



Fair Campaign Practices Commission

PUBLIC HEARING
November 30, 2021

To: Honorable Mayor and Members of the City Council

From: Jedidiah Tsang, Chair, Fair Campaign Practices Commission

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission

Subject: Public Hearing: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt the first reading of an Ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to (1) make public financing available to candidates for the offices of Auditor, School Board Director, and Rent Stabilization Board Commissioner, (2) further clarify the use of Fair Elections funds, (3) clarify the requirements for returning unspent Fair Elections funds, (4) add a new process for requesting return of previously repaid Fair Elections funds, and (5) require the FCPC to make a cost of living adjustment to the contribution limit to candidates in January of each odd-numbered year.

FISCAL IMPACTS OF RECOMMENDATION

None. The City's public financing program is paid for by the Fair Elections Fund, a special, dedicated, non-lapsing fund established by the City Charter. (Charter section 6.2.) The Fair Elections Fund currently has a balance of approximately \$1.4 million and is allocated \$4.65 per City resident each year. For FY 2023, allocations are expected to be \$578,613. The Fair Elections Fund is sufficiently funded to cover the expected matching fund expenditures for the 2022 election cycle, including matching funds which would be disbursed to candidates for the offices added to the public financing program by this amendment.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Election Reform Act (BERA) were approved by the Fair Campaign Practices Commission at its regular meeting of September 16, 2021.

Action: M/S/C (Newman/Humbert) to adopt BERA amendments proposed by MapLight, with amendment changing proposed aggregate amount of Fair Elections funds a participating Rent Stabilization Board candidate may receive in an election cycle from \$5,000 to \$8,000.

Vote: Ayes: Blome, Ching, Hernandez, Humbert, Hynes, Newman, O'Donnell, Saginor, Tsang; Noes: none; Abstain: none; Absent: none.)

Action: M/S/C (Tsang/O'Donnell) to adopt BERA amendments proposed by staff clarifying requirements for returning unspent Fair Elections funds and requesting return of funds after unspent funds have been repaid, with clarifying changes.

Vote: Ayes: Blome, Ching, Hernandez, Humbert, Hynes, Newman, O'Donnell, Saginor, Tsang; Noes: none; Abstain: none; Absent: none.)

Pursuant to Berkeley Municipal Code Section 2.12.051, BERA may be amended by the "double green light" process. This process requires that the FCPC adopt the amendments by a two-thirds vote, and the City Council hold a public hearing and adopt the amendments by a two-thirds vote.

BACKGROUND

BMC § 2.12.560 requires that after each of the first two election cycles that occur after implementation of the Fair Elections Act, the FCPC shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. Necessary amendments were identified and implemented following the 2018 election cycle, and additional issues were raised by staff and participating committees during and after the 2020 election cycle. The FCPC determined that in order to best assist candidates and committees with conforming to the requirements of BERA and the very specific restrictions and requirements of the Public Finance Program additional amendments to BERA are needed.

At its September 16, 2021 meeting, the FCPC approved the attached ordinance which makes the following changes to BERA:

1. Public financing for the offices of Auditor, School Board Director, and Rent Stabilization Board Commissioner

This proposed ordinance expands the Berkeley Fair Elections program to allow candidates for Auditor, School Director, and Rent Stabilization Board Commissioner to participate in the program. Under current law, only candidates for Mayor and City Council may participate in the Fair Elections program. The proposed ordinance specifies that a candidate for Auditor, School Director, or Rent Stabilization Board Commissioner is eligible to participate in the Fair Elections program if the candidate meets the requirements to hold the office sought as provided in the City of Berkeley Charter. The proposed ordinance also provides a maximum aggregate amount of Fair Elections funds per election of \$20,000 for candidates for Auditor; \$20,000 for candidates for School Director; and \$8,000 for candidates for Rent Stabilization Board Commissioner. Under the proposed ordinance, the maximum aggregate amounts of Fair Elections funds for candidates for Mayor and Councilmember are adjusted to the current amounts as provided by Fair Campaign Practices Commission (FCPC) regulation.

