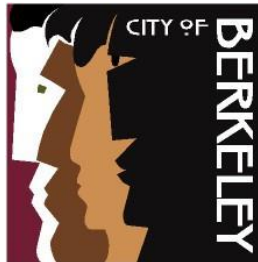


# CAMPAIGN FILING MANUAL

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A Guide to Conducting Campaigns and Disclosing Campaign Finances in Compliance with the Berkeley Election Reform Act



## FAIR CAMPAIGN PRACTICES COMMISSION

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## **TABLE OF CONTENTS**

RECENT AMENDMENTS TO BERA .....	3
A.    The History and Purpose of Berkeley’s Campaign Finance Laws .....	4
B.    The Fair Campaign Practices Commission: BERA Enforcement .....	4
C.    Using the Campaign Filing Manual .....	5
D.    Fines .....	5
E.    FCPC and FPPC Assistance.....	5
CHAPTER 2. GETTING STARTED.....	7
A.    Filing Officer.....	7
B.    Mandatory Electronic Filing of Campaign Statements.....	7
CHAPTER 3. WHO MUST FILE.....	8
A.    Persons with Filing Obligations .....	8
B.    Types of Committees .....	9
CHAPTER 4. WHEN MUST CAMPAIGN STATEMENTS BE FILED? .....	12
A.    Statement of Intention to Be a Candidate (Form 501).....	13
B.    Statement of Organization (Form 410) .....	13
C.    Fixed Filing Schedule.....	14
D.    Committees Making Expenditures to Support or Oppose a Local Ballot Measure.....	15
E.    Late Contributions.....	16
F.    Late Independent Expenditures .....	17
G.    Late Filing Penalties.....	17
H.    Special Elections.....	18
CHAPTER 5. REPORTING AND RECORD-KEEPING REQUIREMENTS: CONTRIBUTIONS AND EXPENDITURES .....	19
A.    Contributions.....	19
B.    Expenditures.....	22
CHAPTER 6. LIMITATIONS AND PROHIBITIONS.....	28
A.    \$270 Limit on Contributions to Candidates .....	28
B.    Prohibition on Contributions to Candidates by Business Entities .....	29
APPENDIX A: DIFFERENCES BETWEEN BERA AND THE STATE POLITICAL REFORM ACT .....	31
APPENDIX B: RESOURCE DIRECTORY .....	33
APPENDIX C: FPPC REGULATIONS ON SB 1439 .....	34



**IF PARTICIPATING IN PUBLIC FINANCING – USE THE PUBLIC FINANCING PROGRAM SUPPLEMENTAL GUIDE AS YOUR PRIMARY RESOURCE. CONTACT THE CITY CLERK DEPARTMENT FOR MORE INFORMATION.**

## **RECENT AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT (BERA)**

### **BMC 2.12.095 Committee**

The definition of a campaign committee is changed from a \$250 threshold to a \$1,000 threshold for contributions and expenditures.

### **BMC 2.12.255, 2.12.260, 2.12.265 Statement of Organization**

Committees are no longer required to file a Form 410 and a Berkeley Statement of Organization. The Berkeley Statement of Organization form has been eliminated.

## CHAPTER 1. INTRODUCTION

### A. The History and Purpose of Berkeley's Campaign Finance Laws

Berkeley's campaign finance laws help ensure that voters have access to information about the money involved in local elections, and that no one interest gains an unfair advantage in the electoral process through the use of campaign funds.

Accordingly, Berkeley's campaign finance laws stress disclosure so the public knows where a candidate or measure's financial support comes from, and place limits on contributions – most notably, limiting contributions to local candidates to \$270 during an election cycle and prohibiting contributions to local candidates by labor unions, corporations (including non-profits) and other business entities.

While a campaign treasurer must become familiar with all of the detailed requirements of state and local laws and regulations, the crux of Berkeley's campaign finance laws is financial disclosure and compliance with contribution limits.

Berkeley's campaign finance laws derive from the Berkeley Election Reform Act of 1974 (BERA), codified in Chapter 2.12 of the Berkeley Municipal Code (BMC), and the Regulations Adopted by the Fair Campaign Practices Commission (FCPC).

Applicable state laws include the California Political Reform Act of 1974 and the regulations of the state Fair Political Practices Commission (FPPC). Please see [Appendix A](#) to this manual for a summary of important differences between BERA and state law.

Berkeley offers a voluntary public financing program (**Public Financing Program (BMC § 2.12.490 et al.)**) providing public matching funds for candidates running for the office of Mayor or Councilmember. In 2020, the Berkeley Fair Elections Act was amended to include the offices of City Auditor, School Board, and Rent Stabilization Board in the public financing program. Participating candidates are eligible to receive a 6-to-1 match on qualifying contributions of up to \$60 (e.g., for a \$60 qualifying contribution, a participating candidate receives \$360 in public matching funds). Participants in the program are subject to additional regulations and documentation requirements. It is imperative that candidates who are participating or considering participating in the program review the Public Financing Program Supplemental Guide prepared by the City Clerk Department before beginning any campaign-related activity. Contact the City Clerk Department for more information.

### B. The Fair Campaign Practices Commission: BERA Enforcement

The nine-member FCPC enforces BERA. Each Commissioner serves for the same term as their appointing City Council member. The FCPC generally meets at 6:30 p.m. on the third Thursday of the month. View information about upcoming meetings on the [FCPC website](#).

The FCPC is staffed by the Berkeley City Attorney's Office. Please contact FCPC staff at (510) 981-6998 for any assistance with your filing obligations under BERA.

### **C. Using the Campaign Filing Manual**

The purpose of this manual is to guide you through the process of conducting your campaign and disclosing campaign finances in compliance with BERA.

- 1. It is important to read this entire manual in order to understand your responsibilities under Berkeley's campaign finance laws.***
- 2. More than one section of BERA may apply to any given situation, so a careful review of this manual is important.***
- 3. An early reading will help you avoid problems of non-compliance before they arise. Frequent later readings will help you to disclose your campaign-related activities properly.***
- 4. City staff can provide assistance with the electronic filing system and identifying the campaign finance laws relevant to your committee's filing obligations. However, staff cannot provide advice or respond to hypothetical scenarios.***

This manual does not substitute for BERA and FCPC regulations. Rather, it is intended to assist you in complying with their requirements. The FCPC recommends that you obtain a copy of BERA and the FCPC regulations from the City Clerk and read them along with this manual.

You must also acquaint yourself with the state disclosure manuals as all filers also have obligations under state law. (Gov't Code § 81000, *et seq.*) The state may require separate and additional information. For further assistance, please consult [Appendix B](#) to this manual (Resource Directory).

### **D. Fines**

BERA and state law require campaign statements to be filed in a timely manner. Committees that fail to do so are subject to fines of \$10 per day and investigation and enforcement action by the FCPC. (BMC § 2.12.485.) FCPC enforcement action may result in orders requiring a committee or candidate to take or to cease taking certain actions or pay a monetary penalty of up to \$1,000 per violation or the sum of the unlawful or undisclosed contribution or expenditure, whichever is greater. (BMC § 2.12.231.)

### **E. FCPC and FPPC Assistance**

The FCPC and its staff can provide basic information to candidates and committees about City campaign finance law (BERA and its implementing regulations), but cannot offer legal advice. While references to state law are found throughout this manual,

candidates and committees should contact the state FPPC for advice on state law. For contact information for the FPPC, please consult [Appendix B](#) (Resource Directory).

## CHAPTER 2. GETTING STARTED

### A. **Filing Officer**

Berkeley's filing officer under both city and state law is the City Clerk. The City Clerk will provide forms and technology to complete and file the required statements. All campaign forms required by BERA are filed with the City Clerk Department.

