions to the candidates.

3 19. Pursuant to BERA Section 2.12.231(c), when determining an appropriate  
4 remedy for a violation of BERA, the Commission may order a committee to “pay a monetary  
5 penalty of up to \$1,000.00 per violation, or up to the amount or value of the unlawful or  
6 undisclosed contribution or expenditure, whichever is greater, to the General Fund of the  
7 City.” As this is a compromise resolution, the Respondents and the Commission have agreed  
8 as part of this Stipulation to limit the penalties to **\$300** each for Jay James, Kiran Shenoy, and  
9 Nicole Drake, and **\$20** for Judy Hunt.

10 **FACTORS IN AGGRAVATION**

11 20. As Respondent James served as the officer of Berkeley TUFF SMO, and the  
12 other three Respondents were authorizing the content of the state mailings being produced by  
13 Berkeley TUFF, they should have known of the contributions received by the SMO on behalf  
14 of their committees.

15 **FACTORS IN MITIGATION**

16 21. Hunt amended her statement soon after discovering her obligation to disclose  
17 the nonmonetary contributions, the day prior to the election.

18 22. The four Respondents were not receiving timely information from the Berkeley  
19 TUFF treasurer about nonmonetary contributions being received on behalf of the candidates.

20 **ADMISSIONS AND STIPULATIONS**

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

23 1. Respondents violated BERA Sections 2.12.280 and 2.12.440 as set forth in  
24 paragraphs 1 through 22 above, which is a true and accurate summary of the facts in this  
25 matter.

26 2. Respondents violated BERA Sections 2.12.275 (1 count), 2.12.280 (3 counts),  
27 2.12.415 (1 count) and 2.12.440 (5 counts) as set forth in paragraphs 1 through 27 above.  
28

1           3.       Based on the facts and law detailed above, and the factors in aggravation and  
2 mitigation, and BERA Section 2.12.231<sup>1</sup>, Respondents agree to pay the following sum as a  
3 monetary penalty, payable to the City of Berkeley for deposit into the City’s general fund no  
4 later than June 15, 2013, as follows:

5           (a) Jay James, \$300

6           (b) Kiran Shenoy, \$300

7           (c) Nicole Drake, \$300

8           (d) Judy Hunt, \$20

9           4.       Respondents agree to take necessary and prudent precautions to comply with  
10 all provisions of the BERA and FCPC regulations in the future. Further, Respondents will  
11 seek advice, as needed, from the City Clerk and FCPC staff on compliance with the BERA  
12 and FCPC regulations prior to filing deadlines to aid in future compliance.

13           5.       The parties agree to enter into this Stipulation to resolve all factual and legal  
14 issues raised in this matter and to reach a final disposition without the necessity of holding an  
15 administrative hearing to determine the liability of the Respondents. Respondents understand  
16 and hereby knowingly and voluntarily waive any and all procedural rights under the BERA  
17 and the FCPC Procedures.

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

25  
26 \_\_\_\_\_  
27 <sup>1</sup> Pursuant to BERA Section 2.12.231(c), when determining an appropriate remedy for a violation of  
28 BERA, the Commission may order a committee to “pay a monetary penalty of up to \$1,000.00 per  
violation, or up to the amount or value of the unlawful or undisclosed contribution or expenditure,  
whichever is greater, to the General Fund of the City.”

1           7.       The parties agree that in the event the FCPC refuses to accept this Stipulation,  
2 it shall become null and void. Respondents stipulate and agree that in the event a full  
3 evidentiary hearing before the Commission becomes necessary, no member of the  
4 Commission or FCPC staff shall be disqualified because of their consideration of this  
5 Stipulation and Order.

6           8.       Respondents acknowledge that the FCPC retains jurisdiction over this  
7 Stipulation and Order, and is acting under Section VI.C.2.d of the FCPC Procedures, enacted  
8 pursuant to the Commission's authority to enact rules and procedures under BERA Section  
9 2.12.210.

10 Dated: May \_\_, 2013

Respectfully submitted:

ZACH COWAN, City Attorney

\_\_\_\_\_  
KRISTY VAN HERICK, Deputy City Attorney  
Attorneys for Fair Campaign Practices  
Commission

17 Dated: May \_\_, 2013

\_\_\_\_\_  
JAY JAMES, Respondent

20 Dated: May \_\_, 2013

\_\_\_\_\_  
KIRAN SHENOY, Respondent

24 Dated: May \_\_, 2013

\_\_\_\_\_  
JUDY HUNT, Respondent

26 Dated: May \_\_, 2013

\_\_\_\_\_  
NICOLE DRAKE, Respondent

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**ORDER**

The foregoing Stipulation of the parties. in the matter of Jay James, Kiran Shenoy, Judy Hunt, and Nicole Drake, is hereby accepted as the final decision and order of the Fair Campaign Practices Commission effective upon execution below by the Chairperson. Further, it is hereby ordered that this Stipulation, Decision and Order be appended to the committee's campaign statements on file with the Office of the City Clerk, City of Berkeley.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
PATRICK O'DONNELL, Chairperson  
FAIR CAMPAIGN PRACTICES  
COMMISSION



