

Fair Campaign Practices Commission

## AGENDA FOR FAIR CAMPAIGN PRACTICES COMMISSION

This meeting is being held in a wheelchair accessible location. To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

Civic Center  
2180 Milvia St.  
Cypress Room (1<sup>st</sup> Floor)

Regular Meeting  
January 16, 2020  
7:00 p.m.

Secretary: Samuel Harvey, Deputy City Attorney

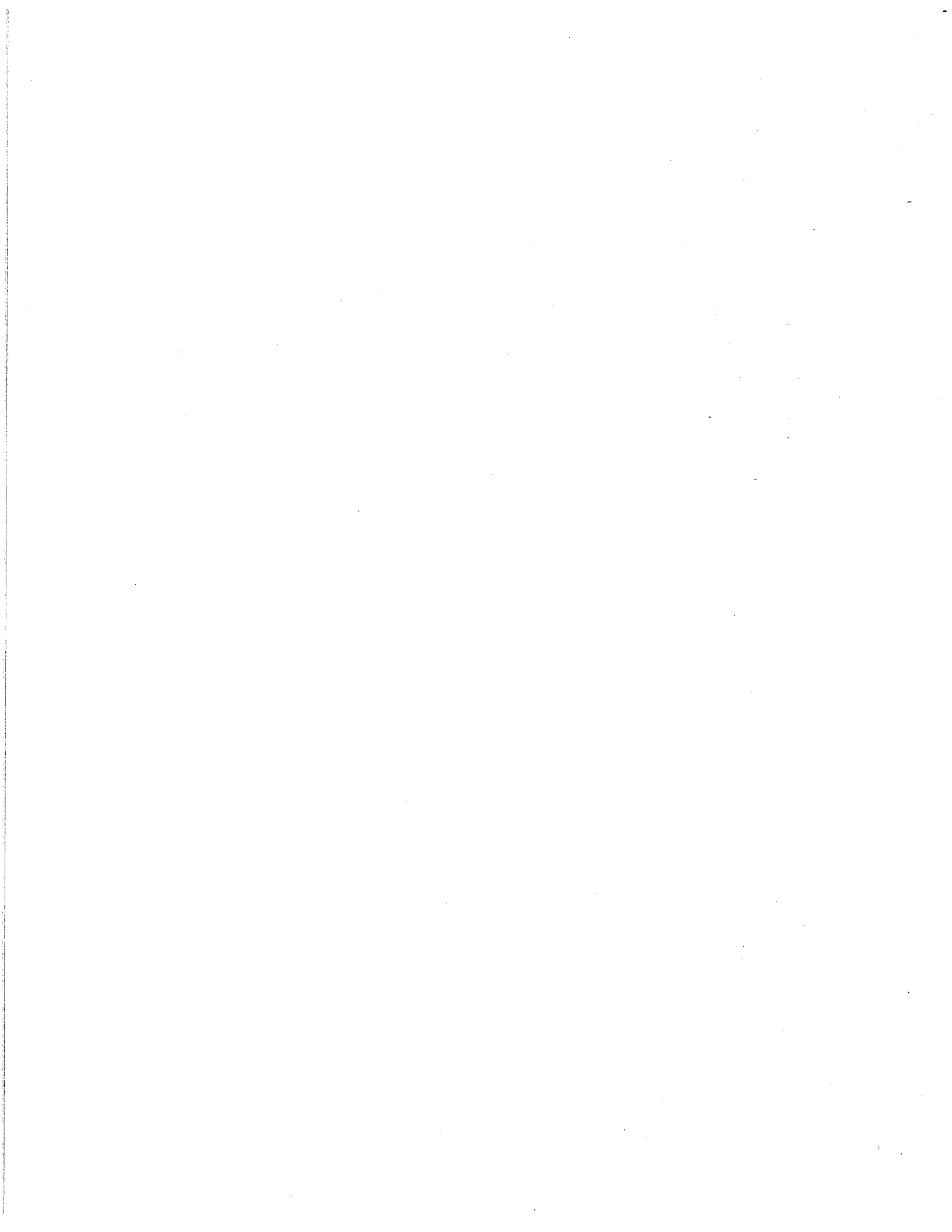
### The Commission may act on any item on this agenda

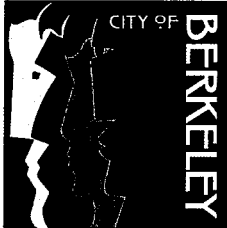
1. Call to Order 7:00 p.m.
2. Roll Call.
3. Public Comment. *Comments on subjects not on the agenda that are within the Commission's purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commission hears those items.*
4. Reports.
  - a. Report from Chair.
  - b. Report from Staff.
5. Approval of minutes for the November 21, 2019 regular meeting.
6. Revising COLA amounts for candidate eligibility to receive public funds under the Election Reform Act; discussion and possible action.
7. Commission 2020 regular meeting schedule; discussion and possible action.
8. Discussion regarding nomination and voting procedures for Commission Chair and Vice-Chair; discussion and possible action.
9. Adjournment.

### Communications

None

Communications to Berkeley boards, commissions or committees 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 a City board, commission or committee, 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 secretary of the relevant board, commission or committee. 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 secretary to the relevant board, commission or committee for further information. **SB 343 Disclaimer:** Any writings or documents provided to a majority of the Commission regarding any item on this agenda will be made available for public inspection at the City Attorney's Office at 2180 Milvia St., 4<sup>th</sup> Fl., Berkeley, CA.





