

REGULATIONS ADOPTED BY THE FAIR CAMPAIGN PRACTICES COMMISSION

These Regulations Supplement the Berkeley
Election Reform Act of 1974,
Ordinance 4700-N.S., as amended.

Revised to July 21, 2016

FCPC REGULATIONS

FCPC REGULATIONS – TABLE OF CONTENTS

Regulation No.	Title	Page
R2.12.025	Verification Requirements	1
R2.12.045	Record Retention Requirements	1
R2.12.095	Contributions by Membership Organizations	1
R.2.12.100	Extensions of Credit as a form of Contribution; Exceptions	2
R2.12.250	Redesignation of Campaign Funds for Future Elections	3
R2.12.260	Statement of Organization	3
R2.12.270	Independent Expenditures: Individuals and Organizations Required to File Campaign Disclosure Statements	3
R2.12.270.1	Administrative Termination of Filing Obligations	4
R2.12.295	Late Contributions	4
R2.12.325.1	Mass Mailings; Filing	4
R2.12.325.2	Filing of Mass Mailings - Method of Filing	5
R2.12.335	Text or Graphic Electronic Media Advertisement	6
R2.12.415	Allocation of Contributions to Multi-Candidate and Measure Committees	6
R2.12.415.1	Separate Accounting of Candidate Contributions	6
R2.12.415.2	Cumulation of Candidate Contributions	7
R2.12.415.3	Joint Account Contributions	7
R2.12.440	Candidate Contributions from Certain Organizations and Business Entities Including Corporations and Labor Unions	8

FCPC REGULATIONS
Amended March 17, 2016

R2.12.025 Verification Requirements

- (a) 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.
- (b) A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. This does not relieve the treasurer of any controlled committee from the obligation to verify each campaign statement filed pursuant to BMC Section 2.12.025.

R2.12.045 Record Retention Requirements

- (a) All persons with filing obligations shall retain copies of all reports, statements and information filed with the City Clerk for a period of at least **four years** from the date upon which it was required to be filed under the terms of the ordinance as required by BMC Section 2.12.045.
- (b) The City Clerk shall retain the originals of all reports, statements and information filed with the City Clerk for a period of at least four years from the date upon which it was required to be filed under the terms of the ordinance. In the event that state law imposes a longer retention period, the requirements of state law must be met.
- (c) The campaign treasurer shall retain all statements of account, canceled checks, records, bills, receipts, vouchers, and other original source documentation for a period of at least **four years** from the date of the final report as required by BMC Sections 2.12.250(D) and (E).

R2.12.095 Contributions by Membership Organizations

(a) Committee Status

A Membership Organization which receives contributions as defined in BMC Section 2.12.100, or makes an Expenditure of \$250 or more as defined in BMC Section 2.12.130, is a Committee as defined in BMC Section 2.12.095 and shall file the Campaign Statements required by BMC Section 2.12.270.

(b) Membership Organization

As used in this Regulation, the term "Membership Organization" shall mean any club, league, trust, unincorporated association in which natural or juridical persons are members, shareholders, associates or the like.

R.2.12.100 Extensions of Credit as a form of Contribution; Exceptions.

(a) Except as provided in either subdivision (b) or (c), an extension of credit which consists of a receipt of goods or services pursuant to an agreement between the provider of the goods or services and a candidate or committee, and where payment is not made until a later date, is a contribution as defined under BMC Section 2.12.100 and is subject to the contribution limits of BMC Section 2.12.415 and BMC Section 2.12.440.

(b) An extension of credit is not a contribution made by the provider of the goods or services or a contribution accepted by the candidate or committee if payment is made on or before the later of the following dates, whichever applies:

(1) 60 days after the date of the invoice; or

(2) If no invoice is sent within 30 days of delivery of goods or services, 45 days from the date the goods or services are delivered; or

(3) For services ongoing in nature, 45 days after the date of the invoice, where services are billed no less frequently than on a three-month billing cycle.