1 ZACH COWAN, City Attorney SBN 96372  
2 KRISTY VAN HERICK, Deputy City Attorney SBN 178685  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704  
3 TEL.: (510) 981-6998  
4 FAX: (510) 981-6960

Attorneys for FAIR CAMPAIGN PRACTICES COMMISSION

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6  
7 **BEFORE THE FAIR CAMPAIGN PRACTICES COMMISSION**  
8 **CITY OF BERKELEY**

9  
10 In the Matter of

11 STAND UP FOR THE RIGHT TO SIT  
12 DOWN, A COMMITTEE IN OPPOSITION  
TO MEASURE S,

13 Respondent.  
14

[DRAFT] STIPULATION,  
DECISION AND ORDER

15  
16 This stipulation is entered into by and between the Complainant, Fair Campaign  
17 Practices Commission (“Commission” or “FCPC”), and Respondent, Stand Up for the Right  
18 to Sit Down, a Committee in Opposition to Measure S (“Respondent”), through its treasurer  
19 Patricia Wall. The following is a true and accurate summary of the facts in this matter:

20 1. Respondent first opened as a campaign committee on August 17, 2012 to  
21 oppose Measure S on the November 2012 ballot. Respondent is still an open committee.

22 2. Staff Secretary to the Commission (“staff”) reviewed Respondent’s campaign  
23 statements for the pre-election and post-election periods as part of an overall review of  
24 candidate and committee filings for compliance with the Berkeley Election Reform Act  
25 (“BERA”). In reviewing the Respondent’s post-election filing, staff found that Respondent  
26 had received five contributions of \$100 or more during the late contribution period, but  
27 noted no record of late contribution reports on file with the City Clerk.  
28

1           3.       Staff followed up with Respondent seeking further information on the late  
2 contributions. Ms. Wall, on behalf of Respondent, acknowledged that Respondent did not  
3 file the late contribution reports, and noted that they had not been aware of the requirement  
4 to do so. They also had errors in their campaign statement which needed amending. Ms.  
5 Wall expressed an interest in working with the Commission to resolve this matter.

6           **ISSUE ONE: FAILURE TO FILE TIMELY LATE CONTRIBUTION REPORT**

7           4.       A "late contribution" means any contribution of one hundred dollars or more  
8 received after the closing date of the last campaign statement required to be filed prior to an  
9 election. (BERA § 2.12.145.) For the 2012 election, the late contribution period began to run  
10 on October 21, 2012. "... Late contributions of one hundred dollars or more, but less than one  
11 thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt;"  
12 (BERA § 2.12.295.)

13           5.       The failure to comply with any section of BERA, including Section 2.12.295,  
14 may result in penalties: "When determining an appropriate remedy for a violation of this  
15 Chapter as specified in Section 2.12.230, the Commission may order any of the following: A.  
16 Cease and desist violation of this Chapter. B. File any reports, statements, or other documents  
17 or information required by this Chapter. C. Pay a monetary penalty of up to \$1,000.00 per  
18 violation, or up to the amount or value of the unlawful or undisclosed contribution or  
19 expenditure, whichever is greater, to the General Fund of the City." (BERA § 2.12.231.)

20           6.       The BERA provides that late filing of a late contribution report subjects the filer  
21 to monetary penalties. "Any candidate or committee whose only requirement to file a  
22 campaign statement or report is pursuant to Sections 2.12.270 or 2.12.295 of this chapter and  
23 who files such report or reports after the deadlines imposed in these sections, shall, in addition  
24 to any other penalties or remedies established by this chapter, be liable for the penalties  
25 enumerated in California Government Code Section 91013, which is incorporated herein."  
26 (BERA § 2.12.485.) Section 91013 caps late filing penalties at \$10 per day from the day the  
27 filing was due up to the cumulative amount stated in the late statement or report, or one  
28 hundred dollars (\$100), whichever is greater.

1           7.       Respondent received the following five contributions during the late  
2 contribution period, which were not reported in late contribution reports as required by  
3 2.12.295:

- 4           (a) 10/22, Osha Neumann, \$100, due by 10/24;
- 5           (b) 10/23, Gary McDole, \$125, due by 10/25;
- 6           (c) 10/31, Christopher Douglas, \$125, due by 11/2;
- 7           (d) 11/2, Dan Siegel, \$250, due by 11/4; and
- 8           (e) 11/2, Paul Boden, \$100, due by 11/4.