2. Further clarifies the use of Fair Elections funds

This proposed ordinance also specifies that a candidate participating in the Fair Elections program must use Fair Elections funds and contributions for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle. Current law requires only that a participating candidate use Fair Elections funds and contributions for direct campaign purposes. Under the proposed ordinance, a participating candidate is also prohibited from using Fair Elections funds and contributions to pay a business in which the candidate or candidate's immediate family member has a ten percent ownership interest.

3. Clarifies the requirements for returning unspent Fair Elections funds

In the 2020 election, several candidates did not follow the required timeline for submitting unspent funds as required by BMC § 2.12.505.H. Participating candidates were sent a letter after the election reminding them of the deadline and requesting a draft Form 460 showing an ending cash balance that matched the amount on the check submitted for unspent funds. Of the ten participating candidates, one initially submitted a draft Form 460 with a closing balancing that did not match the amount of the check, one candidate took three months to return their unspent funds, and one has yet to submit documentation verifying the correct amount to be returned. Neither BERA nor the Public Finance Program Supplemental Guide provided a clear process for returning unspent funds; additionally, there is no specific guidance regarding candidates who participate in the program but do not ultimately qualify for the ballot. The Supplemental Guide has been updated to clarify the administrative process; further amendments to BERA are needed to underscore the requirements and to confirm that non-compliance is a violation of BERA.

4. Adds a new process for requesting return of previously repaid Fair Elections funds

Several months after returning their unspent Fair Elections funds, two committees notified the City Clerk Department that they had received invoices from a vendor who had not yet billed them. The committees requested return of a portion of unspent funds to pay the invoices. Absent specific guidance, the City Clerk Department consulted the City Attorney's Office and agreed to accommodate the requests for the 2020 election. However, staff believe that going forward, such requests should be considered on a case-by-case basis by the FCPC given the unique circumstances of each request and the possibility of campaign reporting violations.

5. Requires the FCPC to make a cost of living adjustment to the contribution limit to City candidates in January of each odd-numbered year

The proposed ordinance amends BMC § 2.12.415 to require the FCPC to make a cost of living adjustment to the contribution limit to candidates every January of an odd-numbered year in the same manner as the Fair Elections funds and contribution limits are adjusted for participating candidates.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

The proposed BERA amendments will expand the public financing program to all City elected offices and improve the administration of the public financing program.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager takes no position on the recommendations in this report.

CONTACT PERSON

Jedidiah Tsang, Chair, Fair Campaign Practices Commission, (510) 981-6998
Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission (510) 981-6998

Attachments:

1. Ordinance amending BERA
2. FCPC September 16, 2021 Meeting Report and Attachments

ORDINANCE NO. _____

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.415 is amended to read as follows:

2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars. The Commission shall adjust the dollar amount in this Section for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year. For purposes of this section single election is a primary, general, special, runoff or recall election.

Section 2. That Berkeley Municipal Code Section 2.12.495 is amended to read as follows:

2.12.495 Offices covered.

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

Section 3. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

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 City 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 to be eligible to hold the office sought:

a) For the office of Mayor or Councilmember, Auditor, or School Director, the requirements as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley; or

b) For the office of Commissioner of the Rent Stabilization Board, the requirements as set forth in Section 121 of Article XVII of the Charter of the City of Berkeley.

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, 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 or City staff any information they 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 or City staff;

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.

7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);

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, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

9) Not accept loans from any source.

10) The City has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

B. At the earliest practicable time after a candidate files with the City a written application for certification as a participating candidate, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid.

C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. 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 City or 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.

Section 4. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

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) \$129,000 for a candidate running for the office of Mayor;
- 2) \$43,000 for a candidate running for the office of City Council;
- 3) \$20,000 for a candidate running for the office of Auditor;

4) \$20,000 for a candidate running for the office of Board of Education;

5) \$8,000 for a candidate running for the office of Rent Stabilization Board.

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.

1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections 2.12.280 and 2.12.283.

2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City 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.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.

F. 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.

G. The City 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 seven 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.

H. 1) Unspent campaign funds of any Participating Candidate who does not remain qualify a candidate for the until ballot at the election for which they the funds were distributed, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and expenditures, must be returned to the City within 30 (thirty) days of the determination on the qualification of the candidate. All funds returned under this paragraph must be accompanied by any required supporting documentation.

