

**PROCEDURES**

**for the**

**FAIR CAMPAIGN PRACTICES COMMISSION**

**July 1998**  
**(Revised July 2014)**

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## Fair Campaign Practices Commission Procedures

Note: The terms used in these procedures shall have the same meaning as in the Berkeley Election Reform Act of 1974, as amended (hereafter cited as BERA) to the extent they appear in that ordinance.

### I. Meetings

#### A. Regular Meetings

1. A regular meeting of the Commission shall be held on the third Thursday of each month beginning at 7:00 p.m. By majority vote, the Commission may change the date on which a given regular meeting will take place and may schedule regular meetings more or less frequently than once each month.
2. The agenda for each regular meeting shall be established by the Chairperson. Any commissioner may propose to the Commission matters for a future agenda. For matters of a time sensitive nature, a commissioner may submit a request to the Chairperson (through the Secretary) to add an item to the next agenda. For good cause, a majority of the Commission may delete matters from the agenda.
3. When the Chairperson, in consultation with the Secretary, determines that there is presently no business requiring Commission action, he or she may cancel the next regular meeting.

#### B. Special Meetings

The Chairperson or a majority of commissioners may call a special meeting to occur at any time other than a regular meeting, consistent with the Brown Act. Notice of at least 24 hours must be provided to all commissioners and, to the extent required by law and these procedures, to the public and the press. Only matters contained in the meeting notice may be considered.

#### C. Executive Session

The Commission may meet in closed session to consider such matters as the law allows. Closed sessions shall generally be scheduled to occur immediately following regular meetings.

#### D. Meetings in General

1. Unless otherwise specified in these procedures, conduct of all Commission meetings shall be in accordance with the guidelines in the City of Berkeley

Commissioners' Manual (current ed.) and, where that document is silent, the current edition of Robert's Rules of Order.

2. Public participation in all Commission meetings is encouraged. Public comment shall be held in compliance with the Brown Act and the Commissioners' Manual.
  - a. *Public comment-non-agenda items*: At the beginning of each meeting, there will be a public comment period of two minutes per speaker during which members of the public may speak on items within the Commission's jurisdiction but that are not on the agenda. If there more than five speakers on matters not on the agenda, the Chairperson, prior to opening public comment, may limit public comment for all speakers to one minute per speaker.
  - b. *Public comment- agenda items*: The Commission will take public comment on items that are on the agenda prior to or during the Commission's consideration of each item. The time for public comment shall generally be two minutes per speaker. If there more than ten speakers on an issue, the Chairperson, prior to public comment on the agenda item, may limit public comment for all speakers to one minute per speaker.
  - c. When the Commission is considering an investigative report stemming from a Complaint or initiated by the Secretary, the Complainant, if any, and Respondent will each be given up to five minutes to speak to the Commission.
3. The Secretary shall cancel any meeting where he or she has good cause to believe that a quorum will not be present, and shall attempt to notify commissioners and all others previously given notice of that meeting of its cancellation. The Secretary shall also post a cancellation notice. In consultation with the Chairperson, the Secretary may also cancel a regular meeting if there are no items of new or old business before the Commission.

## II. Organization and Responsibilities

### A. Officers

1. The Commission shall elect a Chairperson and a Vice Chairperson annually at its regular meeting in February. If the Commission does not hold a February meeting, the election shall take place at the first regular meeting thereafter. After receiving written notice of resignation from an officer, the Commission shall promptly elect a successor to serve the balance of that officer's term.

