

Fair Campaign Practices Commission

AGENDA FOR FAIR CAMPAIGN PRACTICES COMMISSION

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

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

Special Meeting
October 19, 2017
7:00 p.m.

Secretary: Jessica Mar, Deputy City Attorney

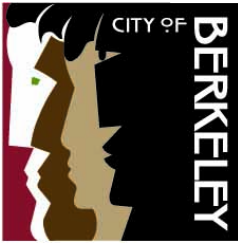
The Commission may act on any item on this agenda

1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
5. Approval of minutes for the September 21, 2017 regular meeting.
6. Commissioner training regarding the Commission's dual advisory and adjudicative roles under the Berkeley Election Reform Act (BERA); discussion and possible action.
7. Alleged BERA violations by the *Berkeley Rental Housing Coalition Independent Expenditure Committee Supporting Nate Wollman and Judy Hunt for Rent Stabilization Board 2016*; communication from treasurer James Sutton requesting appointment of negotiating committee dated September 21, 2017; discussion and possible action.
8. Commission discussion regarding possible guidelines for the Commission regarding penalties for committees that violate the Berkeley Election Reform Act more than once; discussion and possible action.
9. Adjournment.

Communications:

- Letter from Christine Schwartz dated October 10, 2017, with attachment

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



Fair Campaign Practices Commission

DRAFT MINUTES

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

Regular Meeting
September 21, 2017

Members Present: Dean Metzger, Greg Harper, Mary Kay Lacey (temporary appointment), Mark McLean, Patrick O'Donnell, Hamsini Sridharan, Brian Tsui

Members Absent: Brad Smith (excused); Emma Soichet

Also Present: Jessica Mar, Secretary/Deputy City Attorney

1. **Call to Order**

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

2. **Roll Call.**

Roll call taken.

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

1 public comment on matter not on agenda. 4 members of the public in attendance.

4. Reports.

- a. No report from Chair.
- b. No report from Staff.

5. **Approval of minutes for the July 20, 2017 regular meeting**

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

Acting Chair Metzger with the consent of the Commission moved item 8 before item 6.

8. **Status report regarding alleged BERA violations by the Berkeley Rental Housing Coalition Independent Expenditure Committee Supporting Nate Wollman and Judy Hunt for Rent Stabilization Board 2016; discussion and possible action.**

Motion to continue item to next meeting in light of communication from respondent sent to the Commission on the day of the meeting (M/S/C: O'Donnell/Sridharan; Ayes: Metzger, Harper, Lacey, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Brad Smith (excused); Soichet)

6. **Staff report regarding ongoing BERA enforcement actions; discussion and possible action.**

Public Comment: none
Commission discussion and action: *No action taken.*

7. **Staff report regarding draft regulations and draft forms to implement public campaign financing; discussion and possible action.**

Public Comment: none
Commission discussion and action:

Motion to amend Regulation 2.12.505(b) to emphasize that the Commission retains its authority to investigate and enforce the Berkeley Election Reform Act (M/S/C: Tsui/Sridharan; Ayes: Metzger, Harper, Lacey, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Brad Smith (excused); Soichet)

Motion to adopt the Regulations as amended (M/S/C: Harper/Tsui; Ayes: Metzger, Harper, Lacey, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Brad Smith (excused); Soichet)

Motion to adopt the public financing forms as modified (M/S/C: Sridharan/Harper; Ayes: Metzger, Harper, Lacey, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Brad Smith (excused); Soichet)

8. **Draft stipulation regarding BERA violations by Candidate-Controlled Committee Ben Bartlett for Berkeley City Council 2016; discussion and possible action.**

Public Comment: none
Commission discussion and action

Motion to adopt the stipulation (M/S/C: O'Donnell/Tsui; Ayes: Metzger, Harper, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: Lacey; Absent: Brad Smith (excused); Soichet)

9. **Report from Candidate Loan Subcommittee; discussion and possible action.**

Report from Loan Subcommittee; discussion and possible action.

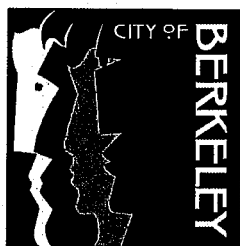
Public Comment: none
Commission discussion and action: No action taken.

