



Fair Campaign Practices Commission

PUBLIC HEARING
March 10, 2026

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Kitt Saginor, Chair, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Election Reform Act, BMC Chapter 2.12.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

The proposed amendments to the Berkeley Election Reform Act (BERA) were adopted by the Fair Campaign Practices Commission (FCPC or Commission) at its regular meeting of January 15, 2026.

Action: *Approve the BERA amendments as presented and submit to City Council with cover report for consideration and adoption.*

Vote: M/S/C: Lee/Haugh; Ayes: Lee, Ching, Silverberg, Soichet, Lazarus, Haugh, Saginor ; Noes: none; Absent: Shere, Sudharsen

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

During the 2024 election year, the Commission and Commission staff identified a number of areas for possible amendments to BERA based upon requests received from City candidates regarding their obligations under BERA and the Commission’s experience with administering BERA.

The attached Ordinance (Attachment 1) was adopted by the Commission at its January 15, 2026 regular meeting and would amend BERA in the following ways:

1. Expressly add the “one bank account” rule to BERA

Under state law, all candidate campaign expenditures must be made from the candidate’s campaign committee bank account. (Cal. Gov. Code § 85201.) This includes any of the candidate’s personal funds expended to promote the election of the candidate, with the exception of the candidate’s payment for a filing fee and statement of qualifications. (Id.) This requirement is known as the “one bank account” rule. While BERA currently requires the creation of a campaign checking account, it does not expressly require that all expenditures be made from that account. The attached Ordinance would amend Section 2.12.250.A of BERA to expressly require that all candidate campaign expenditure be made from the bank account, including personal funds of the candidate used to promote the candidate’s election, except for payment for a filing fee and statement of qualifications, which the candidate may pay directly.

Including this language in BERA would provide clear authority for the Commission to enforce the “one bank account” rule in City elections.

2. Revisions to the timeline for returning unspent Fair Elections funds

Under the City’s public financing program, a participating City candidate can receive public matching funds provided the candidate adheres to additional requirements, including being subject to a lower contribution limit. (BMC § 2.12.500.A.7.)

Following the election, the candidate must return to the City all unspent campaign funds up to the total amount of public matching funds received by the candidate. (BMC § 2.12.505.) Currently, the deadline for returning unspent funds is sixty days after the election. As a result, the deadline to return unspent funds for the 2024 election was January 4, 2025.

Because the semi-annual reporting period immediately following the election ends on December 31st, the Committee’s disposition of unspent funds could remain unreported until the reports for the subsequent semi-annual reporting period are filed on July 31st.

Additionally, BERA currently requires the Clerk to “immediately” notify the FCPC if any candidate has not returned unspent funds. This has resulted in the Clerk notifying the Commission that a participating candidate “may” have not returned unspent funds when no funds were returned by the sixty-day deadline. However, candidates may have outstanding debts and expenditures which are not reported until January 31st or even July 31st for which the remaining funds are spent. As a result, it is difficult for the Clerk to effectuate the “immediate” notification required by BERA.

This Ordinance would revise the deadline for a participating candidate to return unspent funds from sixty days after the election to the end of the semi-annual reporting period

immediately following an election (e.g., December 31st). This will mean that unspent funds must be returned a few days sooner (four days sooner in the case of the 2024 election). However, as a result, a participating candidate's obligation to return funds would end with the calendar year and the disposition of any returned funds would be reported on the year-end semi-annual report due January 31st.

The ordinance would also revise the requirement that the Clerk "immediately" notify the FCPC of candidate's failure to return any unspent funds. Instead, the Clerk would be required to refer to the FCPC a candidate who has not returned unspent funds following the reporting deadline for the semi-annual campaign statement occurring immediately after the election (i.e. the report due January 31st covering the period ending December 31st). This would mean that such a referral would only occur after unspent funds were due and the report for that period indicating whether the candidate had any unspent funds was filed.

3. Allowing for the reuse of campaign materials from a prior election

During the 2024 election, the Commission received a request for an opinion from a candidate who asked whether he could reuse plastic yard signs left over from his 2020 campaign. For both elections, the candidate participated in public financing. The Commission concluded that BERA's public financing provisions prohibited the candidate from reusing the leftover 2020 campaign signs in support of his 2024 campaign.

The Commission noted that reuse of the signs would constitute a contribution from the candidate's 2020 committee to his 2024 committee. (See Fair Political Practices Commission, *Menis* Advice Letter I-20-007 (reused campaign signs are in-kind contribution to new committee from prior committee).) BMC Section 2.12.530.B.3.c prohibits a publicly financed campaign committee from making contributions to any other committee, and Section 2.12.500.A prohibits a publicly financed candidate from accepting non-monetary contributions with a fair market value greater than \$60.

This Ordinance would expressly permit the reuse of campaign materials such as signs, mailers, posters, door hangers and similar items provided they were initially purchased with the intention of being used in the previous election. This would be permitted where the materials were either initially purchased with public matching funds or where the candidate is presently participating in public financing.