2. The Chairperson shall perform the following duties in addition to any other duties which are necessary or customary to this office:
  - a. Preside at all Commission meetings;
  - b. Appoint committees and chairpersons of committees;
  - c. Approve the agenda prior to distribution;
  - d. Sign authorized correspondence on behalf of the Commission or, unless expressly prohibited, delegate such responsibility to the Secretary;
  - e. Administer oaths and affirmations to persons testifying before the Commission;
  - f. Provide guidance to the Secretary regarding staff execution of the Commission's business, including, but not limited to, investigation of possible violations of BERA, review of campaign statements and audits of candidates and committees;
  - g. Represent the Commission in dealings with the City Manager, the City Attorney, and other City staff regarding administrative and budgetary matters and the execution of enforcement activities authorized by the Commission;
  - h. Represent the Commission before the City Council on matters authorized by the Commission. No prior authorization is required for budgetary matters consistent with prior Commission action:
  - i. Exercise the authority of the Commission with regard to administrative matters on which prompt action must be taken prior to the next scheduled meeting, provided that (1) the Chairperson shall report fully each action taken pursuant to this authorization at the next meeting and (2) this authority shall not include the power to dismiss a complaint, to make any finding of probable cause or violation, to demand records under BERA Section 2.12.250(d) or to seek judicial relief or remedies on behalf of the Commission.
3. In the event of absence of the Chairperson from a meeting or his or her inability to conduct other duties of that office, the Vice Chairperson shall assume the duties of the Chairperson for the duration of such absence or inability. If both officers should be absent or unable to conduct other duties of the Chairperson, the commissions shall elect one of their members to act as Chairperson pro tem for the duration of such absence or inability.

B. Commissioners

1. Commissioner Attendance/Termination for Absences

- a. Leaves of Absence. The appointing official, or his or successor, may grant a commissioner a leave of absence for up to three months.
- b. Automatic Termination of Appointment for Excessive Absenteeism. Because the Fair Campaign Practices Commission was created as a result of an initiative ordinance adopted by the voters, members of this commission are exempt from the automatic termination provision of BMC Section 3.02.020. However, through the adoption of these Procedures, the Commission agrees that a commissioner's appointment shall be terminated upon his or her unexcused absence from three consecutive regular meetings of the Commission. Absences during an approved leave of absence are considered excused and thus do not count toward the three consecutive absences.
- c. Notice of Absenteeism. If the commissioner's absence from the next meeting will result in termination, the secretary shall so advise that commissioner.

2. Other Grounds for Termination

The following are additional reasons that a commissioner shall be terminated from the Commission:

- a. The non-filing of required Conflict of Interest Disclosure Statements;
- b. Failure to take the Oath of Office within thirty days of the date of the appointment letter; and
- c. Failure to meet the qualifications for membership pursuant to Section 2.12.195 of the Berkeley Election Reform Act.

3. Reappointment

Section 2.12.175 states "Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember....A member whose term has expired shall serve until his or her successor is appointed." Based on this provision, a commissioner can continue to serve once appointed for the full term of the appointing Councilmember, and cannot be removed by the Councilmember who appointed him or her. If a new Councilmember is elected, that Councilmember may immediately replace the commissioner, or allow the existing commissioner to continue to serve until a new commissioner is

appointed. Pursuant to Section 2.12.175, a terminated commissioner cannot be reappointed by the same Councilmember. This does not preclude a commissioner's reappointment by a different Councilmember for an open seat on the Commission. This means that upon termination for the reasons set forth above, a commissioner cannot be reappointed by his or her appointing Councilmember.

#### 4. Resignation

A Commissioner wishing to resign shall submit a letter of resignation to the City Clerk, the appointing Councilmember and the Commission Secretary. Once submitted to the City Clerk, a letter of resignation cannot be withdrawn.

### C. Commission Staff

1. The Secretary of the Commission means the employee of the City designated by the City Manager to act in this capacity:
2. The duties of the Secretary are as follows:
  - a. Assist the Commission in the discharge of its responsibilities, including providing the Commission with advice and recommendations concerning possible violations, enforcement options, procedures and regulations;
  - b. Attend all Commission meetings and, to the extent feasible, meetings of ad hoc subcommittees;
  - c. Obtain and maintain minutes of meetings and records of proceedings, including hearings, and official actions, and all other records and documents relevant to the duties of the Commission;
  - d. Prepare and distribute Commission correspondence and reports, including materials for meetings;
  - e. Notify commissioners of meetings and prepare the agenda as approved by the Chairperson;
  - f. Report on attendance of each commissioner to the City Clerk;
  - g. Provide technical assistance and informal advice to actual or potential candidates and committees active in Berkeley;
  - h. Review each campaign statement filed or required to be filed pursuant to BERA for adherence to the law and Commission regulations and request amendments to correct apparent violations or deficiencies; process all complaints alleging violations of BERA according to procedures below at

section IV and report to the Commission all significant possible violations as provided by these procedures;