9           8.       As part of this Stipulation, Respondent agrees to file the required late  
10 contribution reports, and pay an agreed upon penalty. The late penalties based on the due date  
11 of the filings would total \$700. However, considering prior Commission stipulations, the fact  
12 that Ms. Wall is a first time volunteer treasurer, and Respondent's diligence and responsiveness  
13 to staff inquiries, the Commission has agreed to limit the penalties due to \$500.

#### 14                           **ISSUE TWO: INCOMPLETE CAMPAIGN STATEMENT**

15           9.       BERA Section 2.12.280 requires, amount other things, that the campaign  
16 statement include the total amount of contributions received during the period covered by the  
17 campaign statement for contributions less than \$50, and contributions of \$50 or more.

18           10.      The reporting period for the Semi-Annual/Post-Election period spanned the  
19 dates on October 21, 2012 through December 31, 2012. The campaign statement filed by  
20 Respondent identified that the report commenced on October 26. It is unclear whether any  
21 required information was omitted from the campaign statement, as the filing did list  
22 contributions prior to October 26. Additionally, the campaign statement summary page was  
23 incomplete, making it difficult to determine whether all contributions have been accurately  
24 reflected in the filing.

25           11.      Respondent has agreed to file an amended Form 460 for the period of October  
26 21 through December 3, inclusive of a complete summary page.

#### 27                           **ADMISSIONS AND STIPULATIONS**

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

1           1.       Respondent violated BERA Section 2.12.295 and 2.12.280, as set forth in  
2 paragraphs 1 through 11 above.

3           2.       Respondent agrees to file the late contribution report, amend the Semi-  
4 Annual/Post-Election report, and pay as a penalty the sum of \$500, payable to the City of  
5 Berkeley, for deposit into the City's general fund no later than June 15, 2013.

6           3.       Based on the facts and law detailed above, and the factors in aggravation and  
7 mitigation, and BERA Section 2.12.231, Respondent agrees to pay the sum of \$500 as a  
8 monetary penalty, payable to the City of Berkeley for deposit into the City's general fund no  
9 later than June 15, 2013.

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

14          5.       The parties agree to enter into this Stipulation to resolve all factual and legal  
15 issues raised in this matter and to reach a final disposition without the necessity of holding an  
16 administrative hearing to determine the liability of the Respondent. Respondent understands  
17 and hereby knowingly and voluntarily waive any and all procedural rights under the BERA and  
18 the FCPC Procedures.

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

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

1           8.       Respondent acknowledges that the FCPC retains jurisdiction over this  
2 Stipulation and Order, and is acting under Section VI.C.2.d of the FCPC Procedures, enacted  
3 pursuant to the Commission’s authority to enact rules and procedures under BERA Section  
4 2.12.210.

5  
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8 Dated: \_\_\_\_\_, 2013

Respectfully submitted:

ZACH COWAN, City Attorney

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10  
11 By \_\_\_\_\_  
12 Kristy van Herick, Deputy City Attorney  
13 Attorneys for Fair Campaign Practices  
14 Commission

15 Dated: \_\_\_\_\_ 2013

16 \_\_\_\_\_  
17 Patricia Wall, Treasurer for Respondent,  
18 Stand Up for the Right to Sit Down,  
19 a Committee in Opposition to Measure S  
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**ORDER**

The foregoing Stipulation of the parties In the Matter of Stand Up for the Right to Sit Down, a Committee in Opposition to Measure S, is hereby accepted as the final decision and order of the Fair Campaign Practices Commission effective upon execution below by the Chairperson. Further, it is hereby ordered that this Stipulation, Decision and Order be appended to the Stand Up for the Right to Sit Down, a Committee in Opposition to Measure S’s campaign statements on file with the Office of the City Clerk, City of Berkeley.

IT IS SO ORDERED.

Dated: \_\_\_\_\_, 2013

\_\_\_\_\_  
Patrick O’Donnell, Chairperson  
Fair Campaign Practices Commission



Fair Campaign Practices Commission

PUBLIC HEARING  
June 11, 2013

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Patrick O'Donnell, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act – Electronic Filing

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance amending the Berkeley Election Reform Act to provide for the electronic filing of campaign statements and reports and to designate the electronic filing as the filing of record.

FISCAL IMPACTS OF RECOMMENDATION

Savings of staff resources related to the manual processing of campaign statements and reports.

CURRENT SITUATION AND ITS EFFECTS

Assembly Bill 2452, signed into law last year, allows a local jurisdiction to require the electronic filing of campaign statements and provides for the electronic filing to serve as the filing of record, thus eliminating the need for hard copy statements to be filed.

On June 26, 2012 the City Council adopted the recommendation of the Fair Campaign Practices Commission (FCPC) to send a letter to the legislature in support of the bill. The bill was signed into law in July 2012.