2) Any campaign or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.

3) All unspent campaign funds returned to the City shall be deposited in the Fair Elections Fund pursuant to the City Charter.

4) The City Clerk shall immediately refer to the Commission for enforcement any participating candidate who does not return unspent funds as required by this subsection.

I. Any request by a Participating Candidate for a refund of any amount of unspent campaign funds previously repaid to the City, for a qualified campaign expenditure or other permissible campaign purpose, shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.

Section 5. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

2.12.530 Use of Fair Elections funds.

A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle.

B. A participating candidate shall not use Fair Elections funds or contributions for:

1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

2) The candidate's personal support or compensation to the candidate or ~~the~~ the candidate's family, or a business in which the candidate or candidate's immediate family member has a ten (10) percent or greater ownership interest;

3) Indirect campaign purposes, including but not limited to:

a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;

b) 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;

c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;

d) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;

e) Any payment or transfer for which compensating value is not received;

C. The term "Contribution" is defined in 2.12.100 and includes "Qualified Contributions" as defined in 2.12.167 and contributions from non-residents of Berkeley as described in 2.12.500.A.7.

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act related to the regulation of officeholder accounts.

The hearing will be held on November 30, 2021 at 6:00 p.m. The hearing will be held via videoconference pursuant to Government Code Section 54953(e) and the state declared emergency.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of **November 18, 2021**. **Once posted, the agenda for this meeting will include a link for public participation using Zoom video technology.**

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

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.

Communications to the Berkeley City Council 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 the City Council, 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 City Clerk. 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 City Clerk at (510) 981-6900 or clerk@cityofberkeley.info for further information.

Published: November 19, 2021 – The Berkeley Voice

Pursuant to Berkeley Municipal Code section 2.12.051

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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 the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way, as well as on the City’s website, on November 18, 2021.



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Mark Numainville, City Clerk





City Clerk Department

September 16, 2021

To: Members, Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

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BMC 2.12.560 requires that after each of the first two election cycles that occur after implementation of the Fair Elections Act, the Fair Campaign Practices Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. Necessary amendments were identified and implemented following the 2018 election cycle, and additional issues were raised by staff and participating committees during and after the 2020 election cycle. In order to best assist candidates and committees with conforming to the requirements of BERA and the very specific restrictions and requirements of the Public Finance Program, additional amendments to BERA and to the FCPC Regulations are needed.

Additionally, representatives from MapLight, the original sponsors of the Fair Elections Act of 2016, have proposed the inclusion of the offices of Auditor, School Board Director, and Rent Stabilization Board Commissioner to the Public Finance Program, and have proposed amendments further clarifying the use of Fair Elections funds. These are discussed further in the accompanying memo.

Attachments:

1. MapLight - Summary of Proposed Changes
2. MapLight - City of Berkeley Campaign Expenditures 2014-2020
3. MapLight - Fair Elections Budget Projections
4. MapLight - Draft Ordinance Amendments
5. Staff - Summary of Proposed Changes
6. Staff - Draft Ordinance Amendments

**MapLight****Summary of Proposed Changes**

This proposed ordinance expands the Berkeley Fair Elections program to allow candidates for Auditor, School Director, and Rent Stabilization Board Commissioner to participate in the program. Under current law, only candidates for Mayor and City Council may participate in the Fair Elections program. The proposed ordinance specifies that a candidate for Auditor, School Director, or Rent Stabilization Board Commissioner is eligible to participate in the Fair Elections program if the candidate meets the requirements to hold the office sought as provided in the City of Berkeley Charter. The proposed ordinance also provides a maximum aggregate amount of Fair Elections funds per election of \$20,000 for candidates for Auditor; \$20,000 for candidates for School Director; and \$5,000 for candidates for Rent Stabilization Board Commissioner. Under the proposed ordinance, the maximum aggregate amounts of Fair Elections funds for candidates for Mayor and Councilmember are adjusted to the current amounts as provided by Fair Campaign Practices Commission (FCPC) regulation – this provision should be reviewed to ensure that if the ordinance is passed, the amounts for Mayor and Councilmember do not revert back to the original \$120,000 and \$40,000, respectively.