- i. Perform or supervise investigations, including audits of possible violations of BERA as provided by these procedures or specifically requested by the Commission, and provide thorough reports to the Commission of the results;
  - j. To the extent authorized by the City Manager or the City Attorney, represent the Commission in civil or criminal proceedings it has instituted pursuant to BERA, and in dealings with judicial or other governmental officials;
  - k. Preserve strict confidentiality with regard to details and documents concerning any matter under investigation for potential violation of law or regulation until it can be fully reported to the Commission and affected parties, or unless it is required to be disclosed pursuant to the California Public Records Act. (All campaign statements and reports, as well as correspondence concerning amendments to such documents, are public records and are not confidential.)
3. Other Commission Staff. Unless otherwise prohibited, the Secretary may delegate to other City staff any matter or duty for which he or she is responsible.

### III. Request for Advice and Opinions

#### A. Requests for Advice

1. Any person may informally request advice from the Commission regarding his or her duties and responsibilities under BERA. Such requests shall present all relevant facts as concisely as possible and shall state the question or questions based on the facts.
2. The Secretary shall provide advice orally if the matter is routine or does not require substantial interpretation of the ordinance.
3. If a request for advice is complex or requires interpretation of the ordinance in an area where there is not a regulation or clear Commission policy, the Secretary shall consult with the Chairperson and may seek the advice of the City Attorney prior to giving any advice, which shall be made in writing. The Secretary may also decide that the matter must be handled only through the formal opinion process.
4. In any proceeding before the Commission, a candidate or committee may present evidence of advice rendered to it only if that entity and its representa-

tive(s) were identified to the Secretary at the time the advice was requested. Advice of the Secretary does not constitute an opinion of the Commission issued pursuant to BERA Section 2.12.220 or a declaration of policy by the Commission, but shall be evidence of good faith conduct in any Commission, civil, or criminal proceeding if the request for advice disclosed truthfully all the material facts, and the requestor acted in reliance on such advice.

B. Requests for Opinions

1. Opinion requests shall present all material facts as concisely as possible and shall state the question or questions based on the facts. They shall be signed by the person requesting the opinion and shall indicate which candidate or organization such person is representing. The good faith reliance protection granted under BERA Section 2.12.220 shall extend only to those persons identified in the request, and only if the request for advice disclosed truthfully all the material facts and the requestor acted in reliance on such advice.

IV. Review of Campaign Reports and Statements

A. Detailed Review and Monitoring

1. The Secretary shall monitor campaign statements for compliance with Section 2.12.440 of BERA.
2. The Secretary shall monitor campaign statements for compliance with BERA Section 2.12.415 regarding transfers between committees and cumulative contributions.
3. The Secretary shall monitor compliance with the late reporting requirement of Sections 2.12.295 and 2.12.297.
4. The Secretary shall review all campaign communications which have been filed with the City Clerk to assure that candidates and committees are complying with the requirements of BERA, including but not limited to 2.12.297, 2.12.325, and 2.12.330.

B. Substantial Compliance

1. A campaign statement is not in substantial compliance with BERA if there is:
  - a. Any internal discrepancies in reporting contributions, expenditures, or cash balance which total \$250 or more;
  - b. Any discrepancy of \$250 or more between the cash position or total contributions and expenditures reported and those reported in prior statements;

- c. Any omission of the address and date of receipt of any single or aggregate contribution of \$100 or more from a single source;
- d. Any omission of any required original signature by the treasurer or by any candidate, including one who controls a committee; or
- e. Any gap in periods of time covered by successive campaign statements, or statements in which the period covered is not in conformance with the law.

C. Reports of Possible Violations

- 1. The Secretary shall report as soon as feasible all possible violations of BERA to the Commission, along with a written preliminary investigative report if the matter involves complex factual or legal issues.

