

**CITY ATTORNEY ANALYSIS
CHARTER AND MUNICIPAL CODE AMENDMENTS ESTABLISHING PUBLIC
CAMPAIGN FINANCING PROGRAM**

This measure was placed on the ballot by the City Council.

The measure would amend the City Charter and Municipal Code to establish an optional public financing program (Program) for candidates for Mayor and City Council.

The amendments would allocate \$4.00 per Berkeley resident – approximately \$500,000 per year – from the General Fund to a newly-created Fair Elections Fund (Fund). The total amount in the Fund would be capped at \$2,000,000. The Fund could pay up to \$250,000 in administrative and enforcement costs in any four year election cycle.

Under current City law, the maximum permitted contribution amount is \$250, which may be accepted only from natural persons. Under the Program, candidates who collect at least 30 contributions of \$10-\$50 from natural person residents of Berkeley, totaling at least \$500, and agree to only accept or solicit contributions of \$50 or less by natural persons and to not make any contribution or loan to their campaign that exceeds \$50, would be eligible for payments from the Fund of six times the amount of contributions from Berkeley residents, up to \$120,000 (Mayoral candidates) and \$40,000 (Council candidates). After reaching these caps, participating candidates would continue to be restricted to contributions of \$50 or less.

A participating candidate who is refused payment must receive a written determination specifying the basis for non-payment and an opportunity to petition for reconsideration, and could seek judicial review.

Payments from the Fund would be limited to direct campaign purposes, and could not be used for costs of legal defense in any enforcement proceeding under the Berkeley Election Reform Act (BERA), or indirect campaign purposes (e.g., personal support or compensation to the candidate or his or her family, clothing or related items, capital assets of more than \$500 with a useful life beyond the end of the election, contributions or loans to another candidate, a party committee, or another political committee, independent expenditures, or payments or transfers for which compensating value is not received).

Candidates not participating in the public campaign financing program would continue to be regulated by existing provisions of BERA.

Existing provisions of BERA regarding enforcement and penalties would apply to participating candidates, except that participating candidates who violate program requirements would be required to repay twice the value of public funds unlawfully accepted or spent, and significant violators would be prohibited from participating in the Program for four years. All amounts recovered would be deposited in the Fund.

Financial Implications

The measure would not increase taxes, but would require the Council to appropriate approximately \$500,000 per year from the General Fund to the Fair Elections Fund, up to \$2,000,000 per four-year election cycle. If administration and enforcement costs exceed the \$250,000 provided for by the measure, additional costs would be paid from the General Fund.

All dollar amounts, including the per-resident allocation, fund cap, administrative allowance, qualifying contribution, and total payment cap would be adjusted by the Consumer Price Index.

s/ZACH COWAN
Berkeley City Attorney