This proposed ordinance also specifies that a candidate participating in the Fair Elections program must use Fair Elections funds and contributions for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle. Current law requires only that a participating candidate use Fair Elections funds and contributions for direct campaign purposes. Under the proposed ordinance, a participating candidate is also prohibited from using Fair Elections funds and contributions to pay a business in which the candidate or candidate's immediate family member has a ten percent ownership interest. As amended by the proposed ordinance, this provision includes both the terms "family" and "immediate family" and leaves them undefined; this provision should be reviewed to ensure that it is clear which family members are included in the provision's restrictions and provide definitions if necessary. For consistency, both references could be changed to "immediate family" so that the restrictions of the provision apply to the same group of family members.

Finally, the proposed ordinance requires the FCPC to make a cost of living adjustment to the contribution limit to candidates every January of an odd-numbered year in the same manner as the Fair Elections funds and contribution limits are adjusted for participating candidates.

**Section-by-Section**

Section 1. This section requires the FCPC to make a cost of living adjustment to the contribution limit to candidates every January of an odd-numbered year in the same manner as the contribution limit and Fair Elections funds limits are adjusted for participating candidates.

Section 2. This section expands the Fair Elections program to allow candidates for Auditor, School Director, and Rent Stabilization Board Commissioner to participate in the program.

Section 3. This section specifies that candidates for Auditor, School Director, and Rent Stabilization Board Commissioner must meet the candidacy requirements for their respective offices as provided in the City of Berkeley Charter in order to be eligible to participate in the Fair Elections program.

Section 4. This section updates the maximum aggregate amounts of Fair Elections funds that a candidate for Mayor or City Council may receive and establishes maximum aggregate amounts of Fair Elections funds that a candidate for Auditor, School Director, and Rent Stabilization Board Commissioner may receive.

Section 5. Under this section, a participating candidate is required to use Fair Elections funding only for direct campaign purposes that further the participating candidate's own campaign for the relevant office and election cycle. In addition, this section prohibits a candidate from spending Fair Elections funding at a business in which the candidate or candidate's immediate family member has a 10 percent or greater ownership interest.

**CITY OF BERKELEY CAMPAIGN EXPENDITURES 2014-2020****for Auditor, Rent Board, and School Board**

Data collected from the City of Berkeley's Public Portal for Lobbyist and Campaign Finance Disclosure by MapLight, a nonprofit research organization.

Candidates with less than \$500 in total expenditures were excluded from this dataset.

Winning candidates are indicated by an asterisk\*

**2014**


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| <b>Office Sought</b>     | <b>Candidate</b>  | <b>Total Expenditures</b> |
|--------------------------|-------------------|---------------------------|
| Auditor                  | Anne-Marie Hogan* | \$ 2,639                  |
| Rent Stabilization Board | James Chang*      | \$ 2,092                  |
| Rent Stabilization Board | John Selawsky*    | \$ 1,894                  |
| Rent Stabilization Board | Jesse Townley*    | \$ 1,705                  |
| Rent Stabilization Board | Katherine Harr*   | \$ 1,553                  |
| Rent Stabilization Board | Paola Laverde*    | \$ 1,110                  |
| School Board Trustee     | Ty Alper*         | \$ 48,298                 |
| School Board Trustee     | Julie Sinai       | \$ 30,220                 |
| School Board Trustee     | Joshua Daniels*   | \$ 22,430                 |
| School Board Trustee     | Karen Hemphill*   | \$ 11,533                 |

**Independent Expenditures**

No independent expenditures found for the above contests.