The FCPC adopted the attached ordinance to enable electronic filing in Berkeley at its April 18, 2013 meeting, as follows:

*Move that the amendments to the BERA to provide for electronic filing of campaign statements are approved (Proposed amendment to add 2.12.032, 2.12.033 and 2.12.127, and amend 2.12.025, 2.12.040 and 2.12.295 of the Berkeley Municipal Code). (M/S/C: Smith/Costa. Ayes: Costa, Lombardi, Murray, O'Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Pritchard.)*

The FCPC approved submission of this report at its May 16, 2012 meeting:

(M/S/C: . . .)

The ordinance makes the findings required by state law and adds three new sections to the BERA to provide for the procedures and parameters for electronic filing. The ordinance also amends three existing sections of BERA –(1) providing for a secure electronic signature on electronic filings, (2) clarifying the information available for public review online and through the City Clerk’s Office, and (3) removing a reference to paper filings for late contribution reports.

If the ordinance is approved by a two-thirds vote of the City Council, the new ordinance would be effective on January 1, 2014. As mandated by state law, the electronic filing requirement will only apply to committees that raise or spend \$1,000 or more.

Staff has informed the Commission that electronic filing could be implemented in Berkeley using the current vendor (NetFile). This vendor has the necessary expertise and state approvals to provide a seamless transition to all electronic filing under the new legislation. In recent elections, approximately 60% – 65% of Berkeley campaign committees have filed their statements using the NetFile online system.

NetFile uses the same type of data encryption for online filings that is used for online banking. In addition, the filing data that is collected in the NetFile system is backed up nightly in three secure locations. The data will be backed-up and retained for at least 10 years as is required by state law. NetFile counts many statewide campaigns among its customers and is fully approved by the Secretary of State.

In addition, NetFile will be adding functionality to the system so that campaigns will have greater access to the data they have entered. This will allow campaigns to use the data for other purposes and eliminate the need to “double enter” the data in two locations.

#### BACKGROUND

The voters enacted the Berkeley Election Reform Act (BERA) in 1974 with the following stated purposes:

- A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.
- C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced. (BMC § 2.12.015)

BERA may be amended to further these purposes through a “double-green light” procedure. First, the FCPC must approve any amending ordinance by not less than a two-thirds vote of its membership. Second, following a period of at least thirty days, the City Council must hold a public hearing and also approve the amendment by not less than a two-thirds’ vote of its membership. (BMC § 2.12.051.A.)



RATIONALE FOR RECOMMENDATION

Bringing these amendments forward is consistent with the purposes of the BERA by providing greater public access to campaign contribution and expenditure data. The amendment would also save significant staff resources by streamlining the processing campaign statements.

ALTERNATIVE ACTIONS CONSIDERED

Council may decide to maintain the current system and forego any staff resource savings and increased public access that the amendments would provide.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Kristy van Herick, Commission Secretary, City Attorney's Office, 981-6998  
Patrick O'Donnell, Commission Chair, 486-0236

Attachments:

1: Ordinance

ORDINANCE NO. - N.S.

ADDING SECTIONS 2.12.032, 2.12.033, AND 2.12.127 TO PROVIDE FOR THE ELECTRONIC FILING OF CAMPAIGN STATEMENTS AND AMENDING SECTIONS 2.12.025, 2.12.040, AND 2.12.295 OF THE BERKELEY MUNICIPAL CODE TO MAKE TECHNICAL CHANGES RELATED TO ELECTRONIC FILING

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

Section 1. That the Council of the City of Berkeley hereby makes the following findings:

A. The electronic filing system will operate securely, ensure the integrity of the data transmitted, and shall include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.

B. The electronic filing system will operate effectively and will not unduly burden filers.

C. The requirement for electronic filing of campaign statements furthers the purposes of the Berkeley Election Reform Act by providing greater public access to campaign finance data.

Section 2. That Section 2.12.032 is added to the Berkeley Municipal Code to read as follows:

**2.12.032 Requirement to file statements and reports electronically.**

A. An elected officer, candidate, committee, or other person required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section 84100), who receives contributions totaling one thousand dollars (\$1,000) or more, or makes expenditures totaling one thousand dollars (\$1,000) or more, in a calendar year must submit all reports or statements as an electronic filing. Once an elected officer, candidate, committee, or other person is required to submit reports or statements as an electronic filing, that elected officer, candidate, committee, or other person shall continue to use electronic filing until the committee has officially terminated or the elected officer, candidate or other person has no further filing obligations.

1. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but has not met the \$1,000 threshold in subsection A, may submit required reports or statements as an electronic filing or in paper format.

2. In any instance in which the original report, statement, or other document is required to be filed with the Secretary of State and a copy of that report, statement, or other document is required to be filed with the City of Berkeley, the copy may be submitted as an electronic filing.