### B. **Mandatory Electronic Filing of Campaign Statements**

All Berkeley committees that raise or spend \$1,000 or more must file their campaign statements electronically. Electronic statements constitute filings of record and eliminate the need to file hard copies with original signatures for most types of filings.

All committees in Berkeley have access to the free online campaign statement filing system provided by NetFile. NetFile facilitates the creation and filing of campaign statements and improves their accuracy. NetFile uses an electronic signature to verify filings. All committee officers who are required to sign campaign statements (e.g., treasurers, assistant treasurers and controlling candidates) must set up their electronic signature using a Signature Verification Card obtained through NetFile and filed with the City Clerk Department.

Complete user instructions for electronic filing are available through the City Clerk Department. Committee treasurers may contact the City Clerk Department at (510) 981-6900 or [elections@berkeleyca.gov](mailto:elections@berkeleyca.gov) to get started with NetFile. The City Clerk Department also offers one-on-one training for treasurers using NetFile.

To view Berkeley campaign statements online, please visit:  
<https://ssl.netfile.com/static/agency/brk/>

## CHAPTER 3. WHO MUST FILE

### A. Persons with Filing Obligations

Each of the following individuals and entities has campaign disclosure obligations under BERA. Please determine which categories apply to you, then refer to Chapter 4 to determine your disclosure obligations.

#### 1. Elected Berkeley Officeholders

Berkeley's elected officers consist of a Mayor, eight Councilmembers, an Auditor, five School Board members and nine Rent Stabilization Board commissioners. All elected officers serve four-year terms.

#### 2. Candidates for Berkeley Municipal Office

A candidate is an individual who meets any one of the following criteria:

- (1) is listed on the ballot,
- (2) is qualified to have write-in votes counted on their behalf,
- (3) raises or spends money with the intention of seeking elective office,
- (4) allows money to be raised or spent on behalf of their campaign for elective office, **or**
- (5) is an elected officeholder subject to a recall election.

(BMC § 2.12.085.)

#### 3. Committees

A committee is any person or combination of persons, including an ongoing membership organization, that receives contributions or makes expenditures of \$1,000 or more in a calendar year for the purpose of influencing voters to support or oppose any ballot measure or candidate for Berkeley municipal office, or to support or oppose the qualification of any measure for the ballot. (BMC § 2.12.095.)

A committee that is formed by *receiving* contributions of \$1,000 is known as a "recipient committee." (This differs from the state's \$2,000 threshold for formation.) Most committees are recipient committees.

A candidate or officeholder who receives contributions or makes expenditures of \$1,000 or more in a calendar year must have a committee (a "candidate-controlled committee," discussed in Section B.2, below). Accordingly, all references to "committees" in this manual include candidate-controlled committees unless otherwise noted.



The state's definition of “committee” differs from Berkeley's and the state has a more elaborate system of categorizing different types of committees. Please consult the state disclosure manuals and/or contact the state FPPC if you have questions concerning state definitions and requirements. Please see [Appendix B](#) (Resource Directory) for contact information.

## **B. Types of Committees**

There are a number of different types of committees, each subject to different rules. The following are examples of different types of committees. Note that one committee can fall into one or more of the following categories:

1. A “primarily formed committee” is organized primarily to support or oppose a single candidate or ballot measure or specific group of local candidates or measures on the same ballot, including recall measures for the ballot. (Gov’t Code § 82047.5; 2 Cal. Code Reg. § 18247.5.)

A primarily formed committee exists “primarily to support or oppose” a Berkeley candidate or measure if:

- (1) the committee is created for the purpose of or is involved in running the principal campaign for or against a candidate(s) or measure(s); **or**
- (2) the committee’s primary purpose and activities are to support or oppose a candidate(s) or measure(s); **or**
- (3) the committee makes more than 70% of its total contributions and expenditures on all candidates and measures (not including administrative overhead) to a single local candidate or ballot measure or specific group of candidates or measures on the same ballot.

(2 Cal. Code Reg. § 18247.5.) Special filing provisions may apply to committees (including primarily formed committees) that make expenditures in support of or in opposition to a local ballot measure. (See [Chapter 4, Section D](#).)

Please note that a ballot measure committee formed to support or oppose the *recall* of a local officeholder must abide by the \$270 limit on contributions to candidates. (See [Chapter 6](#).)

2. A “controlled committee” is a committee that is either directly or indirectly controlled by a candidate or another committee.

A candidate controls a committee if they, or their agent, or any other committee they control has a significant influence on the actions or decisions of that committee. A candidate-controlled committee must have its statements signed and verified by the candidate who controls it.

3. An “independent committee” is not controlled by a candidate or by a candidate-controlled committee. Independent committees may not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one candidate or measure and independent with respect to other candidates or measures. Examples of independent committees include city general purpose committees, sponsored committees, and small contributor committees.

Please note that under state law, a committee becomes a City general purpose committee subject to BERA if it makes more than 70% of its contributions or expenditures to support or oppose candidates or measures voted on in the City of Berkeley. This includes contributions to city general purpose committees in the same city. (2 Cal. Code Reg. § 18227.5.)

Please consult the applicable state disclosure manual for further information.

4. An “independent expenditure” is a payment for a communication made in support or opposition to a candidate or ballot measure, but which is **not** made at the behest of or in coordination with the affected candidate or committee. (BMC § 2.12.142; Gov’t Code § 82031.)

Note that an entity which decides to make expenditures in support of or opposition to a candidate or ballot measure can become an independent committee even if that entity does not receive contributions from any outside sources.

5. A “major donor committee” is an individual or entity that makes contributions to committees (including political parties and political action committees (PACs) totaling \$10,000 or more in a calendar year. A major donor committee does not *receive* contributions, but rather uses only its own funds to make contributions. (Gov’t Code § 82013(c).)

The \$10,000 threshold is based on the individual or entity’s total political contributions throughout the state, not just contributions made in the City of Berkeley.

*Reminder: BERA prohibits contributions to Berkeley candidate-controlled committees and candidate recall ballot measures in excess of \$270.*

6. Slate Mailers and Slate Mailer Organizations

A slate mailer is a mass mailing that supports or opposes a total of four or more candidates or ballot measures. (BMC § 2.12.272.)

A slate mailer organization (SMO) is any person or entity which is (a) involved in the production of a slate mailer and exercises control over the selection of the candidates and measures to be supported or opposed in the slate mailer, and (b) receives or is promised payments totaling \$500 or more in a calendar year for the production of one or more slate mailers. (BMC § 2.12.272; Gov’t

Code § 82048.4.)

SMOs are generally “organizations” governed by state law, and not “committees” governed by BERA. However, certain activities can cause an SMO to become a committee subject to BERA. For example, while payments from candidates or ballot measure committees to appear on a slate mailer are not considered “contributions,” an SMO which receives unallocated payments to generally support the SMO would convert into a “committee” subject to all BERA committee filing requirements.

Also, if a *candidate* is actively involved in an SMO (e.g., acting as treasurer or principal officer) and one or more slate mailers includes or features the candidate, the SMO may become a *candidate-controlled* committee subject to BERA’s contributor source prohibitions and \$270 limit on contributions to candidates.

SMOs supporting or opposing candidates for Berkeley elective office or any Berkeley measure must file a copy of their campaign disclosure forms with the City Clerk. (BMC § 2.12.272.)

*Identification and Disclaimers.* No SMO or committees primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless the organization or committee has complied with the detailed slate mailer identification and disclaimer requirements specified in the state Political Reform Act. (See Gov’t Code § 84305.5.) SMOs and ballot measure committees sending out mailers should consult state law and regulations and are encouraged to contact the FPPC for further guidance.