————— *Meeting temporarily adjourned at 8:01 p.m., reconvened at 9:03 p.m.* —————

10. **Adjournment.**

Motion to adjourn (M/S/C: McLean/Harper; Ayes: Metzger, Harper, Lacey, McLean, O'Donnell, Sridharan, Tsui; Noes: None; Abstain: None; Absent: Brad Smith (excused); Soichet)

The meeting adjourned at 9:30 p.m.



Fair Campaign Practices Commission

DATE: October 19, 2017

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: JESSICA MAR, Commission Secretary JM 10/12/17

SUBJECT: **Alleged Violations of BERA by the Berkeley Rental Housing Coalition Independent Expenditure Committee Supporting Nate Wollman and Judy Hunt for Rent Stabilization Board 2016 Sponsored by the Berkeley Property Owners Association; Communication from Treasurer James Sutton dated September 21, 2017**

A status report on the matter regarding *Berkeley Rental Housing Coalition Independent Expenditure Committee Supporting Nate Wollman and Judy Hunt for Rent Stabilization Board 2016 Sponsored by the Berkeley Property Owners Association* the was included in the September 21, 2017 FCPC packet. Several hours before the Commission's last meeting on September 21, 2017, James Sutton, treasurer for the *Berkeley Rental Housing Coalition Independent Expenditure Committee Supporting Nate Wollman and Judy Hunt for Rent Stabilization Board 2016 Sponsored by the Berkeley Property Owners Association* sent a letter to the Commission Secretary for Chair Smith. This letter was distributed to the full Commission as a communication at the September 21, 2017 meeting. The matter has now been agendized for discussion. The letter is included as **Attachment 1**.

The letter, in part, requests appointment of a negotiating committee. The Commission Secretary was asked to provide information from the FCPC Procedures regarding appointment of a negotiating committee.

Appointment of a negotiating committee is one of the options for proceeding after a determination of probable cause. Section VI.C.2 of the Procedures for the FCPC, sets forth possible courses of action following a determination of probable cause as follows:

The Commission may take any of the following courses of action:

- a. Dismiss the complaint, where appropriate, and take no further action.
- b. Request the Secretary conduct further investigation, including an audit of campaign records;

FCPC

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Page 2 Re: Berkeley Rental Housing Coalition Independent Expenditure Committee Supporting Nate Wollman and Judy Hunt for Rent Stabilization Board 2016 Sponsored by the Berkeley Property Owners Association

- c. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;
- d. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.
- e. Schedule and conduct a hearing pursuant to Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after the Secretary has completed his or her report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.
- f. Ask the City Attorney or the District Attorney to seek legal remedies.
- g. Seek any other remedy within its authority.

Attachments

1. Letter from James Sutton re: Request to Appoint Negotiating Subcommittee in the Matter of Berkeley Rental Housing Coalition Independent Expenditure Committee, dated September 21, 2017

THE SUTTON LAW FIRM

September 21, 2017

VIA EMAIL ONLY

Brad Smith, Chair
Berkeley Fair Campaign Practices Commission
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

RE: Request to Appoint Negotiating Subcommittee in the Matter of Berkeley Rental Housing Coalition Independent Expenditure Committee

Dear Mr. Smith:

On behalf of our client, the Berkeley Rental Housing Coalition Independent Expenditure Committee (the "Committee"), we respectfully request that you exercise your authority as Chair of Berkeley's Fair Campaign Practices Commission (the "FCPC" or the "Commission") to appoint a "negotiating subcommittee" of one or more members to negotiate a settlement with the Committee. (See Procedures for the Fair Campaign Practices Commission section (VI)(C)(2)(d).)

We have attempted to negotiate in good faith with the Commission and Commission Secretary – by voluntarily providing all information related to the Committee filings at issue, giving the Commission back-up documentation for the filings, submitting signed declarations under penalty of perjury confirming that the failure to file the reports on time was completely inadvertent, and appearing and answering questions at several Commission meetings. Nevertheless, the Commission has been unable to move a stipulation forward.