Section 3. That Section 2.12.033 is added to the Berkeley Municipal Code to read as follows:

**2.12.033 Filing procedures.**

A. Electronic filing procedures shall be administered in accordance with California Government Code Section 84615.

B. Notwithstanding any other provision of law, any statement, report or other document submitted as an electronic filing pursuant to Section 2.12.032.A shall serve as the filing of record and shall not be required to be filed with the City Clerk in paper format.

Section 4. That Section 2.12.127 is added to the Berkeley Municipal Code to read as follows:

**2.12.127 Electronic Filing.**

“Electronic filing” means the submission of required reports and statements in an electronic format approved by the Secretary of State and the City Clerk.

Section 5. That Section 2.12.025 of the Berkeley Municipal Code is amended to read as follows:

**2.12.025 Reports and statements—Signature and verification requirements.**

Reports and statements filed under this chapter shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this chapter which contains material which he or she knows to be false is guilty of perjury. For a report or statement submitted as an electronic filing pursuant to Section 2.12.032, a secure electronic signature shall meet the requirements of this section.

Section 6. That Section 2.12.040 of the Berkeley Municipal Code is amended to read as follows:

**2.12.040 Statements--Public inspection requirements.**

Campaign statements are to be ~~open~~ open-available for public inspection and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents per page copied. The data contained in any campaign report or

statement submitted as an electronic filing shall be available free of charge on the Internet in an easily understood format that is searchable and downloadable. The data made available on the Internet shall not contain the street name and building number of any person or entity representative listed on the report or statement or any bank account number required to be disclosed pursuant to this Chapter or state law.

Section 7. That Section 2.12.295 of the Berkeley Municipal Code is amended to read as follows:

**2.12.295 Report of late contributions.**

All candidates and committees, including committees qualified under Section 2.12.095 but prior to filing required statements under Section 2.12.255 of this chapter, shall report all late contributions received by identifying the full name, street address, occupation, and the name of the employer, if any, or principal place of business if self-employed, of the contributor. Late contributions of one hundred dollars or more, but less than one thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt; late contributions of one thousand dollars or more shall be reported to the City Clerk within twenty-four hours of receipt. Such reports ~~may be by any written means of communication,~~ and do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section.

Section 8. These amendments shall be effective on January 1, 2014.

Section 9. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.



Fair Campaign Practices Commission

PUBLIC HEARING  
June 11, 2013

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Patrick O'Donnell, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act – Technical Changes and Clean Up

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance amending the Berkeley Election Reform Act to bring the Act into compliance with state law, make technical changes to outdated provisions, and remove obsolete sections.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

When the electronic filing amendments were developed, a full review of the Berkeley Election Reform Act (BERA) was undertaken to ensure that the electronic filing amendments did not create any internal inconsistencies in the law. During that review, several sections (unrelated to the electronic filing amendments) were identified as potential candidates for revision or deletion.

The Fair Campaign Practices Commission (FCPC) adopted the attached ordinance to amend the BERA at its April 18, 2013 meeting, as follows:

*Motion to approve proposed BERA amendments, to amend Sections 2.12.145, 2.12.250 and 2.12.297 and to repeal 2.12.285 and 2.12.290. (M/S/C: Murray/Smith. Ayes: Costa, Lombardi, Murray, O'Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Pritchard.)*

The FCPC approved submission of this report at its May 16, 2012 meeting:

(M/S/C: . . .)

A summary of the amendments is provided below.

Section 2.12.250A requires a committee's bank account to be at a bank in Alameda County and also references joint accounts. State law requires that a campaign account be located in California, however, staff does not find a compelling reason to limit local filers to a bank in Alameda County. With regards to joint accounts, the state requires one account per committee (GC 85201, FPPC Reg 18521) thus making this provision obsolete.

Section 2.12.250C requires the liquidation of any remaining committee funds within 90 days after the election. It also includes language enabling the payment of remaining funds directly to the candidate. The state regulations regarding the use of surplus funds (GC 89519, FPPC Reg 18951) generally prohibit this type of payment. Since state law is more specific and restrictive, BERA should defer to the state statutes. In addition, state law allows for a candidate to redesignate funds for future elections, which this section appears to prohibit. Given these allowances in state law, it seems unduly restrictive to compel a candidate or committee to disband within 90 days after the election. Additionally, this section is inconsistent with the Commission's determination (and regulation) that committees can continue to fundraise for two years after the election for the purpose of paying off outstanding debts.

Section 2.12.285 allows a filer to submit a written declaration in lieu of a campaign filing. However, once a campaign committee has qualified, state law requires certain information appear on the filings, generally on a Form 460 (GC 84211). If there is minimal activity a committee may file a short form when permitted by law. In either case, the written statement provided for under 2.12.285 is not consistent with state law and regulations.