## CHAPTER 4. WHEN MUST CAMPAIGN STATEMENTS BE FILED?

This chapter is divided into eight sections. Please determine which sections apply to you and familiarize yourself with all applicable rules.

**Section A. Statement of Intention to Be a Candidate (Form 501)**

Applies to all candidates.

**Section B. Statement of Organization (Form 410)**

Applies to all candidates and committees. The State Form 410 must be filed by all committees to comply with BMC Section 2.12.255.

**Section C. Fixed Filing Schedule**

Applies to all filers. Berkeley follows the state fixed filing schedule.

**Section D. Committees Making Expenditures to Support or Oppose a Local Ballot Measure**

**Section E. Late Contributions (Form 497)**

Applies to all filers who receive a contribution of \$100 - \$999 starting after the closing date of the last pre-election campaign statement through Election Day. For contributions of \$1,000 or more, the Late Contribution reporting period starts 90 days before the election. (The state and Berkeley have differing late contribution rules.)

**Section F. Late Independent Expenditures (Form 496)**

Applies to all persons, including committees, businesses, and individuals, making an "independent expenditure" of \$1,000 or more during the last 90 days before an election.

**Section G. Late Filing Penalties**

Applies to all filers.

**Section H. Special Elections**

Applies to committees involved in elections not held in November of an even numbered year.

## **A. Statement of Intention to Be a Candidate (Form 501)**

A candidate for office must file a Candidate Intention Statement (Form 501) with the City Clerk before soliciting or receiving any contributions or making expenditures from personal funds on behalf of their candidacy.

## **B. Statement of Organization (Form 410)**

1. *Most committees, 10 days to file.* All committees which receive contributions of \$1,000 or more must file Form 410. within 10 days after the committee has qualified or is formed.
2. *Late-formed committees, one business day to file.* All committees that form during the period between the second pre-election report and Election Day must file Form 410 by the close of the first business day following the committee's formation or qualification. (BMC § 2.12.255.)
3. *Naming candidate-controlled committee.* State FPPC Regulation 18402 requires that the names of all candidate-controlled committees contain the last name of the candidate, the office sought, and the year of the election. Similarly, the names of all committees primarily formed to support or oppose a candidate must include the last name(s) of the candidate(s) and whether the committee supports or opposes the candidate(s).
4. *Filing with city and state.* While most original forms are filed with the City Clerk, **state law requires that committees file original Form 410 statements (Initial, Amendment and Termination) with the Secretary of State and file a copy of the Form 410 with the City Clerk. This form cannot be filed using NetFile.** Committees must include a \$50 payment with the initial Form 410 when it is mailed to the state. Thereafter, the committee must send a \$50 payment to the state annually by January 15 until the committee is terminated.
5. *“Qualified” as a committee.* A committee is “qualified” under BERA at the time it raises \$1,000, and must file an initial Form 410 within 10 days. (BMC § 2.12.095.) Under state law, a committee is only “qualified” when it receives contributions totaling \$2,000 or more. Based on these differing definitions, to comply with BERA, a committee must file the Form 410 within 10 days of raising \$1,000. At the time of filing, if the committee has not yet raised \$2,000, the committee should check the box “Not yet qualified” at the top of the Form 410 (as explained in detail in the instructions to the Form 410). Then, within 10 days of raising contributions totaling \$2,000 and thus qualifying as a committee under state law, the committee must file an amended Form 410 with the Secretary of State indicating the date the committee reached \$2,000 in contributions and a copy of the amended Form 410 with the City Clerk.

6. *Campaign bank account statement.* Committees that did not include bank account information in their initial Form 410 must file an amended Form 410 within 10 days of committee formation, discussed above.
7. *Termination statement.* Form 410 is used to provide notice of a committee's termination. Committees must file the original Form 410 termination statement with the Secretary of State and a copy with the City Clerk. Committees must file a Form 460 termination statement showing a zero balance at the same time as they file the Form 410 termination statement. Committees may terminate only when they are no longer active in campaigns, have filed all required forms, do not anticipate becoming active, and have no surplus funds or outstanding debts, or no intention or ability to discharge any debt. Committees' filing obligations, and annual \$50 payment to the state, continue until they file the Form 410 termination statement.

A candidate or officeholder who has one or more controlled committees automatically terminates their status as a candidate or officeholder when they have terminated **all** of their controlled committees **and** left office.

A candidate or officeholder who does not have any controlled committees, and who filed Form 470, automatically terminates their status as a candidate or officeholder *at the end of the calendar year* **if**:

- the candidate lost, was not on the ballot in the election, or left office during the calendar year, **and**
- the individual has ceased to receive contributions and make expenditures, and has filed all of the required campaign statements.

Officeholders continue to have filing obligations while in office.

Officeholders who do not have an open committee, and candidates who have raised or spent or anticipate raising or spending less than \$1,000 in a calendar year, have fewer filing obligations.

### **C. Fixed Filing Schedule**

**Semi-Annual Filings:** All open committees must file semi-annual statements for each half of the year regardless of whether they have had any campaign-related activity during that time.

**Election Period Filings:** During the six-month period in which they are involved in an election, committees must file two pre-election statements in addition to the semi-annual statements.

State law requires city general purpose committees to file pre-election statements if they make contributions or independent expenditures totaling \$500 or more in connection with a city election in the committee's jurisdiction during the period covered by the pre-election statement.

Candidate-controlled committees must use Form 460 for their semi-annual and election period filings. Other committees use Forms 425, 450, 461, and/or other forms as appropriate. Please refer to the applicable state disclosure manual for further explanation.

**D. Committees Making Expenditures to Support or Oppose a Local Ballot Measure**

A primarily formed committee is organized primarily to support or oppose a single candidate or ballot measure or specific group of local candidates or measures on the same ballot, including recall measures for the ballot. State law refers to committees primarily formed to support a ballot measure as “ballot measure committees.”

For ballot measure committees that have reached the qualification threshold, but before the local measure is voted upon, state law requires that the committee file quarterly reports by the following dates: April 30 (for the period January 1 through March 31) and October 31 (for the period July 1 through September 30).

These reports are in addition to the regular semi-annual and election cycle reports that the committee must file.

BERA also requires that any other type of committee that makes expenditures of more than \$250 to support or oppose a ballot measure (including during the signature gathering process for an initiative, referendum, or recall petition) file quarterly statements on the same schedule as primarily formed committees under state law. (BMC § 2.12.271.)<sup>1</sup>

During the semi-annual period when committees file pre-election statements, ballot measure committees must file on the more frequent pre-election schedule. After the election, ballot measure committees must file semi-annual statements until the committee is terminated.

For example, a committee formed on January 1 to support a local measure on the November ballot (“Measure Z”) must file a quarterly statement by April 30 and a semi-annual campaign statement by July 31. For the semi-annual period beginning on July 1, the committee only must file pre-election statements. If the same committee were formed on April 1 or later, then it would only file semi-annual and pre-election statements, as applicable. In all cases, a semi-annual/post-election statement is due the following January 31. (See Gov’t Code § 84202.3.)

If an existing city general purpose committee decides to oppose local Measure Z, and on March 5 prints up door hangers in opposition to the measure at a cost of \$300, the committee must file a quarterly report by April 30 because it has made expenditures in excess of \$250 to support or oppose a local ballot measure. (BMC § 2.12.271.)<sup>1</sup>

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<sup>1</sup> An amendment to BERA pending with the FCPC would increase this threshold to \$270 with automatic increases for every election cycle.