In any event, for the extension of credit not to be a contributory payment, it must be made no later than the end date of the reporting period for the Second Semi-Annual/Post Election Campaign Statement (i.e. December 31 for a November general municipal election), even if said date falls before the applicable date under (b) (1), (2) or (3).

(c) An extension of credit is not a contribution made by the provider of the goods or services if all of the requirements of subsections (c)(1) – (5) of this regulation are met:

(1) The credit arrangement is recorded in a written instrument;

(2) It is a regular business of the provider of goods or services to provide similar goods or services;

(3) The provider provides the goods or services in the ordinary course of business and on the same terms and conditions offered to customers generally;

(4) The provider of goods or services enters into the agreement with the intent that the candidate or committee be required to pay in accordance with terms of the agreement and does not have actual knowledge that the candidate or committee would not be able to pay in accordance with those terms; and

(5) The provider of goods or services makes reasonable efforts to collect the full amount of the payment owed within four months of the date that the payment for the goods or services is due under the terms of the agreement. Reasonable efforts to collect the full amount of the payment may be demonstrated even if:

(i) The provider does not exhaust all available legal options; or

(ii) The provider accepts less than the full amount of the payment owed by the candidate or committee.

R2.12.250 Redesignation of Campaign Funds for Future Elections**(a) Defeated Candidates, Individuals Leaving Office**

A defeated candidate or individual leaving office and planning to redesignate campaign funds for a future election shall do so before such funds become surplus. Funds will become surplus at the end of the post-election reporting period following the defeat of a candidate for elective office, or upon an individual leaving office, whichever occurs last. (Govt. Code Section 89519[a])

(b) Redesignation to the Same Elective Office

The treasurer shall certify that to his or her knowledge there remains no further outstanding indebtedness in connection with the campaign. A defeated candidate or individual leaving office shall redesignate campaign funds for a future election to the same elective office by filing an amended State Form No. 410 (Statement of Organization) to include the new election year, and an initial State Form No. 501 (Candidate Intention). The defeated candidate or individual leaving office shall also file a statement with the Commission that campaign account funds have been redesignated.

(c) Redesignation to a Different Elective Office

The treasurer shall certify that to his or her knowledge there remains no further outstanding indebtedness in connection with the campaign. A defeated candidate or individual leaving office shall redesignate campaign funds for a future election to a different elective office by closing the existing campaign bank account and opening a new campaign bank account for the new elective office, and shall file initial State Forms No. 410 and 501.

R2.12.260 Statement of Organization

For the purposes of meeting the requirements of Section 2.12.260 for the information required on a statement of organization, the committee shall file both a City of Berkeley Statement of Organization and a State of California Form 410 within 10 days after the committee is formed as a committee under Berkeley Election Reform Act Section 2.12.095.

R2.12.270 Independent Expenditures: Individuals and Organizations Required to File Campaign Disclosure Statements

(a) An individual or organization that does not fall within the definitions of Government Code Section 82013(b) and (c) and that makes independent expenditures of \$250 or more in a calendar year to support or oppose a single Berkeley candidate, single Berkeley measure, or the qualification of a single Berkeley measure shall file a Supplemental Expenditure Form (State Form No. 465) with the City Clerk's Office in accordance with the prescribed campaign disclosure statement filing schedule.

(b) An individual or organization whose only filing obligation is pursuant to this regulation is no longer required to file pursuant to paragraph (a) when it has ceased to make expenditures with regard to campaigns for Berkeley elective office or for measures on the Berkeley ballot totaling \$250 or more in an ensuing calendar year. A Statement of Termination (State Form No. 410) is not required of such individuals or organizations.

R2.12.270.1 Administrative Termination of Filing Obligations

- (a) A candidate's or committee's status and filing obligations pursuant to BMC Chapter 2.12 may be administratively terminated by the Commission, either on its own initiative or upon the candidate's or committee's request.
- (b) Factors the Commission will consider in determining administrative termination include the candidate's or committee's:
- (1) aggregate annual reported financial activity
 - (2) reports disclosing minimal or no receipt of contributions and/or expenditures; and
 - (3) primary purpose for filing reports confined to disclosure of outstanding debts and obligations

Any evidence of possible violations of any provisions of BMC Chapter 2.12 at present, or if administrative termination occurs, will preclude such administrative termination.