V. Complaints of Alleged Violations

A. Filing Requirements

- 1. Any person who believes that a violation of any portion of this ordinance has occurred or is about to occur may file a complaint with the Secretary. Each complaint shall:
  - a. State the full name and address of the complainant;
  - b. Allege who has committed or is about to commit a violation;
  - c. Clearly, concisely and accurately state the facts which constitute the violation;
  - d. Be accompanied by any documentation supporting the facts alleged. Statements which are not based upon personal knowledge should identify the source of information which gives rise to the complainant's belief in the truth of such statements; and
  - e. Be signed by the complainant under penalty of perjury.
- 2. Complaints which are not signed under penalty of perjury or which do not meet the standards for completeness described above shall be returned to the complainant and shall not be deemed received until such a declaration is made or the complaint is amended to be complete.
- 3. The Secretary may investigate the facts surrounding such a complaint or any oral complaint which he or she receives if it provides reasonable cause to believe a violation has occurred or will occur. Any evidence of violation

discovered in such investigation shall be reported to the Commission at its next meeting.

4. The Secretary may conduct an initial review of the complaint to ascertain whether the complaint alleges a violation of BERA or instead falls outside of the Commission's purview. If the Secretary believes the complaint to fall outside of the Commission's purview, the complaint shall be presented as an information item to the Commission, and will only be referred back to the Secretary for investigation if the Commission determines, by a vote of a majority of appointed members, that the complaint falls within the Commission's purview.

B. Processing of Complaints

1. For purposes of the seven day requirement for Commission response, a complaint shall not be deemed received by the Commission until the first regular Commission meeting following the Secretary's receipt of the complaint, provided that it is received in time to provide copies to the Commission and to the subject of the complaint (respondent) prior to the meeting, and to be placed on the agenda consistent with the Brown Act.
2. At the first regular Commission meeting following the Secretary's verification that the complaint meets the above-specified filing requirements, the Commission shall decide: (a) whether to direct the Secretary to investigate the complaint, to the extent the Secretary has not already done so; (b) whether to dismiss the complaint; or (c) whether to find probable cause to believe a provision of the BERA has been violated.
  - a. If the Commission dismisses the complaint, the Secretary shall notify the complainant, and the complainant may then take any other action as provided in the BERA.
  - b. If the Commission decides to investigate the complaint, to the extent not already done so by the Secretary, the Secretary shall investigate the complaint to the extent feasible as authorized by these procedures and to make inquiry of the parties to establish facts and to make a report to the Commission at its next meeting. Notice of the date the complaint will be considered, along with a copy of the complaint and pertinent portions of Commission procedures shall be transmitted to the subject of the complaint as soon as possible. The complainant shall also receive a notice of the date the matter has been scheduled along with a copy of pertinent portions of Commission procedures.
  - c. The Commission shall not make a finding of probable cause except as provided in Parts VI (A) and (B).

3. Consideration of the complaint by the Commission shall proceed according to Parts VI and VII.
4. Upon conclusion of its consideration of the complaint, the Commission shall decide what further actions it intends to take, if any, and shall inform the complainant of the reasons for its decision.

C. Restrictions on Investigation/Consideration by Individual Commissioners

1. Individual commissioners shall not receive complaints. Individual commissioners may not investigate complaints or discuss pending complaints with persons other than commissioners during a noticed meeting, or the Secretary.
2. Each commissioner has an obligation, as to every item before the Commission, to consider whether he or she has a financial conflict of interest as defined by law or a political conflict of interest as set forth in Section 2.12.196, and if a conflict exists, to recuse himself or herself from participating in the item.
3. Any commissioner absent from a meeting where substantial information is presented in connection with a complaint shall disqualify himself or herself from voting on the merits of the complaint at a subsequent meeting, unless he or she has reviewed all relevant information.

D. Conduct of Investigations

1. The Secretary is authorized to conduct investigations on behalf of the Commission. Investigations will be commenced either based on information discovered by the Secretary in the commission of his or her duties or based on a Complaint.
2. The Secretary may request records to which the Commission is entitled pursuant to BERA when he or she has reason to believe that a violation has occurred.
3. Failure to respond to written inquiries and requests for interviews or records by reasonable deadlines established by the Secretary shall be considered evidence of bad faith and shall be cause for the Commission to demand records or to initiate an audit unless the party or parties involved come forward with an explanation satisfactory to the Commission. A deadline may be extended if sufficient progress is made toward answering inquiries and the candidate or committee agrees to fully answer questions within a time established by mutual agreement between the Secretary and the parties involved.