**2016**

| <b>Office Sought</b>     | <b>Candidate</b>      | <b>Expenditures</b> |
|--------------------------|-----------------------|---------------------|
| Rent Stabilization Board | Judy Hunt             | \$ 7,991            |
| Rent Stabilization Board | Christina Murphy*     | \$ 6,846            |
| Rent Stabilization Board | Leah Simon-Weisberg*  | \$ 5,615            |
| Rent Stabilization Board | Igor Tregub*          | \$ 5,110            |
| Rent Stabilization Board | Alejandro Soto-Vigil* | \$ 4,013            |
| Rent Stabilization Board | Nathan Wollman        | \$ 3,551            |
| School Board Trustee     | Judy Appel*           | \$ 5,342            |
| School Board Trustee     | Beatriz Leyva-Cutler* | \$ 1,301            |
| School Board Trustee     | Abdur Sikder          | \$ 1,069            |

**Independent Expenditures**

| <b>Committee</b>          | <b>Candidate</b>     | <b>Support or Oppc</b> | <b>Total Expenditures</b> | <b>Office Sought</b>     |
|---------------------------|----------------------|------------------------|---------------------------|--------------------------|
| Berkeley Working Families | Alejandro Soto-Vigil | support                | 734                       | Rent Stabilization Board |
| Berkeley Working Families | Christina Murphy     | support                | 734                       | Rent Stabilization Board |
| Berkeley Working Families | Igor Tregub          | support                | 734                       | Rent Stabilization Board |
| Berkeley Working Families | Leah Simon-Weisberg  | support                | 734                       | Rent Stabilization Board |

**2018**

| <b>Office Sought</b>     | <b>Candidate</b>   | <b>Total Expenditures</b> |
|--------------------------|--------------------|---------------------------|
| Auditor                  | Jennifer Wong*     | \$ 24,875                 |
| Auditor                  | Vladislav Davidzon | \$ 14,714                 |
| Auditor                  | John Selawsky      | \$ 1,970                  |
| Rent Stabilization Board | James Chang*       | \$ 9,749                  |
| Rent Stabilization Board | Judy Hunt          | \$ 5,161                  |
| Rent Stabilization Board | Maria Poblet*      | \$ 2,089                  |
| Rent Stabilization Board | John Selawsky*     | \$ 1,970                  |
| Rent Stabilization Board | Solomon Alpert*    | \$ 1,959                  |
| Rent Stabilization Board | Paola Laverde*     | \$ 1,844                  |
| School Board Trustee     | Ty Alper*          | \$ 37,567                 |
| School Board Trustee     | Julie Sinai*       | \$ 29,767                 |
| School Board Trustee     | Ka'Dijah Brown*    | \$ 10,594                 |
| School Board Trustee     | Lea Baechler-Brabo | \$ 500                    |

**Independent Expenditures**

| <b>Committee</b>                  | <b>Candidate</b> | <b>Support or Opp</b> | <b>Total Expenditures</b> | <b>Office Sought</b> |
|-----------------------------------|------------------|-----------------------|---------------------------|----------------------|
| California Federation Of Teachers | Jule Sinai       | support               | 2,420                     | School Board         |
| California Federation Of Teachers | Ka'Dijah Brown   | support               | 2,420                     | School Board         |
| California Federation Of Teachers | Ty Alper         | support               | 2,420                     | School Board         |

**2020**

| <b>Office Sought</b>     | <b>Candidate</b>     | <b>Total Expenditures</b> |
|--------------------------|----------------------|---------------------------|
| Rent Stabilization Board | Andy Kelley*         | \$ 16,104                 |
| Rent Stabilization Board | Bahman Ahmadi        | \$ 13,600                 |
| Rent Stabilization Board | Soulmaz Panahi       | \$ 11,970                 |
| Rent Stabilization Board | Dan McDunn           | \$ 8,756                  |
| Rent Stabilization Board | Leah Simon-Weisberg* | \$ 8,646                  |
| Rent Stabilization Board | Wendy Hood           | \$ 7,638                  |
| Rent Stabilization Board | Carole Marasovic     | \$ 6,762                  |
| Rent Stabilization Board | Pawel Moldenhawer    | \$ 5,823                  |
| Rent Stabilization Board | Timothy Johnson*     | \$ 4,848                  |
| Rent Stabilization Board | Mari Mendonca*       | \$ 4,547                  |
| Rent Stabilization Board | Dominique Walker*    | \$ 4,115                  |
| School Board Trustee     | Ana Vasudeo*         | \$ 23,061                 |
| School Board Trustee     | Laura Babbit*        | \$ 12,291                 |
| School Board Trustee     | Michael Chang        | \$ 16,503                 |
| School Board Trustee     | Jose Bedolla         | \$ 3,371                  |
| School Board Trustee     | Esfandiar Imani      | \$ 2,732                  |