- (c) The Commission will notify the candidate and committee treasurer of its intent to consider administrative termination and may request that any objections be submitted within a reasonable time.

R2.12.295 Late Contributions

- (a) A late contribution means any contribution as defined in BMC Section 2.12.145 and received before the election at which the candidate or measure for which the contribution is intended is to be voted on.
- (b) For the purposes of this section, if the deadline to file the late contribution report falls on a Saturday, Sunday or holiday, a report received by the City Clerk no later than the next business day shall be deemed timely filed.

R2.12.325.1 Mass Mailings; Filing

- (a) A mass mailing means any mailing as defined in BMC Section 2.12.150 that has been sent within a calendar month.
- (b) Any committee, candidate, officeholder, individual or organization who
- (1) Has local filing requirements pursuant to the BERA, as it may be amended from time to time, and
 - (2) Makes expenditures supporting or opposing one or more candidates or ballot measures,

shall file three copies of each mass mailing paid for by expenditures reported therein.

R2.12.325.2 Filing of Mass Mailings - Method of Filing

Three copies of all mailings as defined in BMC Section 2.12.150 shall be filed with the City Clerk’s Office no later than one day of the date the mass mailing was first placed in the U.S. mail. Filing shall be made by hand-delivery to the City Clerk’s Office no later than one day after the mailing or by depositing three originals addressed to the City Clerk’s Office in the U.S. mail on the same day as the first pieces are deposited in the U.S. mail.

The three copies of the mass mailing and the certification must be hand delivered or sent by guaranteed overnight delivery to comply with the requirement that they be filed with the City Clerk’s Office no later than one day after the date the mass mailing was first placed in the U.S. mail.

Mass mailings may be filed with the City Clerk prior to the date of the actual mailing.

Each mass mailing required to be filed with the City Clerk pursuant to BMC Section 2.12.325 shall be accompanied by a certification of the date the mass mailing was (or will be) deposited in the U.S. mail. The certification shall include the following information:

- (a) The name of the candidate, committee, officeholder, individual or organization with local filing requirements under the BERA responsible for the mass mailing.
- (b) The campaign filing identification number, if any.
- (c) The date that the mass mailing was (or will be) deposited in the U.S. mail.
- (d) The signature of the candidate, committee, officeholder, individual or organization with local filing requirements under the BERA responsible for the mass mailing. Where a committee or organization is responsible for the filing, the certification shall be signed by the committee or organization treasurer.

The certification may be hand- or type-written by the responsible candidate, committee, officeholder, individual or organization with local filing obligations under the BERA either directly on the mass mailing filed with the City Clerk’s Office, or on a separate piece of paper if the piece of paper is attached to the mass mailing by staple. The certification shall be in a form substantially similar to the following:

I, _____, hereby certify under penalty of perjury under the laws of the State of California that 200 or more copies of the document entitled or described as follows: _____, were (or will be) mailed on _____.

Signed: _____ Date: _____

Filing I.D. Number: _____

Dated: _____

The filing of a mass mailing in accordance with this regulation shall satisfy the requirement in BMC Section 2.12.325 that all mass mailings be sent to the Commission.

R2.12.335 Text or Graphic Electronic Media Advertisement

The disclosure information in a text or graphic electronic media advertisement must appear in letters at least as large as the majority of the text in the advertisement, or alternatively, if the advertisement is limited in size (e.g., a micro bar, button ad, paid text advertisement that is limited to 500 characters or less in length, or small paid graphic or picture link), the disclosure is displayed via link to a webpage with disclosure information or other technological means that provide the user with disclosure information. In addition, the disclosure information must be visible until the user clicks through the disclosure information, and the disclosure information must appear with a reasonable degree of color contrast between the background and text of the statement as to be legible.

R2.12.415 Allocation of Contributions to Multi-Candidate and Measure Committees**(a) Independent Committees**

All contributions received by independent committees formed for the purpose of supporting or opposing one or more candidates or measures shall be allocated equally among all such candidates and measures unless otherwise indicated by the donor in writing.