*Note regarding referendum petition drives.* The state FPPC has determined that a referendum becomes a “measure” under state law the moment proponents begin to circulate signature petitions to qualify the referendum for the ballot, whether or not the referendum ultimately qualifies for the ballot. As a result, contributions or expenditures to qualify a referendum or support or oppose a referendum must be reported under the state Political Reform Act. The FCPC has reached a similar determination regarding local referendums under BERA.

**E. Late Contributions**

BERA adds an important requirement for late contributions beyond state law. Under state law, committees must report late contributions in aggregate of \$1,000 or more from a single source within 24 hours of receipt. (Gov’t Code § 84203; BMC § 2.12.295.) BERA also requires committees receiving late contributions in aggregate of \$100 - \$999 (\$100 - \$270 for candidate-controlled committees) from a single source to report the contribution within 48 hours of receipt.

*Reminder: Except for contributions by a candidate to their own candidate-controlled committee, contributions to a candidate-controlled committee may not exceed \$270 per contributor for a single election. (BMC § 2.12.415.)*

If the deadline to file the late contribution report falls on a Saturday, Sunday, or holiday, except for the final Saturday and Sunday before an Election Day, a report received by the City Clerk no later than the next business day shall be deemed timely filed. (FCPC Reg. R2.12.295.)

State and City Late Contribution Filing Requirements

	<b>State Political Reform Act</b>	<b>BERA</b>
Late Contribution of \$1,000 or more	<u>Period:</u> Begins 90 days before Election Day and runs through Election Day. <u>Due:</u> Within 24 hours. <u>Filed:</u> Electronically only.	Same as state law.
Late Contribution of \$100 - \$999	No Late Contribution Report required.	<u>Period:</u> Begins the day after the closing date of the 2 <sup>nd</sup> pre-election statement and runs through Election Day. <u>Due:</u> Within 48 hours. <u>Filed:</u> Electronically or hard copy depending on committee activity and e-filing status. (BMC § 2.12.295, FCPC Reg. R2.12.295.)

Committees that are required to file electronically must file their late contribution reports electronically as well.



Committees that are not required to file electronically may file their late contribution reports by personal delivery, guaranteed overnight delivery, or fax. Late contribution reports may **not** be delivered by regular mail.

Committees are responsible for ensuring that their filings are received by the City Clerk Department. Committees should confirm that the reports are received by checking the online filing system or contacting the City Clerk Department. If a report is not timely received, the committee may be subject to late filing penalties, discussed in Section G, below.

#### **F. Late Independent Expenditures**

State law requires that any person making independent expenditures in aggregate of \$1,000 or more in support of or opposition to a measure or candidate during the last 90 days before Election Day, and on Election Day, file a notice with the City Clerk within 24 hours of the expenditure. The notice must be filed electronically.

Notice must be completed by filing Form 496, and must include (a) each candidate or measure supported or opposed, (b) the amount spent to support or oppose each candidate or measure, (c) whether the candidate or measure was supported or opposed, (d) the date and amount of each expenditure, (e) a description of the type of communication for which the expenditure was made, (f) the name and address of the person making the expenditure, and (g) the name and address of the payee.

In addition to Form 496, the person making the late independent expenditure must provide three copies of the communication funded by the expenditure to the City Clerk. (BMC § 2.12.297.)

The principal officer of the committee making the late independent expenditure (*i.e.*, the individual primarily responsible for approving the political activity of the committee, for example, the candidate for a candidate-controlled committee) must sign and file Form 462 (Verification of Independent Expenditures) with the state FPPC by email. The verification attests that the independent expenditure was not coordinated with the affected candidate or ballot measure committee or their opponent and the committee reported all contributions and reimbursements. Further detail regarding this form is in the instructions to Form 462 and applicable state disclosure manuals. (2 Cal. Code Reg. § 18402.1; Gov't Code § 84213).

#### **G. Late Filing Penalties**

Statements that are not timely filed are subject to a late filing fee of \$10 per day the statement is past due, up to the cumulative amount of contributions or expenditures stated in the late statement or \$100, whichever is greater. Once a filer receives a second notice of non-filing from the City Clerk of an unfiled statement, the fine may be waived only if good cause is shown and the late statement is filed by the deadline stated in the notice (10 days from the date of the written notice for semi-annual statements and 5 days for pre-election statements).

After that deadline elapses, the fine may not be waived for any reason. (BMC § 2.12.485; Gov't Code § 91013.)

Filers may obtain a copy of the fining policy regarding untimely campaign statements from the City Clerk. The City Clerk will refer non-filers to the FCPC and/or the state for enforcement action.

Intentional failure to file is a misdemeanor under both state law and BERA. (BMC § 2.12.460; Gov't Code § 91000.)

## **H. Special Elections**

Berkeley elections are sometimes held at times other than November of even-numbered years. Committees directly involved in such special elections are required to file two pre-election statements and one post-election semi-annual statement on a schedule adjusted to correspond to the election's date. Quarterly statements may also be required. For special elections, the City Clerk Department will provide committees with adjusted filing schedules.

## CHAPTER 5. REPORTING AND RECORD-KEEPING REQUIREMENTS: CONTRIBUTIONS AND EXPENDITURES

### A. Contributions

BERA defines “contribution” broadly in BMC Section 2.12.100. Contributions include a gift, loan, advance, deposit, forgiveness of a debt, and promise of money or anything of value received by a candidate or committee for the purpose of influencing voters. This includes the purchase of tickets for fundraising events, discounts from vendors, transfers of money, goods or services from any committees (including a candidate’s own controlled committee), and a candidate’s own money used on behalf of their candidacy.

Non-monetary (also known as “in-kind”) contributions are contributions of goods or services. Non-monetary contributions are calculated at their fair market value and must be disclosed in the same manner as other contributions.

#### **Committees receiving contributions must meet the following requirements:**

1. *Treasurer.* Before it may accept a contribution, a candidate or committee must have a treasurer. A candidate may appoint themselves as treasurer of their controlled committee. (BMC § 2.12.245.) Treasurers are responsible for ensuring the propriety of all contributions. (FCPC Regulation R2.12.440.)
2. *Bank account.* Committees must have a bank or credit union checking account. Treasurers must “**promptly**” place all monetary contributions in the committee’s checking account. (BMC § 2.12.250(A).)

Committee treasurers should make frequent deposits and should implement a process to ensure that the candidate, committee members and campaign volunteers quickly forward any contributions received to the treasurer for deposit.

3. *Separate accounting.* Committees that receive or make contributions or make expenditures to support or oppose both (i) a Berkeley candidate, and (ii) a non-Berkeley candidate or any ballot measure, must maintain separate bank accounts. (FCPC Regulation R2.12.415.1.) This ensures that money associated with a Berkeley candidate is distinguishable from money associated with non-Berkeley candidates and ballot measures. It also enables the FCPC to enforce Berkeley’s prohibition on contributions to candidates by certain business entities and \$270 limit on permitted contributions to candidates. (See [Chapter 6](#).)

A committee may submit to FCPC staff a written proposal to perform separate accounting instead of maintaining separate bank accounts. The proposal must explain the committee’s method of separate accounting. If FCPC staff approves the proposal, the committee will not be required to maintain separate bank accounts.

4. *No commingling personal funds.* BERA prohibits the commingling of personal funds with campaign contributions. (BMC § 2.12.245.) For example, a candidate should not use personal funds to purchase campaign supplies and seek reimbursement. Instead, the candidate should make campaign purchases using campaign funds.

If a candidate wishes to use personal funds for campaign purposes, they must make a contribution or loan to their committee, which is run through the campaign bank account and recorded on campaign reports.