4. If the Secretary has been unable to obtain voluntary access to such documents which the Secretary reasonably believes to be relevant to the investigation and/or the Commission's proceedings, then, upon majority vote, the Commission may issue a demand for campaign records pursuant to Section 2.12.250(e) of BERA.
5. The Secretary may request, and the Chairperson may appoint from time to time an investigative committee to assist the Secretary in carrying out an investigation, auditing financial records, and preparing a report with specific recommendations to the Commission. In such cases, members of the investigative committee shall be bound by the same rules of confidentiality as the Secretary.
6. The Secretary shall present a written investigative report to the full Commission at the earliest opportunity. An investigative report shall include the following information: a description of alleged violation(s); the identification of the respondent(s); summary of evidence; discussion of applicable law and precedents from FCPC and, to the extent applicable, FPPC and FEC; statement by respondent(s) or other affected parties; any aggravating or mitigating circumstances; and recommendation for action.

## VI. Disposition of Alleged Violations

### A. Report by Secretary

1. The Secretary shall submit a memorandum outlining the Secretary's investigation before any probable cause determination or violation hearing.
2. Whenever a person files a complaint with the Commission alleging a violation of BERA, in addition to the above, the Secretary's report shall include a copy of that complaint, an analysis of its merits, and an analysis of the harm done by the alleged violation.

### B. Proceeding After Presentation of Secretary's Report

1. The Commission may dismiss the matter (by majority vote) and proceed no further if evidence of any violation is insufficient or unreliable or if the possible violation has only a slight impact on the administration of BERA and/or the outcome of any election that further proceeding would be an inefficient use of resources.
2. The Commission may determine that probable cause exists to believe that the BERA has been violated. Probable cause exists when based on the circumstances presented there is a reasonable basis on which to believe that a violation of the BERA has occurred.

C. Proceeding after a Determination of Probable Cause

1. Upon making a determination of probable cause, the Commission shall consider what course of action to take. When deciding upon appropriate action, the Commission may take into consideration:
  - a. Its policies, procedures, regulations, and past actions in similar situations.
  - b. The amount of experience of the candidate, if any, and treasurer in campaign reporting, the history or absence of other campaign violations, and the degree to which these persons made good faith efforts to correct any relevant reporting deficiencies.
  - c. The presence, if any, of an apparent intent to conceal, deceive or mislead.
  - d. Whether the probable violation appears deliberate, negligent or inadvertent.
  - e. The effect of the probable violation upon the election or upon the administration of BERA
2. The Commission may take any of the following courses of action:
  - a. Dismiss the complaint, where appropriate, and take no further action.
  - b. Request the Secretary conduct further investigation, including an audit of campaign records;
  - c. Require the timely filing of campaign statements and/or amendments to campaign statements if the probable violation involves an error and/or an omission on a campaign statement that has been filed, or if it involves the failure to file a campaign statement as required;
  - d. Invite the respondents to participate in settlement negotiations. The Commission may request that the Secretary participate in negotiations on behalf of the Commission. Alternatively, the Chairperson may appoint a negotiating committee, which shall be guided by the Commission regarding the desired outcome of the settlement. Any settlement reached by the Secretary or negotiating committee and respondent(s) shall be presented to the commission for approval. Negotiations between the designated negotiator or negotiating committee and the respondent shall be confidential. Only the negotiated draft settlement agreement, or the fact of an impasse, shall be shared with the Commission.
  - e. Schedule and conduct a hearing pursuant to Section 2.12.230 of BERA. The hearing shall be conducted in accordance with Part VII below after

the Secretary has completed his or her report. However, the hearing must be conducted within a reasonable time after a determination of probable cause.

f. Ask the City Attorney or the District Attorney to seek legal remedies.

g. Seek any other remedy within its authority.

3. After making a probable cause determination, the Commission shall promptly inform the parties of the determination and of the course(s) of action it intends to pursue.

## VII. Hearings

### A. Parties

1. The parties to any hearing are (a) the Secretary or his or her designee, and (b) the candidate(s), committee(s) and other persons who are the alleged violators of BERA (respondents).
2. Each candidate or committee who is a party shall be represented by its treasurer or assistant treasurer or the committee's attorney of record.