Section 2.12.290 allows for filing joint campaign statements. As is the case with 2.12.250A, references to joint accounts and filings are no longer enforceable with the one account, one committee requirement in state law.

Section 2.12.297 regarding independent expenditures was added in 2012. While this section was added just last year, more recent changes in state law have made it outdated and potentially very confusing for filers. The new state law, AB 481, expands the time for special reporting of late contributions and late independent expenditures to include the 90 days preceding the election. State law now casts a wider net than BERA with regards to independent expenditures and staff recommends bringing BERA in line with the state law.

Due to the changes in AB 481 noted above, Section 2.12.145, late contribution, is inconsistent with state law. The proposed revision brings the reporting period for contributions of \$1000 or more in line with state law. The reporting period for contributions of \$100 to \$999 is unchanged.

## BACKGROUND

Adopted by the voters in 1974, the Berkeley Election Reform Act (BERA) has been amended from time to time. Section 2.12.051 of the BERA provides for amendment through the “double green light” process which requires a two-thirds vote of the FCPC and the City Council to amend the law.

#### RATIONALE FOR RECOMMENDATION

Updating these sections will make BERA easier to understand by residents and filers, thus making BERA more relevant and current. Keeping laws relevant and current helps to maintain the credibility of the law and also assist in compliance by those that it regulates.

#### ALTERNATIVE ACTIONS CONSIDERED

Council may decline to amend BERA and leave the conflicting and outdated provisions unchanged.

#### CITY MANAGER

The City Manager **concur**s with the content and recommendations of the Commission’s Report.

#### CONTACT PERSON

Kristy van Herick, Commission Secretary, City Attorney’s Office, 981-6998  
Patrick O’Donnell, Commission Chair, 486-0236

Attachments:  
1: Ordinance

ORDINANCE NO. - N.S.

AMENDING SECTIONS 2.12.145, 2.12.250 AND 2.12.297 AND REPEALING SECTIONS 2.12.285 AND 2.12.290 OF THE BERKELEY MUNICIPAL CODE TO CONFORM WITH STATE LAW REGULATING CAMPAIGN STATEMENTS

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

Section 1. That Section 2.12.145 of the Berkeley Municipal Code is amended to read as follows:

**2.12.145 Late contribution.**

"Late contribution" means any contribution of one hundred dollars or more, but less than one thousand dollars, received after the closing date of the last campaign statement required to be filed prior to an election and contributions of one thousand dollars or more received within the reporting period specified in California Government Code Section 82036.

Section 2. That Section 2.12.250 of the Berkeley Municipal Code is amended to read as follows:

**2.12.250 Campaign expenditure and contribution account--Establishment required-- Procedure for use.**

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee ~~in a bank located in Alameda County.~~ All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. ~~Where a candidate or a committee is permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish and maintain under the terms of this section one joint checking account for the candidate and the committee.~~

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall ~~certify that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, and shall liquidate the~~



~~contribution checking account by paying the remaining balance in the checking account to the candidate or committee for his or her or its use in any lawful manner consistent with California Government Code Section 89510 et seq., and applicable state regulations, before terminating the campaign committee, within ninety days after the date of election, unless upon good cause an extension is granted by the commission.~~

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

F. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section 2.12.230 of this chapter shall apply.

Section 3. That Section 2.12.297 of the Berkeley Municipal Code is amended to read as follows:

**2.12.297 Late independent expenditures in 40 days preceding election.**

A. Disclosure of Expenditures. Any person that makes an late independent expenditure as defined in California Government Code Section 82036.5 of \$1,000 or more in support of or in opposition to any measure or candidate, or group of measures or candidates, shall file the required report in the 40 days before an election in which the measure or candidate, or group of measures or candidates, appears on the ballot, shall notify the with the City Clerk within 24 hours of making the expenditure, by personal delivery, fax, overnight mail, or other electronic means as authorized by law each time an expenditure which meets this threshold is made. The City Clerk shall post a copy of the report notice to the City's website within two business days after receiving the report

~~notice~~. Late independent expenditures shall be reported on subsequent campaign statements in addition to the reports filed pursuant to this section. The person shall also provide to the City Clerk three copies of the communication funded by the expenditure.

- B. Contents of ~~Notice~~Report. The ~~notice~~report shall specify:
- a. Each candidate or measure supported or opposed by the expenditure;
  - b. The amount spent to support or oppose each candidate or measure;
  - c. Whether the candidate or measure was supported or opposed;
  - d. The date and amount of each expenditure;
  - e. A description of the type of communication for which the expenditure was made;
  - f. The name and address of the person making the expenditure; and
  - g. The name and address of the payee.