5. *Legal names.* Contributors must make any contributions in their legal name. (BMC § 2.12.305.)
6. *No anonymous contributions.* Treasurers may not accept anonymous contributions (monetary or non-monetary) of more than \$50. Anonymous contributions of more than \$50 shall be paid to the City for deposit in the Fair Elections Fund. (BMC § 2.12.320.)
7. *Other Committees who have received contributions or made expenditures on behalf of candidate.* If a candidate has knowledge of any other committee (besides their own candidate-controlled committee) that has received contributions or made expenditures in support of their candidacy, the candidate or their committee's campaign statement must report the name and street address of the committee, as well as the name, street address and telephone number of the treasurer of that committee.

Treasurers must report this information on Form 460 (Recipient Committee Campaign Statement), on page "Cover Page – Part 2," under item 5 ("Related Committees Not Included in this Statement"). (BMC § 2.12.280.K.)

8. *Designating funds to Berkeley candidates.* Where a committee supports or opposes a Berkeley candidate and also a ballot measure or non-Berkeley candidate, and an equal allocation of a contribution received by the committee would result in a contribution in excess of \$270 for or against a Berkeley candidate, the treasurer must obtain a written designation from the contributor specifying the preferred allocation to the Berkeley candidate. (FCPC Reg. R2.12.415.)

The treasurers of committees subject to this designation requirement must designate candidate contributions in one of two ways:

- the contributor may include a written designation at the time it makes its contribution, and the treasurer must keep this document with campaign records; **or**
- the treasurer may verify a contributor's designation orally (e.g., by telephone), send a confirmation letter to the contributor within 10 days of the verification date, and maintain a copy of the letter with campaign records.

9. *Late contributions.* All committees must report late contributions of \$100 – \$999 (\$100 - \$270 for candidate-controlled committees) within 48 hours of receipt.

When the deadline to file late contribution reports falls on a Saturday, Sunday, or holiday, except for the final Saturday and Sunday before an Election Day, a report received by the City Clerk no later than the next business day shall be deemed timely filed. (BMC § 2.12.295; FCPC Reg. R2.12.295.)

Committees must report late contributions of \$1,000 or more within 24 hours. (Gov't Code § 84203(b); BMC § 2.12.295.)

10. *Volunteer services, property, food and drink, and fundraisers.*

Generally, volunteer services or labor are not contributions, but expenses incurred by volunteers can be non-monetary contributions. For example, a professional photographer may volunteer their time to take a photograph of a candidate, which would not be a contribution, but the costs of film or printing would be non-monetary contributions.

If an employer donates the services of an employee to work on campaign activities, the amount the employer generally pays the employee is a non-monetary contribution if the employee spends more than 10% of their compensated time in a calendar month to campaign activities. Compensation includes both the wages the employer pays the employee and any benefits the employer provides the employee in lieu of wages.

Contributions do not include the use of personal or real property if the value of the use does not exceed \$50. Contributions do not include the cost of food or beverages for any one event if the value does not exceed \$50. Contributions of personal or real property use or food or beverages for any one event in excess of \$50 are non-monetary contributions and must be reflected on campaign reports.

If an individual holds a fundraiser for a candidate, the candidate's controlled committee must report the fundraiser as a non-monetary contribution to the extent that the personal or real property used or the cost of food or beverages for the event exceeds \$50. The committee does not need to report the value of the services of persons who volunteer at the fundraiser with the exception of supplies used and certain employee services, as noted above.

A candidate-controlled committee that holds its own fundraiser must report the money it spends as an expenditure.

11. *Record retention.* Candidates, treasurers and officeholders must keep detailed accounts, records, bills and receipts for contributions of \$25 or more. These records must include the date and amount of the contribution, name of the contributor(s) and type of contribution (e.g., monetary, non-monetary). Candidates, treasurers and officeholders must also maintain the cumulative amount of contributions. (2 Cal. Code Reg. § 18401.)

For contributions by credit or debit card, the records must include all credit card receipts, transaction slips or other writings signed by the contributor, credit card vouchers, and other documentation of credit card transactions, including credit card confirmation numbers and itemized transaction reports.

**RECORDS MUST BE SUFFICIENT TO DOCUMENT THE ACCURACY OF CAMPAIGN STATEMENTS. TREASURERS MUST MAINTAIN ALL RECORDS FOR FOUR YEARS FROM THE DATE OF THE FINAL REPORT FOR THE ELECTION.** (BMC §§ 2.12.250.D and E.)

Upon request, treasurers must make all records available to the FCPC, City Attorney, City Clerk, District Attorney, California Attorney General, and California Secretary of State, FPPC or their designees. (Gov't Code § 90001(i); 2 Cal. Code Regs. § 18401; BMC § 2.12.250.F.)

## **B. Expenditures**

Expenditures are payments, pledges, or promises of payment or anything of value for goods, services, materials or facilities for the purpose of influencing voters.

Expenditures include transfers of money, payments, gifts, loans, forgiving of loans, and promises of payment made by one committee to another. (BMC § 2.12.130.) State law permits any controlled committee to contribute to another committee for a Berkeley candidate or local ballot measure. However, *candidate-controlled* committees cannot make independent expenditures to support or oppose other Berkeley candidates. (Gov't Code § 85501.) Other types of committees are not subject to this restriction.

**Committees making expenditures must meet the following requirements:**

1. *Treasurer.* Before it may make an expenditure, a candidate or committee must have a treasurer. A candidate may appoint themselves as treasurer. The treasurer must authorize every expenditure made by the candidate or committee. (BMC § 2.12.245.)
2. *Bank account.* Treasurers must make all expenditures from a campaign checking account. (BMC § 2.12.250.)
3. *Separate accounting.* Committees making expenditures for or against any Berkeley candidate in addition to any non-Berkeley candidate or any ballot measure must maintain separate checking accounts unless exempted. (BMC § 2.12.250; FCPC Reg. R2.12.415.1.) (See [Chapter 5, Section A.](#))
4. *Written instrument.* All committees must make payments of \$50 or more by a written instrument (check, credit card or debit card – not cash) payable to the person furnishing the goods or services. BERA prohibits treasurers from making payments without first obtaining a receipt from the person furnishing the goods or services itemizing and identifying those goods or services. (BMC § 2.12.250.)

5. *\$50 or more itemized.* Treasurers must disclose and itemize all expenditures of \$50 or more in campaign statements. The disclosure must include the full name and street address of each person or vendor to whom the expenditure was made, amount of each separate expenditure, and a brief description of what was purchased or obtained. If the person paid is different from the person providing the goods or services paid for, the disclosure must include the full name and street address of the person actually providing the goods or services. (BMC § 2.12.280.H.)
6. *Candidates may not pay vendors.* Unlike volunteers or paid employees of a candidate's controlled committee, a candidate may not pay vendors, even if the candidate later seeks reimbursement from the committee. The committee must make all campaign expenditures from the committee's bank account. The candidate may contribute to their committee, and the committee may then make an expenditure. The committee would report the contribution on Schedule A and the expenditure on Schedule E of state Form 460.
7. *Unpaid expenditures become contributions.* An extension of credit arises when a committee receives goods or services but does not pay until later. **Extensions of credit are contributions subject to contributor source prohibitions and the \$270 limit on contributions to candidates unless an exception applies.** (FCPC Reg. R.2.12.100; BMC §§ 2.12.100, 2.12.415 and 2.12.440.) The exceptions are limited to payments made within a short time after receiving the goods or services and before the end of the post-election reporting period. (FCPC Reg. R.2.12.100(b).) There is also a limited exception for written extension of credit agreements. (FCPC Reg. R.2.12.100(c).)