### B. Scheduling and Notices

1. All hearings shall be scheduled by the Chairperson in consultation with the Secretary. The Chairperson may, if requested by a party, reschedule such a hearing upon a showing of good cause.
2. The Secretary shall provide notice of the hearing to all parties either by deposit in the U.S. Mail or delivery to that party's representative or to the address of that party's representative on file with the Commission.
3. Before the Commission undertakes a hearing it shall provide each party with reasonable notice. Reasonable notice shall be considered fourteen (14) calendar days, unless a finding of probable cause is made within the four (4) weeks prior to an election, in which case seventy-two (72) hours notice will be sufficient.

### C. Rules Regarding Written and Oral Submissions

1. Memoranda of argument and authorities may be submitted before the hearing by any party. The submitting party shall furnish copies to the Commission and to all other parties. Memoranda may be up to 15 pages. For good cause, the Chairperson may extend these limits.

2. Evidence, oral and documentary, may be presented to the Commission. The formal rules of evidence do not apply. All testimony offered shall be under oath. The Chair shall administer the oath or affirmation.

Any party or commissioner, including the Chairperson, may challenge the admissibility of evidence offered to the Commission at the time it is offered. The Chairperson shall rule on its admissibility, subject to being overruled by a majority of the Commission.

D. Conduct of Hearing

1. All hearings shall be audio recorded by the Secretary.
2. Order of presentation:
  - a. Secretary;
  - b. Each respondent; and
  - c. Questions by commissioners.
3. The hearing may be continued upon a majority vote of the Commission.

E. Commission Deliberations

1. Following the hearing, the Commission shall deliberate and decide whether a violation has occurred.
2. A commissioner who has not been present at the hearing in regard to the alleged violation(s) shall not take any part in any deliberations in such proceedings.

F. Remedies

Upon making a finding of violation or willful violation, the Commission shall determine what remedy should be pursued. The Commission shall consider the factors set forth in Part VI, Section C.1. above and may pursue the following remedies:

1. A stipulated agreement between itself and the party or parties found to have violated BERA. A stipulated agreement may include any of the following provisions:
  - a. The history of Commission activity regarding the matter and a statement of violation.

- b. An admission of violation by the party or parties.
  - c. A monetary penalty to be paid to the City's General Fund.
  - d. A promise by the violating party or parties to comply with BERA.
  - e. Any other terms or conditions within the scope of the Commission's power (for example, nonmonetary settlement terms, such as attending a treasurer training, agreement to file or amend statements).
2. A monetary penalty.
    - a. The Commission may seek a monetary penalty pursuant to Section 2.12.231 or Section 2.12.435 of BERA.
    - b. If the candidate or committee found to have violated BERA may have similarly violated the California Political Reform Act of 1974 as amended, the Commission may recommend that the City seek monetary penalties as prescribed in the Political Reform Act, on behalf of the State.
  3. Seek authorization from the City Council to file an action at law or equity to enforce and compel compliance with the provisions of the BERA.
  4. Referral of willful violations to the District Attorney for criminal prosecution under Section 2.12.460 of BERA.
  5. A written press release setting forth the Commission's finding of violation.

G. Reconsideration

Within 60 days of any final Commission action (dismissing or suspending a matter, approving a stipulated agreement, initiating legal proceedings or otherwise concluding all deliberations and decisions) a party may request the Commission to reconsider its action by reopening the evidentiary phase of the proceedings. The only ground for reconsideration is an offer of admissible evidence capable of affecting the outcome of Commission action, provided that the requesting party also shows good cause why such evidence could not have been presented earlier.

VIII. Communications with City Council

A. Periodic Reports

Periodic reports to Council, other than those accompanying proposed ordinance amendments, shall be submitted in accordance with the City Council agenda process in the Commissioners' Manual. Proposed Ordinance amendments must

be submitted to Council in compliance with Berkeley Municipal Code Section 2.12.051.

B. Spokesperson for Commission

The Chairperson shall speak on behalf of the Commission or shall direct the preparation of written memoranda, correspondence and reports for the Commission. The Chairperson may delegate this responsibility to other Commissioner(s), to the Secretary, or to a subcommittee of the Commission as circumstances dictate.

IX. Communications With The Press

- A. Notice of meeting and agendas shall be sent to media. Minutes shall be sent out to media or other persons upon request.
- B. Copies of written press releases authorized by the Commission on various matters shall be sent to the City Manager's office pursuant to the Commissioner's Manual.