**Independent Expenditures**

| <b>Committee</b>                      | <b>Candidate</b>    | <b>Support or Oppose</b> | <b>Expenditures</b> | <b>Office Sought</b>     |
|---------------------------------------|---------------------|--------------------------|---------------------|--------------------------|
| National Association Of Realtors Fund | Bahman Ahmadi       | support                  | 54,143              | Rent Stabilization Board |
| National Association Of Realtors Fund | Dan McDunn          | support                  | 17,791              | Rent Stabilization Board |
| National Association Of Realtors Fund | Soulmaz Panahi      | support                  | 17,791              | Rent Stabilization Board |
| National Association Of Realtors Fund | Wendy Saenz Hood Ne | support                  | 17,791              | Rent Stabilization Board |
| Committee For Ethical Housing, Suppo  | Pawel Moldenhawer   | support                  | 5,756               | Rent Stabilization Board |
| Committee For Ethical Housing, Suppo  | Wendy Saenz Hood Ne | support                  | 5,756               | Rent Stabilization Board |
| Committee For Ethical Housing, Suppo  | Dan McDunn          | support                  | 5,756               | Rent Stabilization Board |
| Committee For Ethical Housing, Suppo  | Soulmaz Panahi      | support                  | 5,756               | Rent Stabilization Board |
| Committee For Ethical Housing, Suppo  | Bahman Ahmadi       | support                  | 5,756               | Rent Stabilization Board |

**Budget Projections - Fair Elections Program Proposed Expansion**

prepared by MapLight

Current balance in Fair Elections Fund: about \$1,400,000

Most recent annual allocation to Fair Elections Fund: \$505,000

Total allocated to Fair Elections Fund each 4-year election cycle: about \$2,020,000

Total disbursed from Fair Elections Fund for 2018: \$295,288

Total disbursed from Fair Elections Fund for 2020: \$299,454

*Source for above figures: City Clerk's office*

| Office                                 | Maximum public funding per candidate (proposed) | 2013-2020 average # of candidates per 4-year election cycle | Moderate estimate | High estimate     |
|----------------------------------------|-------------------------------------------------|-------------------------------------------------------------|-------------------|-------------------|
| Auditor                                | \$ 20,000                                       | 2                                                           | \$ 40,000         | \$ 60,000         |
| School Board Trustee                   | \$ 20,000                                       | 8                                                           | \$ 160,000        | \$ 240,000        |
| Rent Stabilization Bd.                 | \$ 5,000                                        | 14                                                          | \$ 70,000         | \$ 105,000        |
| <b>Total per 4-year election cycle</b> |                                                 |                                                             | <b>\$ 270,000</b> | <b>\$ 405,000</b> |

Moderate estimate: Same number of candidates as historical average, all candidates receive maximum public funding.

High estimate: 1.5X as many candidates as historical average, all candidates receive maximum public funding.

**Budget projection with proposed expansion--every 4 years:**

|                                                  |    |           |                                  |
|--------------------------------------------------|----|-----------|----------------------------------|
| Allocation to Fair Elections fund                | \$ | 2,020,000 |                                  |
| Disbursed from Fund: Administrative costs        | \$ | (290,000) | set by statute                   |
| Disbursed from Fund: Mayor and Council           | \$ | (594,742) | based on disbursements 2017-2020 |
| Disbursed from Fund: Auditor, School Bd, Rent Bd | \$ | (270,000) | based on moderate estimate       |
| Remaining in Fund after disbursement             | \$ | 865,258   |                                  |

Conclusion: The Fair Elections program is already funded at a sufficient level to support expansion.  
No new funding allocation is needed to implement the proposed expansion.

*Source for historical number of candidates: MapLight analysis of candidate filings  
Candidates with less than \$500 in total expenditures were excluded from this data.*

ORDINANCE NO. \_\_\_\_\_

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.415 is amended to read as follows:

**2.12.415 Persons other than candidate--Maximum permitted amount.**

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars. The Commission shall adjust the dollar amount in this Section for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year. For purposes of this section single election is a primary, general, special, runoff or recall election.

