

# **AMENDMENTS TO CITY OF BERKELEY CHARTER ARTICLE III (ELECTIONS) AND MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM ACT) TO CREATE A FAIR ELECTIONS PUBLIC CAMPAIGN FINANCING SYSTEM**

## **Section 1. FINDINGS**

The People of the City of Berkeley find that the City of Berkeley's current campaign finance system:

- A. Discourages many otherwise qualified candidates from running for office because of the need to raise substantial sums of money to be competitive;
- B. Fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions;
- C. Creates a danger of actual corruption by encouraging elected officials to take money from private interests that are directly affected by governmental actions;
- D. Forces candidates to raise larger and larger percentages of money from interest groups that have a specific financial stake in matters before Berkeley City government to keep pace with rapidly increasing campaign costs;
- E. Diminishes elected officials' accountability to their constituents by compelling them to be disproportionately accountable to the contributors who finance their election campaigns;
- F. Violates the rights of all citizens to equal and meaningful participation in the democratic process;
- G. Disadvantages challengers, because campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive;
- H. Burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities; and
- I. Necessitates the creation of a Fair Elections public financing system to address these concerns.

**Section 2.** The People of the City of Berkeley hereby amend the following sections of the Charter of the City of Berkeley as follows:

**Section 2.1.** Section 6½ of Article III ("Elections") of the City of Berkeley Charter is recodified as Section 6.1, and all references to "Section 6½" in the Charter are recodified as "Section 6.1."

**Section 2.2.** Section 6.2 is added to Article III ("Elections") of the City of Berkeley Charter to read as follows:

### **Section 6.2. Fair Elections Fund.**

#### **(1) Establishment of Fair Elections Fund.**

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the City Council for the purpose of:

- (a) Providing public financing for the election campaigns of certified participating candidates; and
- (b) Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission (“Commission”) and City staff related to the Fair Elections Fund public campaign financing program. The administrative and enforcement costs shall not exceed \$250,000 in any four year election cycle.

**(2) Appropriations to the Fair Elections Fund.**

- (a) The City Council shall appropriate \$4 per Berkeley Resident per year, as determined by the most recent official United States Census Bureau Population Estimate for the City of Berkeley, from the City General Fund to the Fair Elections Fund.
- (b) Other sources of revenue to be deposited in the Fund shall include:
  - i) Unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which they were distributed;
  - ii) Fines levied by the Commission against candidates for violation of election laws;
  - iii) Voluntary donations made directly to the Fair Elections Fund;
  - iv) Other funds appropriated by the City Council;
  - v) Any interest generated by the Fund; and
  - vi) Any other sources of revenue determined as necessary by the City Council.
- (c) The amount in the Fair Elections Fund shall not exceed \$2 million at any time. In order to comply with this limitation, revenue that would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.
- (d) The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

**(3) Cost of Living Adjustments.**

The Commission shall adjust the dollar amounts specified in subsections (1)(b), (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

**Section 3.**

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

**AN ORDINANCE OF THE CITY OF BERKELEY AMENDING CHAPTER 2.12 OF THE BERKELEY MUNICIPAL CODE TO CREATE A PUBLIC CAMPAIGN FINANCING SYSTEM**

The people of the city of Berkeley ordain as follows:

**Section 3.1.** That Berkeley Municipal Code Section 2.12.051 is hereby amended as follows:

**2.12.051 Amendment or repeal of chapter.**

This chapter may be amended or repealed by the procedures set forth in this section. If any portion of subsection A is declared invalid, subsection B shall be the exclusive means of amending or repealing this chapter.

A. This chapter, including the amendments adopted by Ordinance No. #,###-N.S. and its successors, may be amended to further its purpose by ordinance passed by a vote of the City Council of not less than two-thirds vote of its membership, following a public hearing, if at least thirty days prior to passage the amendment has been approved by the Berkeley Fair Campaign Practices Commission by not less than two-thirds vote of its membership, and has been distributed to the news media and to every person regularly receiving communications from the commission.

B. This chapter may be amended or repealed by initiative approval of the voters of the City of Berkeley.

**Section 3.2.**

That Article 2 (“Definitions”) of Berkeley Municipal Code Chapter 2.12 is hereby amended to add the following sections:

**2.12.123 Election Cycle.**

“Election cycle” means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending on the date of the next general election for that office or seat.

**2.12.137 Fund.**

“Fund” means the Fair Elections Fund created by City Charter Article III Section 7.

**2.12.138 General Election.**

“General election” means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4.

**2.12.156 Nomination Period**

“Nomination period” means the period specified by state law during which candidates must submit nomination papers for City offices.

**2.12.158 Participating Candidate.**

“Participating candidate” means a candidate who qualifies for Fair Elections campaign funding.

**2.12.167 Qualified Contribution.**

“Qualified contribution” means a contribution not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley.

**2.12.168 Qualifying Period.**

“Qualifying period” means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending at the close of the nomination period.