The law clearly requires the Commission to act impartially when considering an enforcement matter. (See Berkeley Muni. Code sections 2.12.205 & 2.12.230 [Commission is legally required to act "impartially" and must protect respondents' due process rights]; Noble v. Palo Alto (1928) 89 Cal.App. 47, 51 & Clark v. Hermosa Beach (1996) 48 Cal.App.4th 1152 [Commissioners are legally required to act "with disinterested skill, zeal, and diligence"].) The public meetings at which the Commission has considered this matter have instead been rife with due process and procedural violations, including: claiming that prior FCPC enforcement matters involve the same parties as the Committee matter when they clearly do not; permitting protestors to chant prejudicial slogans and to cheer during the Commission's deliberations; a Commissioner having a private conversation with protestors

Chair Brad Smith
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during the Commission's consideration of the matter; using unsubstantiated disparaging terms to describe the Commission Secretary, the parties, and the Committee's counsel; making a motion to issue a fine even though the law only allows such action after a full hearing on a matter; etc. It has become clear that politics and personal political biases have made it impossible for the Commission to consider the matter in a fair and impartial manner. The political fervor at the public meetings have made them an inappropriate venue to produce a reasonable settlement.

Appointing a negotiating subcommittee would make it much more likely that the Commission can consider the facts, comparable cases and appropriate procedures and penalties in a way which leads to a reasonable resolution and which protects the Committee's due process rights. It would also allow the Commissioners to receive information directly, rather than filtered through the Commission Secretary. Perhaps most notably, it would save the Commission and City resources by bringing this matter – which has already gone on for over five months – to an end.

We will continue to respond to all requests by the Commission and to negotiate in good faith, and hope that you agree that appointing a negotiating subcommittee is the most appropriate action at this time.

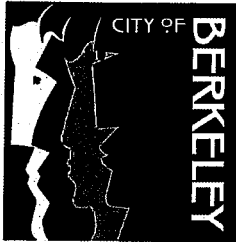
Sincerely,



James R. Sutton

cc: All other FCPC Commissioners
Jessica Mar, Esq.

NLS/dfm
#1777.03



Fair Campaign Practices Commission

DATE: October 19, 2017

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: JESSICA MAR, Commission Secretary JM 10/12/17

SUBJECT: Possible guidelines for the Commission regarding penalties for committees that violate the Berkeley Election Reform Act more than once

During public comment at Commission meetings, some members of the public have expressed interest in the Commission developing guidelines for committees that violate the Berkeley Election Reform Act more than once or "repeat offenders."

Vice Chair Metzger's proposed revisions to BERA regarding this matter is included as **Attachment 1**.

Attachments

1. Proposed Revisions to BERA section 2.12.231, from Dean Metzger

October 19, 2017

Proposed Revision to BERA section 2.12.231

Purpose for change:

The Berkeley Election Reform act is silence on what should be done if an organization repeatedly violates this ordinance. The FCPC commission needs some guide lines for the definition of committees and PACs with the penalties it can use when this type of violation is alleged to have occurred and proven to be true.

2.12.231 Violation--Penalties.

When determining an appropriate remedy for a violation of this Chapter as specified in Section [2.12.230](#), the Commission may order any of the following:

- A. Cease and desist violation of this Chapter.
- B. File any reports, statements, or other documents or information required by this Chapter.
- C. 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 Fair Elections Fund of the City.

D. Repeat Offenders.

1. Definitions:

- a. Candidate Committee – any committee controlled by a candidate running for public office.
- b. Initiative Committee – any committee supporting an initiative.
- c. PAC – any organization formed to support an elective office or initiative. An organization formed by any organization with a different name but from the same organization.

2. Penalties:

- a. Second violation – pay a monetary penalty of twice the amount spent.
- b. Third violation and any further violations – pay a monetary penalty of three times the amount spent.

(Ord. 7564-NS § 4, 2017; Ord. 7234-NS § 2, 2012)

2.12.235 Judicial review of actions.

Any person may seek judicial review of any action of the commission. (Ord. 4700-NS § 313, 1974)

Dean Metzger