(b) Controlled Committees

All contributions received by controlled committees formed for the purpose of supporting a candidate for Berkeley elective office and one or more ballot measures shall be allocated equally among the candidate and the ballot measures unless otherwise indicated by the donor in writing.

(c) When Donor Must Specify Allocation

If equal allocation of a contribution would result in exceeding Berkeley's \$250 per candidate contribution limit, the treasurer of the recipient committee shall promptly require the contributor to indicate in writing a preferred allocation so as to comply with the requirements of BMC Section 2.12.415.

R2.12.415.1 Separate Accounting of Candidate Contributions

(a) A committee which receives or makes contributions or makes expenditures in support of or opposition to both any candidate for Berkeley elective office and any non-Berkeley candidate or any measure shall maintain sufficient separate accounting so as to insure that expenditures made on behalf of or against each Berkeley candidate do not exceed contributions made in relation to that candidate. Either a separate candidate campaign account must be established or Commission staff must approve a written explanation of the committee's method of separate accounting.

(b) If a committee establishes a separate candidate campaign account, all contributions received by the committee in support of or opposition to any candidate for Berkeley elective office, and only such contributions, shall be deposited in this account. All disbursements made by the committee in support of or opposition to any candidate for Berkeley elective office shall be made from this account. No contribution received directly or indirectly from a corporation or labor union shall be deposited in a candidate campaign account.

R2.12.415.2 Cumulation of Candidate Contributions**(a) Cumulative Period**

Separate four-year cumulative periods for elective offices of staggered four-year terms shall apply for each election for the purpose of administering the \$250 per candidate contribution limitations of BMC Section 2.12.415. The cumulative period will commence on January 1 of the year immediately following the election.

(b) Contributions to Prior Cumulative Period to Help Retire a Campaign Debt

A candidate for Berkeley elective office who has not received the maximum contribution from a particular contributor permitted by BMC Section 2.12.415 for an election may receive a contribution from that contributor intended for other than the current cumulative period only as necessary to retire debt from a previous election, provided, however, that such additional contributions may not be accepted after the end of the second semi-annual filing period (i.e., December 31st) in the next even-numbered year following such election. Unless otherwise stated in writing by the contributor, contributions from that contributor will be deemed received for the current period.

(c) Applicability to Run-Off Elections

For purposes of this regulation, the provisions of subparagraph (b) above, are applicable to the retirement of debt from a run-off election.

R2.12.415.3 Joint Account Contributions

Except as provided in BMC Section 2.12.440 and R2.12.440 with respect to business organizations, a contribution may be made on a joint account. A contribution drawn on a joint account is presumed to come from the person or persons who signed the check or other instrument. When more than one party to the joint account intends to make a contribution using a single check or other instrument, each party to the joint account intending to make the contribution must sign the check or other instrument, or sign a written statement accompanying the check or other instrument indicating that all of the signatories intend to make the contribution. The amount of the contribution shall be allocated equally between or among the signers, unless otherwise indicated by the contributors.

R2.12.440 Candidate Contributions from Certain Organizations and Business Entities Including Corporations and Labor Unions

- (a) The campaign treasurer must make all reasonable inquiries concerning, and is responsible for insuring the propriety of, the source of all campaign contributions in support of or opposition to any candidate for Berkeley elective office, especially those obviously not from individuals. If the treasurer knows or should reasonably know that the contribution is from a prohibited source, it must be refunded to the donor promptly.
- (b) No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporation or labor union may contribute to any candidate or committee supporting or opposing any candidate. A contributor who has received contributions from this type of organization is not precluded from making contributions to candidates for Berkeley elective office or their campaigns provided either:
- (1) the contributor establishes a separate bank account into which monies not contributed by this type of organization are deposited and from which contributions to 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.
- (d) Adequate records and other information shall be maintained and made available for inspection by the Commission, the City Clerk, and the City Attorney upon request. Nothing in this regulation limits the right of any person to make contributions in aid of a ballot measure from any source of funds.