Section 2. That Berkeley Municipal Code Section 2.12.495 is amended to read as follows:

**2.12.495 Offices covered.**

Candidates for the offices of Mayor ~~and~~, City Council, Auditor, Board of Education, and Rent Stabilization Board shall be eligible to participate in the public campaign financing program established by this chapter.

Section 3. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

**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 City 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 to be eligible to hold the office sought:

a) For the office of Mayor or Councilmember, Auditor, or School Director, the requirements as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley; or

b) For the office of Commissioner of the Rent Stabilization Board, the requirements as set forth in Section 121 of Article XVII of the Charter of the City of Berkeley.

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, 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 or City staff any information they 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 or City staff;

6) Not make expenditures from or use his or her personal funds or funds jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a monetary or non-monetary contribution to his or her controlled committee of \$250 or less. Contributions from a participating candidate to his or her own controlled committee are not eligible for matching funds.

7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);

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, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

9) Not accept loans from any source.

10) The City has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission shall adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

B. At the earliest practicable time after a candidate files with the City a written application for certification as a participating candidate, the City shall certify that the candidate is or is not eligible. Eligibility can be revoked if the Commission determines that a candidate has committed a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid.

C. At the discretion of the Commission or at the applying candidate's request, the City's denial of eligibility is subject to review by the Commission. 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 City or 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.

Section 4. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

**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) \$129,000 for a candidate running for the office of Mayor;
- 2) \$43,000 for a candidate running for the office of City Council;
- 3) \$20,000 for a candidate running for the office of Auditor;

4) \$20,000 for a candidate running for the office of Board of Education;

5) \$5,000 for a candidate running for the office of Rent Stabilization Board.

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.

1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections 2.12.280 and 2.12.283.

2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City 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.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.

F. 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.

G. The City 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 seven 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.

H. Unspent funds of 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 shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election.

Section 5. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

**2.12.530 Use of Fair Elections funds.**

A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes to further the candidate's own campaign for the relevant office and election cycle.

B. A participating candidate shall not use Fair Elections funds or contributions for:

1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;

2) The candidate's personal support or compensation to the candidate ~~or~~ the candidate's family, or a business in which the candidate or candidate's immediate family member has a ten (10) percent or greater ownership interest;

3) Indirect campaign purposes, including but not limited to:

a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;

b) 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;

c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;

d) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;

e) Any payment or transfer for which compensating value is not received;

C. The term "Contribution" is defined in 2.12.100 and includes "Qualified Contributions" as defined in 2.12.167 and contributions from non-residents of Berkeley as described in 2.12.500.A.7.

D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.



City Clerk Department

September 16, 2021

To: Members, Fair Campaign Practices Commission

From: Mark Numainville, City Clerk

Subject: Staff Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

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### 1. Clarification of requirements for returning unspent funds after the election

In the 2020 election, several candidates did not follow the required timeline for submitting unspent funds as required by BMC 2.12.505.H. Participating candidates were sent a letter after the election reminding them of the deadline and requesting a draft Form 460 showing an ending cash balance that matched the amount on the check submitted for unspent funds. Of the ten participating candidates, one initially submitted a draft 460 with a closing balance that did not match the amount of the check, one candidate took three months to return their unspent funds, and one has yet to submit documentation verifying the correct amount to be returned. Neither BERA nor the Public Finance Program Supplemental Guide provided a clear process for returning unspent funds; additionally, there is no specific guidance regarding candidates who participate in the program but do not ultimately qualify for the ballot. The Supplemental Guide has been updated to clarify the administrative process; further amendments to BERA are needed to underscore the requirements and to confirm that non-compliance is a violation of BERA.

Proposed Remedy: Amend BERA 2.12.505.H as follows:

H. 1) Unspent ~~campaign~~ funds of any Participating Candidate who does not ~~remain~~ ~~qualify a candidate for the~~ ~~until~~ ~~ballot at~~ the election for which ~~they~~ ~~the~~ ~~funds~~ were distributed, ~~up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and expenditures, must be returned to the City within 30 (thirty) days of the determination on the qualification of the candidate. All funds returned under this paragraph must be accompanied by any required supporting documentation.~~

Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

2) Any campaign ~~or such~~ funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.

