



Fair Campaign Practices Commission

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ACTION CALENDAR

June 26, 2012

To: Honorable Mayor and Members of the City Council

From: Fair Campaign Practices Commission

Submitted by: Steve Wollmer, Chair, Fair Campaign Practices Commission

Subject: Amendment to Berkeley Election Reform Act, Adding BMC Section 2.12.335

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt the first reading of an Ordinance amending the Berkeley Election Reform Act (BERA) to add Berkeley Municipal Code section 2.12.335, requiring disclosure on campaign communications of the committee's name and certain contributions and loans received by the committee.

FISCAL IMPACTS OF RECOMMENDATION

There could be a slight increase in staff time spent by the City Clerk's Office and the Commission Secretary educating committees and treasurers of the new requirement, balanced by the potential for collection of penalties payable to the general fund for violations of the BERA.

CURRENT SITUATION AND ITS EFFECTS

Currently, BERA has no requirement that campaign committees include identifying information on campaign materials, except for certain mass mailings. Section 2.12.335, if approved, will require committees to list on campaign communications both the name of the committee and information about the top four donors (both contributors and lenders) to the committee in excess of \$250. Campaign communications subject to the disclosure requirement include campaign literature (mailers, flyers, pamphlets and doorhangers), advertisements (newspapers, magazines and the Internet), emails and pre-recorded calls.

At the April 3 Council meeting, the City Council considered Section 2.12.335 as part of a package of six proposed BERA amendments. Council ultimately approved five of the amendments, but did not pass Section 2.12.335. Prior to voting on the amendment, Council discussed a number of possible revisions to the amendment. The Commission then held a Special Meeting on May 3 to discuss each of the concerns and suggestions raised at the April 3 Council meeting. After discussion, the Commission passed the following motions by unanimous vote of its membership:

- a. *Motion to accept proposed revision to add loans and name of committee to information subject to disclosure on campaign communications:*
(M/S/C:Ritchie/Smith. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)

- b. *Motion to accept proposal to increase number of substantially similar printed campaign materials considered campaign communications subject to disclosure requirements from 200 to 1000: (M/S/C: Smith/Cummins. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)*
- c. *Motion to leave door hangers on list of campaign communications subject to disclosure: (M/S/C: Ritchie/Smith. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)*
- d. *Motion to accept proposal to increase number of substantially similar email and recorded calls considered campaign communications subject to disclosure requirements from 200 to 1000, retain email as a form of campaign communication, and maintain the timeframe as one month: (M/S/C: Ritchie/Smith. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)*
- e. *Motion to accept proposal to remove exception for candidate contributions to their own committees: (M/S/C: Bedrick/Cummins. Ayes: Bedrick, Cummins, Murray, O'Donnell, Ritchie, Smith, Wollmer; Noes: None; Abstain: None; Absent: None.)*

Staff incorporated all of the Commission's revisions and forwarded the revised draft to local news media, in line with BMC Section 2.12.051, and to the Commission for a further vote. At a May 10 special meeting, the Commission approved the revised Section 2.12.335 by a unanimous vote of those in attendance as follows:

Move to approve Section 2.12.335 as amended: (M/S/C: Murray, Cummins. Ayes: Cummins, Murray, O'Donnell, and Wollmer; Noes: None; Abstain: None; Absent: Ritchie. [Smith on approved leave of absence].)

The Commission again presents the amendment to the City Council for consideration.

BACKGROUND

The voters enacted the 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.)

Since at least 2009, this Commission has been discussing revising the BERA to add reporting and disclosure requirements, with a particular focus on campaign communications by independent expenditure, ballot measure and general purpose committees. In early 2010, the Supreme Court decided the case of *Citizens United*, which expanded corporate campaign spending power by holding that it is unconstitutional for the government to suppress corporate political speech. The case nevertheless confirmed that "[t]he government can regulate corporate political speech through disclaimer and disclosure requirements." (*Citizens United v. FEC* (2010) 130 S. Ct. 876, 886.)

The proposed amendment furthers BERA's purposes while remaining consistent with the constitutional limits set forth in *Citizens United* by providing for fuller disclosure of the source of, and major donors supporting, local campaign communications.

RATIONALE FOR RECOMMENDATION

See report.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

See companion report.

CONTACT PERSON

Steve Wollmer, Chair, Fair Campaign Practices Commission	510 843-2053
Kristy van Herick, Secretary, Fair Campaign Practices Commission	510-981-6998

Attachments:

- 1: Ordinance
- 2: Proposed Notice of Public Hearing

ORDINANCE NO. -N.S.

AMENDING THE BERKELEY ELECTION REFORM ACT, BERKELEY MUNICIPAL CODE CHAPTER 2.12, TO REQUIRE THE COMMITTEE NAME AND CERTAIN CONTRIBUTORS AND LENDERS TO BE LISTED ON CAMPAIGN COMMUNICATIONS

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

Section 1. That Berkeley Municipal Code 2.12.335 is added to read as follows:

Section 2.12.335. Disclosure on campaign communications of certain contributions and loans.

A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase "Major Funding Provided By" immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. For purposes of this section, the term "contributor" shall include lender, and committees shall aggregate contributions and any loan balances from the same person when determining the total cumulative sum of contributions from a contributor.

B. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, "campaign communication" means any of the following items:

1. 1000 or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;
3. 1000 or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

C. For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

D. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection A, campaign communications must be updated on the following schedule:

1. For printed campaign communications under subsection B.1 or subsection B.2, disclosures must be updated within seven calendar days to include current disclosure

information every time an order to reproduce the campaign communication is placed, or any time the campaign communication is reprinted;

2. For e-mails or pre-recorded telephone calls under subsection B.3, disclosures must be updated to include current disclosure information within seven calendar days.

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way. Within 15 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**

AMENDMENT TO BERKELEY ELECTION REFORM ACT (BERA)

The Fair Campaign Practices Commission is proposing an amendment to the BERA to add Berkeley Municipal Code section 2.12.335, requiring disclosure on campaign communications of the committee's name and certain contributions and loans received by the committee.

The hearing will be held on **JUNE 26, 2012** at 7:00 p.m. 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 as of **JUNE 14, 2012**.

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 Monday, **JUNE 11, 2012** will be included in Council agenda packets. Comments received thereafter will be submitted to Council as supplemental communications. For further information, call Mark Numainville, Acting City Clerk, 981-6900. FAX: (510) 981-6901. TDD: (510) 981-6903.

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

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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 June 14, 2012.

Mark Numainville, Acting City Clerk