The Commission has discussed the concern that a candidate who previously participated in public financing would be receiving the benefit of public funds twice through the reuse of campaign materials previously purchased with public matching funds. Likewise, the Commission discussed the concern that a candidate currently participating in public financing would receive an unfair advantage over other participating candidates who would otherwise not be able to circumvent the in-kind contribution limit for publicly financed candidates. As a result, the Ordinance requires the candidate to submit payment for the fair market value of the materials into the City's public financing fund.

4. Cleanup amendment to cost of living adjustment rounding language

A number of dollar amounts in BERA are subject to cost-of-living adjustments in odd-numbered years. This Ordinance would simplify the language in Section 2.12.545 describing how the adjusted amounts are to be rounded to the nearest ten or thousand dollars.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

Possible reductions in waste from reuse of campaign materials.

RATIONALE FOR RECOMMENDATION

The proposed amendments provide administrative clarity for the City and campaigns, permit the reuse of campaign materials by publicly financed candidates and simplify BERA language.

ALTERNATIVE ACTIONS CONSIDERED

None.

CONTACT PERSON

Kitt Saginor, Chair, Fair Campaign Practices Commission, 981-6998

Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission, 981-6998

Attachments:

1: Ordinance

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 2.12.250.A is amended to read as follows:

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. All campaign expenditures shall be made from the campaign account. Any personal funds of a candidate which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure, except for a candidate's payment for a filing fee and statement of qualifications which may be made from the candidate's personal funds.

Section 2. 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 qualify as a candidate for the ballot at the election for which 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 no later than the date of the election for which the funds were distributed. All funds returned under this paragraph must be accompanied by any required supporting documentation. In such cases, the participating candidate must return the unspent funds to the City, up to the total amount of funds that the participating candidate received as Fair Election Funds distributions, prior to refunding any contributions to individual contributors.

2. Any campaign 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, no later than the close of the semi-annual reporting period immediately following ~~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. Following the deadline for filing the semi-annual campaign statement occurring immediately after the election, ~~t~~The City Clerk shall ~~immediately~~ refer to the Commission for enforcement any participating candidate who ~~has not~~~~does not~~ return~~ed~~ unspent funds as required by this subsection.

5. After the deadline to return unspent funds in [2.12.505.H.2](#), a participating candidate may continue to raise funds in accordance with Article 8 of Chapter 2.12 to pay campaign-related debt from the most recent election. Any such contributions received shall not be eligible for matching funds.

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.

J. Requests for matching funds may be submitted no later than 30 days after Election Day for the election at which the participating candidate qualified as a candidate.

K. Upon approval of a participating candidate's Initial Qualifying Request, the candidate is prohibited from withdrawing from the Public Financing Program and receiving contributions pursuant to Section [2.12.415](#) for the same office at the same election for which they are a participating candidate.

Section 3. 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 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. Notwithstanding any provision of this Chapter, a candidate may use campaign materials, including campaign signs, mailers, posters, door hangers and similar items, purchased by a committee for the same candidate during a previous election so long as the campaign materials were purchased with the intention of being used in the previous campaign, in the following circumstances:

a. A candidate may use campaign materials paid for with Fair Elections funds in a previous election provided that the candidate submits payment to the City in an amount equivalent to the fair market value of such items for deposit in the Fund.

b. A participating candidate may use campaign materials purchased by a committee for the same candidate in a previous election provided that the candidate submits payment to the City in an amount equivalent to the fair market value of such items for deposit in the Fund.

D. For the purposes of subsection C of this section, the fair market value shall be the purchase price of the campaign materials at the time they were initially purchased for the previous campaign minus any cost to affix updated disclaimer language to the campaign materials. All campaign materials must comply with Section 2.12.335 and any other applicable disclaimer requirements.

CE. 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.

DE. 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.

Section 4. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

2.12.545 Cost of living adjustments.

A. The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.271, 2.12.335, 2.12.500.A.3, 2.12.500.A.6, 2.12.500.A.7, 2.12.500.A.8, 2.12.505.B and 2.12.530.B.3.b for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. ~~All s~~Such adjustments shall be rounded to the nearest ten dollars (\$10), except for adjustments to the amount specified in Section 2.12.505.B, which shall be rounded to the nearest one thousand dollars (\$1,000). ~~with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.3.b and one thousand dollars (\$1,000) with respect to Section 2.12.505.B.~~

B. As soon as practicable after adoption of the amendments providing for the adjustment of Sections 2.12.271 and 2.12.335, but no later than December 31, 2024, the Commission shall perform an initial adjustment of the dollar amounts in those sections.

Section 5. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of the Maudelle Shirek Building, 2134 Martin Luther King Jr. Way. Within 15 days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL
AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT**

The Fair Campaign Practices Commission is proposing amendments to the Berkeley Election Reform Act. The hearing will be held on **Tuesday, March 10, 2026 at 6:00PM** in the School District Board Room, 1231 Addison Street.

A copy of the agenda material for this hearing will be available on the City’s website at www.CityofBerkeley.info as of February 26, 2026. 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 981-6900 or clerk@cityofberkeley.info for further information.

Posted: Thursday, February 26, 2026
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 February 26, 2026.

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Mark Numainville, City Clerk