For example, a candidate-controlled committee receives 5,000 pamphlets from a supporter who owns a print shop at a cost of \$500. The committee does not pay the supporter within 45 days of the invoice. On the 45th day, the extension of credit becomes a non-monetary contribution. **The contribution violates BMC Sections 2.12.415 and 2.12.440 because it comes from a business and exceeds \$270.**

Committees must report unpaid bills for goods or services on Schedule F (Accrued Expenses) of Form 460. If accrued expenses are not timely paid, they become contributions as noted above. If accrued expenses are timely paid, they remain expenditures and committees must report the payment on Schedule E (Payments Made) and Schedule F, Column (c) (Amount Paid This Period).

8. *Agent expenditures.* Committees must report expenditures by an agent or independent contractor of the candidate or committee as if made directly by the committee. Committees do not need to report the agent or independent contractor's overhead or normal operating expenses. (BMC § 2.12.315.) Expenditures by agents and independent contractors become non-monetary contributions to the committee if not reimbursed, as discussed above.

9. *Committees making expenditures on behalf of candidate.* Candidate-controlled committees must report the full name and street address of any committee that has made expenditures on its behalf, and the full name, street address and telephone number of the treasurer of that committee.

Treasurers must report this information on Form 460 (Recipient Committee Campaign Statement), on page “Cover Page – Part 2,” under item 5 (“Related Committees Not Included in this Statement”). (BMC § 2.12.280.K.)

10. *Reporting expenditures for multiple candidates or measures.* Committees supporting or opposing multiple candidates or measures must specify the amounts they expended for each candidate or measure. Committees must include the amounts for the period covered by the campaign statement and the cumulative amounts since the start of election cycle. (BMC § 2.12.280.I.)

Note that under state law, two or more candidates cannot form a combined candidate-controlled committee.

11. *Multiple committees sharing expenditures.* Committees occasionally share expenses. The following is guidance on how to allocate and report certain types of shared expenditures. Please contact the City Clerk Department or FCPC staff for guidance regarding more complex allocation issues.

- *Shared campaign communications.* If a mailer supports or opposes more than one candidate or ballot measure, you must determine the fair market value of the mailer to each committee. The fair market value is the percentage of space allotted to each candidate or ballot measure in the mailer multiplied by the total cost of the mailer. If the fair market value to a candidate or ballot measure exceeds the amount its committee paid to produce the mailer, the difference represents a contribution by the other committees to that candidate-controlled or ballot measure committee.

Campaign communication expenditures include all costs without which the communication would not have taken place, including but not limited to the cost of salaries, postage, printing, and broadcast time.

If a ballot measure committee is sending out a “slate mailer,” the committee should consult state law for disclosure and identification requirements. (See also [Chapter 3, Section B.4.](#))

For example, the candidate-controlled committees of Jane Doe and two school board candidates release a mailer featuring Jane Doe and the two school board candidates. One-half of the mailer is devoted to Jane Doe and one-half is split evenly between the two school board candidates.

The mailer costs \$1,040 to design, produce and mail. Given the space allotted to each candidate, \$500 of the mailer’s value is allocated to *Jane Doe for Mayor 2024* and \$270 is allocated to each of the school board candidates.



If *Jane Doe for Mayor 2024* pays for the entire mailer, it has made a non-monetary contribution of \$270 to each of the two school board candidates and an expenditure of \$500 for the *Jane Doe for Mayor 2024* committee. Jane Doe's committee must report the two non-monetary contributions and the expenditure on its next campaign statement. Jane Doe must also confirm that neither she nor her committee has previously contributed to the school board candidates during the same election cycle to ensure that she has not violated the \$270 contribution limit.

If *Jane Doe for Mayor 2024* instead has the two school board candidates' controlled committees promptly reimburse their pro rata share of the cost of the mailer (\$270 each) or pay the vendors directly, then Jane Doe's committee does not need to report the \$270 as a non-monetary contribution to each school board candidate. Jane Doe's committee would still need to report the \$540 as an expenditure, and each school board candidate's committee would now need to report the \$270 as an expenditure.

- *Shared overhead expenses.* Overhead expenses include general expenditures such as rent, utilities, staffing and fundraising events. Committees may share overhead expenses, but each committee must either pay or reimburse its pro rata share of overhead expenses. Otherwise, each committee must report overhead expenses paid by another committee as a non-monetary contribution.

12. *Loans.* Loans are contributions, but have special disclosure requirements. (BMC § 2.12.100.) State law requires committees to report all loans received during the reporting period on Schedule B (Loans Received) of state Form 460. Committees must report all loans made to others on Schedule H (Loans Made to Others). Committees must disclose the name, address and occupation of the lender or recipient, and the interest rate, due date, amount and cumulative amount of all loans from or to the same lender or recipient.

Where a lender forgives a loan or a third party pays it, the committee must report the forgiven or paid amounts as a contribution on Schedule A (Monetary Contributions Received) and simultaneously as forgiven debt on Schedule B, Column (c) (Amount Paid or Forgiven This Period). Where candidates forgive their loans of personal funds to their committees, the committee must report the amount forgiven as a contribution on Schedule A and as forgiven debt on Schedule B, Column (c). Committees must report all loans received until repaid or forgiven on Schedule B (Loans Received).

Because loans are contributions, the \$270 contribution limit and contribution source prohibition apply to all loans to a candidate-controlled committee (other than loans from the controlling candidate's own personal funds).

13. *Mass mailing certifications and copies.* A "mass mailing" is 200 or more identical or nearly identical pieces of mail, excluding form letters sent in response to an inquiry. (BMC § 2.12.150.)

Any committee, candidate, officeholder, individual or organization with reporting obligations that makes expenditures supporting or opposing one or more candidates or ballot measures must send a copy of every mass mailing to the FCPC. (BMC § 2.12.325.) The reporting party must meet this requirement by filing with the City Clerk Department three copies of each mass mailing and a certification of the date the mass mailing was or will be deposited in U.S. mail. The reporting party may either:

- (i) hand-deliver the mass mailing certification and three copies of the entire mass mailing (including, e.g., letters, envelopes and inserts) to the City Clerk Department within one day after the day the mass mailing was first placed in the U.S. mail, or
- (ii) deposit the mass mailing certification and three copies of the entire mass mailing in the U.S. mail, addressed to the City Clerk Department, on the same day the first pieces of the mass mailing are placed in the U.S. mail.

Reporting parties may also file the requisite certification and three copies before the date of the actual mailing. (FCPC Reg. R2.12.325.1, R2.12.325.2.)

14. *Campaign communication disclosures.* City law requires that campaign communications include the name of the committee and the phrase “Major Funding Provided By” followed by the names, cities of domicile, and total cumulative contributions for each of the top four contributors over \$250 to the committee.<sup>2</sup> (BMC § 2.12.335) For purposes of this requirement, “campaign communications” means any of the following items: (1) 1,000 or more substantially similar pieces of campaign literature (e.g., mailers, flyers, pamphlets and door hangers); (2) paid advertisements (e.g., ads in newspapers, magazines and on the internet); (3) 1,000 or more substantially similar emails or pre-recorded telephone calls made within a calendar month. (*Id.*)

**IMPORTANT:** The disclosure language requirements under City law are in addition to the disclaimer requirements for mass mailings and political advertisements under the state Political Reform Act. Information regarding state advertising disclaimer requirements is available on the FPPC website: <http://www.fppc.ca.gov/learn/campaign-rules/campaign-advertising-requirements-restrictions.html>.

15. *Liquidating or redesignating campaign funds.*

After a treasurer has paid for all goods and services related to a campaign, they must liquidate the contribution checking account in a lawful manner consistent with applicable state regulations. (BMC § 2.12.250.C; Gov’t Code §§ 89510, *et seq.*)

Alternatively, treasurers may redesignate campaign funds. Elected officials leaving office and defeated candidates who plan to redesignate campaign funds for a future

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<sup>2</sup> An amendment to BERA pending with the FCPC would increase this threshold to \$270 with automatic increases for every election cycle.

election must do so before such funds become surplus. Funds become surplus either upon the 90<sup>th</sup> day after the date the elected official leaves office or the 90<sup>th</sup> day after the end of the post-election reporting period for a defeated candidate, whichever is later. (Gov't Code § 89519(a).)