HISTORY OF FCPC REGULATIONS¹

- R2.12.025 Adopted May 21,1998, to become effective immediately. Amended February 14, 2002 to become effective immediately.
- R2.12.045 Adopted January 16, 1997, to become effective immediately. Amended May 21, 1998, to become effective immediately. Amended July 15, 2004 to become effective immediately.
- R2.12.095 Adopted February 18, 1993, to become effective immediately. Amended May 21, 1998, to become effective immediately.
- IR2.2.12.070.1 Adopted June 19, 1990 to become effective immediately. Repealed March 19, 1992. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6096-N.S.
- R.2.12.100 Adopted August 21, 2008, to become effective immediately.
- R2.12.150 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Amended former Reg. 83-1, adopted December 15, 1983.] Amended June 20, 1996 and February 20, 1997. Repealed May 21, 1998.
- R2.12.250 Adopted February 14, 2002 to become effective immediately.
- R2.12.260 Adopted May 20, 2010 to become effective immediately.
- IR2.12.270 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Replaced former Reg. 81-1, adopted Feb. 26, 1981 and amended Dec. 15, 1983.] Repealed April 17, 1997. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6329-N.S.
- R2.12.270 Adopted September 15, 1988 to become effective Jan. 1, 1989, and amended April 19, 1990. Amended February 14, 2002 to become effective immediately.
- R2.12.270.1 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Replaced former Reg. 84-2, adopted May 17, 1984.]
- R2.12.270.2 Adopted April 19, 1990 to become effective immediately. Repealed May 21, 1998.
- IR2.12.270.3 Adopted April 19, 1990 to become effective immediately. Repealed March 19, 1992. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6096-N.S.

¹ Regulations designated "IR" are interim regulations.

- R2.12.295 Adopted March 21, 1991 to become effective April 20, 1991.
Amended February 14, 2002 to become effective immediately.
Amended July 15, 2004 to become effective immediately.
- IR2.12.325.1 Adopted June 19, 1990 to become effective immediately. Repealed
March 19, 1992. Added to Berkeley Election Reform Act pursuant
to Ordinance No. 6096-N.S.
- R2.12.325.1 Adopted May 21, 1998, to become effective immediately.
Amended February 14, 2002 to become effective immediately.
Amended July 15, 2004 to become effective immediately.
- R2.12.325.2 Adopted May 21, 1998, to become effective immediately.
Amended July 21, 2016 to become effective immediately.
- R2.12.335 Adopted March 17, 2016, to become effective immediately.
- R2.12.415 Adopted September 15, 1988 to become effective Jan. 1, 1989, and
amended November 30, 1989. [Amended former Reg. 81-6,
adopted March 5, 1981 and amended January 19, 1984.]
- R2.12.415.1 Adopted September 15, 1988 to become effective Jan. 1, 1989.
[Replaced former Reg. 82-1, adopted August 5, 1982.] Amended
July 15, 2004 to become effective immediately.
- R2.12.415.2 Adopted September 15, 1988 to become effective Jan. 1, 1989 and
amended November 30, 1989. [Replaced former Reg. 81-7, adopted
March 5, 1981 and amended May 17, 1984.] Amended April 20,
1995 to become effective immediately. Amended February 17,
2000, to become effective immediately. Amended February 14,
2002 to become effective immediately.
- R2.12.415.3 Adopted September 15, 1988 to become effective Jan.1, 1989.
[Replaced former Reg. 84-3, adopted August 9, 1984.] Amended
May 21, 1998, to become effective immediately.
- R2.12.440 Adopted September 15, 1988 to become effective Jan. 1, 1989.
[Replaced former Reg. 82-3, adopted August 5, 1982.] Amended
April 20, 1995 to become effective immediately.
- IR2.12.440.1 Adopted September 15, 1988 to become effective Jan. 1, 1989.
[Amended former Reg. 81-2, adopted Feb. 26, 1981.] Repealed
March 19, 1992. Added to Berkeley Election Reform Act pursuant
to Ordinance No. 6096-N.S.