**Section 3.3.** That Berkeley Municipal Code Section 2.12.283 is hereby added:

**2.12.283 Campaign statement—Additional Information Required From Participating Candidates.**

Each participating candidate shall file reports of receipts and expenditures of Fair Elections funds at such times and in such manners as the Commission may by regulation prescribe, including, but not limited to, reports containing information necessary to verify that qualified contributions received by participating candidates and Fair Elections funds spent by participating candidates comply with the restrictions and requirements of this chapter.

**Section 3.4.** That Section 2.12.435 of Berkeley Municipal Code is hereby amended to read as follows:

**2.12.435 Excess amounts—Payment to City required.**

If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City for deposit in the ~~general fund~~ Fair Elections Fund of the City.

**Section 3.5.** That Berkeley Municipal Code Section 2.12.465 is hereby amended to read as follows:

**2.12.465 Actions for compliance—Disposition of amounts recovered.**

If a judgment is entered against the defendant or defendants in an action brought under Section 2.12.450, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the ~~general fund~~ Fair Elections Fund of the City. In an action brought by the Commission or the City Attorney, the entire amount recovered shall be paid to the ~~general fund~~ Fair Elections Fund of the City.

**Section 3.6.** That Berkeley Municipal Code Chapter 2.12, Article 8, is hereby added to read as follows:

**Article 8. Berkeley Fair Elections Act of 2016**

**2.12.490 Title and Purpose.**

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties.

**2.12.495 Offices Covered.**

Candidates for the offices of Mayor and City Council shall be eligible to participate in the public campaign financing program established by this chapter.

**2.12.500 Eligibility for Fair Elections Campaign Funding.**

- A. To be eligible to be certified as a participating candidate, a candidate must:
  - 1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the Commission a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:
    - a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

- b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and
  - c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.
- 2) Meet all requirements of applicable law to be listed on the ballot;
- 3) Before the close of the qualifying period, collect at least 30 qualified contributions of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).
  - a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.
  - b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
- 4) Maintain such records of receipts and expenditures as required by the Commission;
- 5) Obtain and furnish to the Commission any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission;
- 6) Not make expenditures from or use his or her personal funds or property or the personal funds or property jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified contribution to his or her controlled committee;
- 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions and contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley;

- 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions and contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley to such candidate's controlled committee.
- B. At the earliest practicable time after a candidate files with the Commission a written application for certification as a participating candidate, the Commission shall certify that the candidate is or is not eligible. Eligibility can be revoked if the candidate commits a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. Such a determination shall be made by the Commission upon a two-thirds vote following a hearing held pursuant to Section 2.12.230.
  - C. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section 2.12.235.
  - D. If the Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates.

#### **2.12.505 Fair Elections Fund Payments.**

- A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.505.B.
- B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:
  - 1) \$120,000 for a candidate running for the office of Mayor;
  - 2) \$40,000 for a candidate running for the office of City Council.
- C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge. The Commission shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to

pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

- D. The Commission shall make an initial payment of Fair Elections funds within four business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.
- E. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.
- F. The Commission shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

#### **2.12.510 Candidate Statement Notice.**

A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6.1.

#### **2.12.515 Transition Rule for Current Election Cycle.**

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund.

#### **2.12.520 Special Municipal Elections.**

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election.

### **2.12.525 Campaign Accounts for Participating Candidates.**

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section 2.12.250.
- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

### **2.12.530 Use of Fair Elections Funds.**

- A. A participating candidate shall use Fair Elections funds only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds for:
  - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act;
  - 2) Indirect campaign purposes, including but not limited to:
    - a) The candidate's personal support or compensation to the candidate or the candidate's family;
    - b) Clothing and other items related to the candidate's personal appearance;
    - c) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
    - d) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
    - e) An independent expenditure;
    - f) Any payment or transfer for which compensating value is not received.

### **2.12.535 Administrative Modification of Timelines**

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter.

#### **2.12.540 Insufficient Funds in the Program.**

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section 2.12.505.B. Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section 2.12.505.C, the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section 2.12.500.A.6.

#### **2.12.545 Cost of Living Adjustments.**

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.2.c for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167 and 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Sections 2.12.500.A.3 and 2.12.505.B.

#### **2.12.550 Fair Elections Act Penalties**

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- C. The Commission shall, after a hearing held pursuant to Section 2.12.230, have the authority to impose the fine created by this section upon a two-thirds vote.

#### **2.12.555 Violation—Persons Ineligible for Public Funds—Time Limit**

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred,

following a hearing held pursuant to Section 2.12.230. The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation.

#### **2.12.560 Review by Commission**

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program.

#### **Section 4. EFFECTIVE DATE**

All provisions of this Act will take effect immediately.

#### **Section 5. SEVERABILITY**

In the event any court of competent jurisdiction holds any provision of this Act invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.