Elected officials and defeated candidates intending to redesignate funds to a future election for the same elective office must file an initial Form 501 (Candidate Intention) and an amended Form 410 (Statement of Organization) to include the new election year.

Elected officials and defeated candidates intending to redesignate funds to a future election for a different elective office must file an initial Form 501 for the new office. Treasurers must close the existing campaign bank account and open a new campaign bank account for the new elective office, and then file the initial Form 410.

16. *Surplus campaign funds.* State law prohibits the personal use of campaign funds and designates limited permissible uses of surplus funds. Please refer to state law for more information regarding the permissible uses of surplus campaign funds. (See Gov't Code § 89519.)
17. *Record retention.* Candidates, treasurers and officeholders must keep detailed accounts, records, bills and receipts for expenditures of \$25 or more. These records must include the date and amount of payment, name of the person paid and description of the value received for each payment. As with contributions, candidates, treasurers and officeholders must also maintain the cumulative amount of expenditures. (2 Cal. Code. Reg. § 18401.)

**RECORDS MUST BE SUFFICIENT TO DOCUMENT THE ACCURACY OF CAMPAIGN STATEMENTS. TREASURERS MUST MAINTAIN ALL RECORDS FOR FOUR YEARS FROM THE DATE OF THE FINAL REPORT FOR THE ELECTION.** (BMC §§ 2.12.250.D and E.)

Upon request, treasurers must make all records available to the FCPC, City Attorney, City Clerk, District Attorney, California Attorney General, and California Secretary of State, FPPC or their designees. (Gov't Code § 90001(i); 2 Cal. Code Regs. § 18401; BMC § 2.12.250.EF)

## CHAPTER 6. LIMITATIONS AND PROHIBITIONS

### A. \$270 Limit on Contributions to Candidates

**No person other than a candidate contributing to their own campaign may contribute more than \$270 to support or oppose a single candidate with respect to a single election.** (BMC § 2.12.415; FCPC Reg. R2.12.415.2(a).)

**No campaign treasurer may solicit or accept any contribution that will cause the total amount contributed by any such person to exceed \$270.** (*Id.*)

The following is additional guidance about Berkeley's \$270 contribution limit.

1. *Four-year cumulative period.* The contribution limit applies during the four-year cumulative period for elective offices of staggered four-year terms. (FCPC Reg. R2.12.415.2(a).) The cumulative period begins January 1 of the year immediately following the election and ends on December 31 of the fourth year of four-year terms.

The contribution limit also applies to special elections, which are elections held at times other than the November of even-numbered years. The cumulative period for these elections ends on the closing date of the post-election statement. The City Clerk Department will provide committees with adjusted filing schedules for special elections.

Candidate committees may receive contributions designated for a prior cumulative period *only* to help retire a campaign debt. The contributor must not have contributed the maximum of \$270 during that earlier period. Candidate committees may only receive such contributions until the end of the second semi-annual filing period (*i.e.*, December 31) in the next even-numbered year after the prior election. For example, where a candidate committee has campaign debts remaining from the November 2024 election, it is prohibited from accepting contributions to retire this debt after December 31, 2026. (FCPC Reg. R2.12.415.2(a).)

In reporting contributions to retire debt, candidate committees must specify the election the contribution is allocated to in the "Per Election to Date" column in Schedule A of state Form 460.

2. *Non-monetary contributions included.* The contribution limit applies to non-monetary contributions, *i.e.*, contributions of goods or services to a candidate-controlled committee, or ballot measure committee in a recall election.
3. *Contributor and treasurer must abide by limit.* The contribution limit applies to both contributors and campaign treasurers, who are prohibited from soliciting or accepting any contribution that will cause a contributor's four-year cumulative total to exceed \$270.

Example: In January 2024, Pharoah Coltrane contributes \$200 to *Sanders for Council 2024*, a committee controlled by Alice Sanders, a Berkeley officeholder who is running for re-election in November 2024. In September 2024, Mr. Coltrane wishes to contribute to *Sanders for Council 2024* again. Mr. Coltrane's contribution may not exceed \$70. Both Mr. Coltrane and *Sanders for Council 2024* will violate BERA if Mr. Coltrane contributes, and the committee accepts, more than \$70. Beginning on January 1, 2025, the start of the next cumulative period, Mr. Coltrane may once again contribute up to \$270 to *Sanders for Council 2024*.

4. *Contributions by individuals and their committees aggregated.* Where an individual directs and controls an entity's contributions, and also makes contributions from their own personal funds, the contribution limit applies to the aggregate of the entity's and individual's contributions.

Example: On May 5, 2014, Alice Sanders contributes \$200 from her personal bank account to the candidate-controlled committee *Jane Doe for Mayor 2016*. On June 5, 2016, Ms. Sanders' own candidate-controlled committee *Sanders for Council 2016* wishes to contribute to *Jane Doe for Mayor 2016*. Ms. Sanders' committee cannot give more than \$70 to *Jane Doe for Mayor 2016* because Ms. Sanders controls her committee, and its contributions are aggregated with her earlier personal contributions.

## **B. Prohibition on Contributions to Candidates by Business Entities**

**BERA prohibits contributions from proprietorships, firms, partnerships, joint ventures, syndicates, business trusts, companies, corporations (including non-profits) and labor unions to candidates, candidate-controlled committees, and ballot measure committees formed to support or oppose the recall of a local officeholder. (BMC § 2.12.440.)**

**No campaign treasurer may solicit or accept any contribution from a prohibited source. (*Id.*)**

The following is additional guidance about Berkeley's contributor source prohibition.

1. *Indirect contributions included.* The contributor source prohibition applies to direct, indirect, and non-monetary contributions. If a contribution can be traced to a prohibited source, it is prohibited. (FCPC Reg. R2.12.440.)

Example: The candidate-controlled committee *Jane Doe for Council 2024* receives a contribution from a PAC. The PAC receives contributions from Corporation F and Labor Union #123, and does not keep them separate from contributions from individuals. The PAC is prohibited from making any contributions to *Jane Doe for Council 2024*.

The committee is also prohibited from soliciting or accepting any contribution from the PAC.

If the PAC keeps its contributions subject to the source prohibition in a separate account from other contributions, then the PAC may contribute and the committee may solicit and accept a contribution from the PAC's permitted-source account.

2. *Treasurers must ensure validity.* Treasurers are responsible for ensuring that all contributions are from permitted sources. Treasurers must keep all records of deposits and disbursements and must be able to show by a reasonable accounting method that its contributions are from permitted sources. (FCPC Reg. R2.12.440(b).)

Treasurers who have received contributions from a potentially prohibited source must promptly request a written statement from the contributor indicating that the contributor is not a proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation (including non-profit) or labor union, and that the contributor does not receive contributions from such entities, or has adequate accounting methods that show that its contribution to the committee did not originate from a prohibited source.

If a treasurer cannot determine if a contribution comes from a prohibited source, the treasurer must promptly return the contribution to the donor. (FCPC Reg. R2.12.440.)

Example: A PAC that receives contributions subject to the source prohibition may only contribute to a candidate or their committee, or ballot measure committee for or against a recall if the PAC and committee treasurer can demonstrably show that the PAC's contribution to the committee did not come from a prohibited source.