3) All unspent campaign funds returned to the City shall be deposited into the Fair Elections Fund pursuant to the City Charter.

4) The City Clerk shall immediately refer to the Commission for enforcement any participating candidate who does not return unspent funds as required by this subsection.

**2. Add new process for requesting return of funds after unspent funds were repaid**

Several months after returning their unspent funds, two committees notified the City Clerk Department that they had received invoices from a vendor who had not yet billed them. The committees requested return of a portion of unspent funds to pay the invoices. Absent specific guidance regarding this matter, the City Clerk Department consulted with the City Attorney's Office and agreed to accommodate the requests for the 2020 election. However, staff believe that going forward, such requests should be considered on a case-by-case basis by the Commission given the unique circumstances of each request and the possibility of campaign reporting violations.

Proposed Remedy: Amend BERA 2.12.505 as follows:

I. Any request by a Participating Candidate for a refund of unspent campaign funds previously repaid to the City shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.

Proposed Amendments to the Berkeley Election Reform Act (BERA) and FCPC Regulations for the 2022 Election Cycle

**3. Require additional reporting for expenditures falling under more than one payment code as provided by the state disclosure form**

Many types of purchases by campaign committees fall under more than one payment category as defined by the state, although the electronic filing system used by most candidates does not allow for the entry of more than one code. In order to provide voters a clear picture of what is actually being purchased, an entry in the description field of the transaction would be required.

Proposed Remedy: Amend BERA 2.12.280 as follows:

I. If a single entry for goods, services, facilities, or items of value reported as received or purchased in a campaign statement falls under more than one payment code provided by the state disclosure form, a description of the goods, services, facilities, or items of value must be provided.

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

## AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

**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.

1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publicly disclosed with the contributor information required under Sections 2.12.280 and 2.12.283.

2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City 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.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the City's certification of a participating candidate's eligibility, or as soon thereafter as is practicable. City staff shall report a certification or denial to the Commission no later than the Commission's next regular meeting, consistent with the Brown Act.

F. 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.

G. The City 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 seven 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.

H. 1) Unspent campaign funds of any Participating Candidate who does not remain qualify a candidate for the until ballot at the election for which they the funds were distributed, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions in that election cycle and after accounting for campaign debts and expenditures, must be returned to the City within 30 (thirty) days of the determination on the qualification of the candidate. All funds returned under this paragraph must be accompanied by any required supporting documentation.

2) Any campaign or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed, up to the total amount of funds that the Participating Candidate received as Fair Elections Funds distributions in that elections cycle and after accounting for campaign debts and expenditures, must be returned to the City shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election. All funds returned under this paragraph must be accompanied by any required supporting documentation.

3) All unspent campaign funds returned to the City shall be deposited in the Fair Elections Fund pursuant to the City Charter.

4) The City Clerk shall immediately refer to the Commission for enforcement any participating candidate who does not return unspent funds as required by this subsection.

I. Any request by a Participating Candidate for a refund of unspent campaign funds previously repaid to the City shall be submitted to the Commission to approve, in whole or in part, or deny. The Commission shall make a final determination on the refund within 45 days of receipt.

Section 2. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

**2.12.280 Campaign statement--Information required.**

Each campaign statement required by this article shall contain the following information:

- A. Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals;
- B. The total amount of contributions received during the period covered by the campaign statement from persons who have given fifty dollars or more;
- C. The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars;
- D. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars or more;
- E. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars;
- F. The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;
- G. The full name of each person from whom a contribution or contributions totalling fifty dollars or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;



H. The full name and street address of each person to whom an expenditure or expenditures totalling fifty dollars or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;

I. If a single entry for goods, services, facilities, or items of value reported as received or purchased in a campaign statement falls under more than one payment code provided by the state disclosure form, a description of the goods, services, facilities, or items of value must be provided.

J. In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;

J.K. The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;

K.L. In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treasurer of such committee.