C. Notification to Candidates of Expenditures. The City Clerk shall notify all candidates and committees in each affected race by first class mail within two business days of receiving a report filed pursuant to this section. ~~notice of the independent expenditures of \$1,000 or more.~~

D. Exemption for Regularly Published Newsletters. For purposes of the notification required by subsection (A) of this section, payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication, shall not be required to be reported.

Section 4. That Section 2.12.285 of the Berkeley Municipal Code is repealed.

Section 5. That Section 2.12.290 of the Berkeley Municipal Code is repealed.

Section 6. These amendments shall be effective on January 1, 2014.

Section 7. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

## NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

### AMENDMENTS TO BERKELEY ELECTION REFORM ACT (BERA)

Notice is hereby given by the City Council of the City of Berkeley that on **June 11, 2013 at 7:00 p.m.** the City of Berkeley is proposing the following amendments to the BERA:

- (1) add sections 2.12.032, 2.12.033, and 2.12.127 to provide for electronic filing of campaign statements;
- (2) amend sections 2.12.025, 2.12.040, and 2.12.295 to make technical changes to the BERA related to electronic filing;
- (3) amend sections 2.12.145, 2.12.250, and 2.12.297 to conform the BERA with the state Government Code; and
- (4) repeal sections 2.12.285 and 2.12.290 to conform the BERA with the state Government Code.

The hearing will be held in the City Council chambers, 2134 Martin Luther King, Jr. Way. A copy of the agenda material for this hearing will be available on the City's website at [www.CityofBerkeley.info](http://www.CityofBerkeley.info) as of **May 30, 2013**.

For further information, please contact Kristy van Herick at (510) 981-6998.

*Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet. Comments received no later than Tuesday, May 28, 2013 will be included in Council agenda packets. Comments received thereafter will be submitted to Council as supplemental communications at the meeting.*

*Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at 981-6908 or [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) for further information.*

*If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.*

**Published:** [Publication Date in Newspaper]

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on.

Mark Numainville, City Clerk

ORDINANCE NO. - N.S.

ADDING SECTIONS 2.12.032, 2.12.033, AND 2.12.127 TO PROVIDE FOR THE ELECTRONIC FILING OF CAMPAIGN STATEMENTS AND AMENDING SECTIONS 2.12.025, 2.12.040, AND 2.12.295 OF THE BERKELEY MUNICIPAL CODE TO MAKE TECHNICAL CHANGES RELATED TO ELECTRONIC FILING

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

Section 1. That the Council of the City of Berkeley hereby makes the following findings:

A. The electronic filing system will operate securely, ensure the integrity of the data transmitted, and shall include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.

B. The electronic filing system will operate effectively and will not unduly burden filers.

C. The requirement for electronic filing of campaign statements furthers the purposes of the Berkeley Election Reform Act by providing greater public access to campaign finance data.

Section 2. That Section 2.12.032 is added to the Berkeley Municipal Code to read as follows:

**2.12.032 Requirement to file statements and reports electronically.**

A. An elected officer, candidate, committee, or other person required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section 84100), who receives contributions totaling one thousand dollars (\$1,000) or more, or makes expenditures totaling one thousand dollars (\$1,000) or more, in a calendar year must submit all reports or statements as an electronic filing. Once an elected officer, candidate, committee, or other person is required to submit reports or statements as an electronic filing, that elected officer, candidate, committee, or other person shall continue to use electronic filing until the committee has officially terminated or the elected officer, candidate or other person has no further filing obligations.

1. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but has not met the \$1,000 threshold in subsection A, may submit required reports or statements as an electronic filing or in paper format.

2. In any instance in which the original report, statement, or other document is required to be filed with the Secretary of State and a copy of that report, statement, or other document is required to be filed with the City of Berkeley, the copy may be submitted as an electronic filing.

Section 3. That Section 2.12.033 is added to the Berkeley Municipal Code to read as follows:

**2.12.033 Filing procedures.**

A. Electronic filing procedures shall be administered in accordance with California Government Code Section 84615.

B. Notwithstanding any other provision of law, any statement, report or other document submitted as an electronic filing pursuant to Section 2.12.032.A shall serve as the filing of record and shall not be required to be filed with the City Clerk in paper format.

Section 4. That Section 2.12.127 is added to the Berkeley Municipal Code to read as follows:

**2.12.127 Electronic Filing.**

“Electronic filing” means the submission of required reports and statements in an electronic format approved by the Secretary of State and the City Clerk.

Section 5. That Section 2.12.025 of the Berkeley Municipal Code is amended to read as follows:

**2.12.025 Reports and statements—Signature and verification requirements.**

Reports and statements filed under this chapter shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this chapter which contains material which he or she knows to be false is guilty of perjury. For a report or statement submitted as an electronic filing pursuant to Section 2.12.032, a secure electronic signature shall meet the requirements of this section.