3. *Specifying "PAC" contributors.* Committees must report contributions from PACs on campaign statements in a way that clearly shows that the source is a PAC and not a prohibited source. Treasurers should include the term "PAC" or "Political Action Committee" after the contributor name as well as the FPPC committee number.

## **APPENDIX A: DIFFERENCES BETWEEN BERA AND THE STATE POLITICAL REFORM ACT**

Participants in the Public Finance Program are subject to additional regulations and requirements. Contact the City Clerk Department for more information.		
<b>MAXIMUM CONTRIBUTION</b>	<b>BERKELEY</b>	<b>STATE</b>
Individuals to a candidate or the candidate's committee	\$270 maximum	\$5,500 for cities without a local contribution limit
Individuals to a non-candidate-controlled committee that supports or opposes a Berkeley candidate; individuals to a ballot measure committee	No applicable limit	Not applicable to local candidates
Cash contributions	\$50 or more must be by written instrument (check, credit card or debit card)	\$100 or more must be by written instrument
<b>DISCLOSURE REQUIREMENTS</b>	<b>BERKELEY</b>	<b>STATE</b>
Itemize the contributor's name, address, occupation and employer	\$50 or more	\$100 or more
In-kind contribution must be itemized	\$50 or more	\$100 or more
Campaign expenditures must be itemized	\$50 of more	\$100 or more
Late contribution reports	\$100-\$999 within 48 hours during the last 16 days prior to Election Day & on Election Day	\$1,000 or more within 24 hours during the last 90 days prior to Election Day, and on Election Day
Independent expenditure report required	\$1,000 or more is spent	\$1,000 or more is spent
Communication funded by an independent expenditure or late independent expenditure	Must file three copies of communication funded by independent expenditure with the City Clerk at the same time the disclosure Form 496 is filed	Not applicable
Anonymous contributions prohibited	\$50 or more	\$100 or more
Ballot measures	All committees making <b>expenditures</b> of \$250 or more for or against a ballot measure file quarterly <sup>3</sup>	Only ballot measure committees file quarterly
<b>CERTAIN ORGANIZATION AND BUSINESS ENTITY CONTRIBUTIONS</b>	<b>BERKELEY</b>	<b>STATE</b>
To candidate or the candidate's committee	Prohibited	No prohibition
To ballot measure committees	No prohibition	No prohibition

<sup>3</sup> An amendment to BERA pending with the FCPC would increase this threshold to \$270 with automatic increases for every election cycle.

**APPENDIX A: DIFFERENCES BETWEEN BERA  
AND THE STATE POLITICAL REFORM ACT**

<b>MASS MAILINGS AND COMMUNICATIONS</b>	<b>BERKELEY</b>	<b>STATE</b>
Copy of Mass Mailing filed with filing officer	Three copies must be filed with City Clerk one day after mailing or mailed on same day it was mailed and must include a mass mailing certification	Not applicable
“Major Funding Provided By” disclosures on campaign communications	Disclosure of top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure <sup>4</sup>	Additional state requirements for advertisement disclaimers, a disclosure of top three contributors of \$50,000 or more. See Government Code Section 84501 et. seq.
<b>DEFINITIONS</b>	<b>BERKELEY</b>	<b>STATE</b>
Committee	Any person or combination of persons including ongoing membership organizations, which receives contributions or makes expenditures of \$1,000 or more in a calendar year for the purpose of influencing votes in support of or in opposition to any ballot measure or candidate for Berkeley office	Any person or combination of persons who directly or individually does any of the following: (1) receives contributions totaling \$2,000 or more in a calendar year; (2) makes independent expenditures totaling \$1,000 or more in a calendar year; or (3) makes a contribution totaling \$10,000 or more in a year or at the behest of candidates or committees
In-kind contributions	Includes a gift, loan, advance, deposit, forgiveness of a debt, or promise of money or anything of value received by a candidate or committee for the purpose of influencing votes. It also includes the purchase of tickets for fundraising events, discounts for vendors, transfers of money, goods or services for other committees, including controlled committees	Includes the purchase of tickets for events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration, the transfer of anything of value received by a committee, unless full and adequate consideration is received

<sup>4</sup> An amendment to BERA pending with the FCPC would increase this threshold to \$270 with automatic increases for every election cycle.



## **APPENDIX B: RESOURCE DIRECTORY**

### **I. LOCAL**

- A. FAIR CAMPAIGN PRACTICES COMMISSION  
2180 Milvia Street, Fourth Floor  
Berkeley, CA 94704  
(510) 981-6998  
[fcpc@berkeleyca.gov](mailto:fcpc@berkeleyca.gov)  
<https://berkeleyca.gov/your-government/boards-commissions/fair-campaign-practices-commission>
  
- B. CITY CLERK  
2180 Milvia Street, First Floor  
Berkeley, CA 94704  
(510) 981-6908  
[elections@berkeleyca.gov](mailto:elections@berkeleyca.gov)  
<https://berkeleyca.gov/your-government/about-us/departments/city-clerk-department>

### **II. STATE**

- A. FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street, Suite 3000  
Sacramento, CA 95811  
(866) ASK-FPPC (275-3772) - Technical Assistance Division  
(916)322-5600 – General Contact Line  
[www.fppc.ca.gov](http://www.fppc.ca.gov)
  
- B. CALIFORNIA SECRETARY OF STATE  
1500 11th Street  
Sacramento, CA 95814  
<http://www.sos.ca.gov/>
  - a) ELECTIONS DIVISION - (916) 657-2166
  - b) POLITICAL REFORM DIVISION - (916) 653-6224  
State Filing Number and Campaign Statements
  
- C. FRANCHISE TAX BOARD  
1515 Clay Street, Suite 305  
Oakland, CA 94612-1431  
(800) 852-5711  
(510) 622-4693  
[www.ftb.ca.gov](http://www.ftb.ca.gov)

### **III. FEDERAL**

- A. INTERNAL REVENUE SERVICE  
1301 Clay Street  
Oakland, CA 94612  
(510) 907-5000  
[www.irs.gov](http://www.irs.gov)
  
- B. FEDERAL ELECTION COMMISSION  
1050 First Street, NE  
Washington, DC 20463  
(800) 424-9530  
[www.fec.gov](http://www.fec.gov)

## **APPENDIX C: FPPC REGULATIONS ON SB 1439**

### **Repealed**

Regulation 18438.7. Prohibitions and Disqualification Under Government Code Section 84308.

### **Adopted**

Regulation 18438. Application of Government Code Section 84308.

Regulation 18438.7. Prohibitions and Disqualification Under Section 84308.

### **Amended**

Regulation 18438.1. Officers and Agencies Under Government Code Section 84308.

Regulation 18438.2. Proceedings Under Government Code Section 84308.

Regulation 18438.3. Agents Under Government Code Section 84308.

Regulation 18438.4. Participants Under Government Code Section 84308.

Regulation 18438.5. Aggregated Contributions Under Government Code Section 84308.

Regulation 18438.6. Solicitation, Direction, and Receipt of Contributions Under Government Code Section 84308.

Regulation 18438.8. Prohibitions and Disqualification Under Section 84308.

Regulation 18705. Legally Required Participation.

Adopted by the Commission on June 15, 2023.

### **Additional Resources:**

The regulations may be viewed at <https://www.fppc.ca.gov/the-law/fppc-regulations/regulations-index.html>

FPPC Fact Sheet on 2023 Changes to Section 84308 may be viewed at

[https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/Changes\\_to\\_Section\\_84308\\_Final.pdf](https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Documents/Changes_to_Section_84308_Final.pdf)

Senate Bill No. 1439, Chapter 848 – An act to amend Section 84308 of the Government code, relating to the Political Reform Act of 1974 may be viewed at

[https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB1439](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1439)