Section 6. That Section 2.12.040 of the Berkeley Municipal Code is amended to read as follows:

**2.12.040 Statements--Public inspection requirements.**

Campaign statements are to be ~~open~~ open-available for public inspection and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents per page copied. The data contained in any campaign report or

statement submitted as an electronic filing shall be available free of charge on the Internet in an easily understood format that is searchable and downloadable. The data made available on the Internet shall not contain the street name and building number of any person or entity representative listed on the report or statement or any bank account number required to be disclosed pursuant to this Chapter or state law.

Section 7. That Section 2.12.295 of the Berkeley Municipal Code is amended to read as follows:

**2.12.295 Report of late contributions.**

All candidates and committees, including committees qualified under Section 2.12.095 but prior to filing required statements under Section 2.12.255 of this chapter, shall report all late contributions received by identifying the full name, street address, occupation, and the name of the employer, if any, or principal place of business if self-employed, of the contributor. Late contributions of one hundred dollars or more, but less than one thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt; late contributions of one thousand dollars or more shall be reported to the City Clerk within twenty-four hours of receipt. Such reports ~~may be by any written means of communication,~~ and do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section.

Section 8. These amendments shall be effective on January 1, 2014.

Section 9. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen 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.

ORDINANCE NO. - N.S.

AMENDING SECTIONS 2.12.145, 2.12.250 AND 2.12.297 AND REPEALING SECTIONS 2.12.285 AND 2.12.290 OF THE BERKELEY MUNICIPAL CODE TO CONFORM WITH STATE LAW REGULATING CAMPAIGN STATEMENTS

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

Section 1. That Section 2.12.145 of the Berkeley Municipal Code is amended to read as follows:

**2.12.145 Late contribution.**

"Late contribution" means any contribution of one hundred dollars or more, but less than one thousand dollars, received after the closing date of the last campaign statement required to be filed prior to an election and contributions of one thousand dollars or more received within the reporting period specified in California Government Code Section 82036.

Section 2. That Section 2.12.250 of the Berkeley Municipal Code is amended to read as follows:

**2.12.250 Campaign expenditure and contribution account--Establishment required-- Procedure for use.**

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee ~~in a bank located in Alameda County.~~ All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. ~~Where a candidate or a committee is permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish and maintain under the terms of this section one joint checking account for the candidate and the committee.~~

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall ~~certify that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, and shall liquidate the~~



~~contribution checking account by paying the remaining balance in the checking account to the candidate or committee for his or her or its use in any lawful manner consistent with California Government Code Section 89510 et seq., and applicable state regulations, before terminating the campaign committee, within ninety days after the date of election, unless upon good cause an extension is granted by the commission.~~

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

F. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section 2.12.230 of this chapter shall apply.

Section 3. That Section 2.12.297 of the Berkeley Municipal Code is amended to read as follows:

**2.12.297 Late independent expenditures in 40 days preceding election.**

A. Disclosure of Expenditures. Any person that makes an late independent expenditure as defined in California Government Code Section 82036.5 of \$1,000 or more in support of or in opposition to any measure or candidate, or group of measures or candidates, shall file the required report in the 40 days before an election in which the measure or candidate, or group of measures or candidates, appears on the ballot, shall notify the with the City Clerk within 24 hours of making the expenditure, by personal delivery, fax, overnight mail, or other electronic means as authorized by law each time an expenditure which meets this threshold is made. The City Clerk shall post a copy of the report notice to the City's website within two business days after receiving the report

~~notice~~. Late independent expenditures shall be reported on subsequent campaign statements in addition to the reports filed pursuant to this section. The person shall also provide to the City Clerk three copies of the communication funded by the expenditure.

- B. Contents of ~~Notice~~Report. The ~~notice~~report shall specify:
- a. Each candidate or measure supported or opposed by the expenditure;
  - b. The amount spent to support or oppose each candidate or measure;
  - c. Whether the candidate or measure was supported or opposed;
  - d. The date and amount of each expenditure;
  - e. A description of the type of communication for which the expenditure was made;
  - f. The name and address of the person making the expenditure; and
  - g. The name and address of the payee.

C. Notification to Candidates of Expenditures. The City Clerk shall notify all candidates and committees in each affected race by first class mail within two business days of receiving a report filed pursuant to this section. ~~notice of the independent expenditures of \$1,000 or more.~~

D. Exemption for Regularly Published Newsletters. For purposes of the notification required by subsection (A) of this section, payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication, shall not be required to be reported.

Section 4. That Section 2.12.285 of the Berkeley Municipal Code is repealed.

Section 5. That Section 2.12.290 of the Berkeley Municipal Code is repealed.

Section 6. These amendments shall be effective on January 1, 2014.

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