Fair Campaign Practices Commission

**DRAFT MINUTES**

Civic Center  
2180 Milvia Street  
Cypress Room (1<sup>st</sup> Floor)

Regular Meeting  
**November 21, 2019**

Members Present: Dean Metzger (Chair), Janis Ching, Daniel Saver, Jessica Blome, Mark McLean, Jedidiah Tsang, Brad Smith

Members Absent: Patrick O'Donnell (excused)

Also Present: Samuel Harvey, Staff Secretary/Deputy City Attorney  
Mark Numainville, City Clerk  
Michael MacDonald, Assistant City Clerk

1. **Call to Order**

Chair called the meeting to order at 7:02 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment (items not on agenda)**

No public comment on matters not on agenda. One member of the public in attendance.

4. **Reports**

- a. Report from Chair.
- b. Report from Staff.

5. **Approval of Minutes for the September 19, 2019 Regular Meeting**

- a. Public comment: No speakers.
- b. Commission discussion and action.

*Motion to approve minutes (M/S/C: Blome/Tsang; Ayes: Metzger, Saver, Blome, Tsang, Smith; Noes: none; Abstain: McLean; Absent: Ching, O'Donnell (excused))*

6. **Approval of regulation codifying Cost of Living Adjustment ("COLA") to contribution limits for fair elections funding approved by the Commission on September 19, 2019 and of proposed BERA amendments regarding COLA; discussion and possible action.**

- a. Public comment: No speakers.
- b. Commission discussion and action.

*Motion to approve regulations codifying COLA increase and propose BERA amendments to Council (M/S/C: Smith/McLean; Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: None; Abstain: None; Absent: O'Donnell (excused)).*

7. **Recommendation from Officeholder Accounts Subcommittee; discussion and possible action.**

- a. Public comment: No speakers.
- b. Commission discussion and action.

*Motion to amend proposed BERA amendment by striking section 2.12.441(C). (M/S/C: Blome/Smith; Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused))*

*Motion to amend proposed BERA amendment by amending section 2.12.441(D). (M/S/C: Blome/Ching; Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused))*

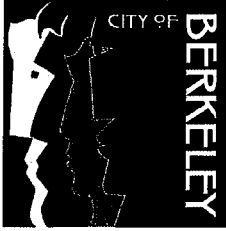
*Motion to approve proposed amendment to BERA with amendments. (M/S/C: Smith/Saver; Ayes: Metzger, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: none; Abstain: none; Absent: O'Donnell (excused))*

8. **Adjournment**

*Motion to adjourn (M/S/C: Blome/McLean; Ayes: Metzger, O'Donnell, Ching, Saver, Blome, McLean, Tsang, Smith; Noes: None; Abstain: None; Absent: O'Donnell (excused)).*

The meeting adjourned at 7:50 p.m.

## AGENDA ITEM 6



Fair Campaign Practices Commission

**DATE:** January 16, 2019  
**TO:** FAIR CAMPAIGN PRACTICES COMMISSION  
**FROM:** Dean Metzger, Commission Chair  
**SUBJECT:** Revising COLA amounts for candidate eligibility to receive funds under the Election Reform Act

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Under the Berkeley Election Reform Act (BERA), the Commission is required in January of every odd-numbered year to adjust certain data points and dollar amounts related to the City's public-financing program, the Fair Elections Act of 2016. (See Berkeley Municipal Code (BMC), § 2.12.545.)

At its September 19, 2019 meeting, the Commission approved a cost of living adjustment (COLA) for the following three dollar amounts set forth in BERA:

- **Required Amount of Initial Qualified Contributions** (BMC, § 2.12.500.A.3): Adjusted from \$500 to \$540;
- **Aggregate Totals for Fund Payments** (BMC, § 2.12.505.B): Adjusted from \$120,000 to \$129,000 for candidates for Mayor, and from \$40,000 to \$43,000 for candidates for City Council; and
- **Cap on Capital Assets Purchased with Campaign Funds** (formerly BMC, § 2.12.530.B.2.c, now BMC, § 2.12.530.B.3.b): Adjusted from \$500 to \$540.

The COLA adjustment of the qualifying amount of dollars needed to be eligible for public financing needs to be revised so that it remains the same amount as stated in the ordinance.

This needs to be done because a person trying to decide if they want to use the public financing program cannot know what the amount to be raised to qualify is by reading the ordinance and State Code (BMC Sections 2.12.167 and 2.12.500 and California Government Code, Section 82001). As we saw during the last election cycle there are too many ways for candidates using public financing to be in violation of the ordinance without knowing it.

## AGENDA ITEM 6

FCPC January 16, 2020 Meeting  
Item 6 – COLA  
Page 2

- Qualified Contribution - \$50 per ordinance, COLA adjustment - \$53.78
- Initial Qualified Contributions - \$10 per ordinance, COLA adjustment - \$10.76.
- Initial Qualified Contributions – Total - \$500, COLA adjustment - \$537.85

The proposal is to make the Qualified Contribution (\$50) and the Initial Qualified Contributions (\$10 and \$500 Total) as defined in Section 2.12.167 and Section 2.12.500 exempt from the cost-of-living adjustment:

### **2.12.545 Cost of living adjustments.**

The Commission shall adjust the dollar amounts specified in Sections ~~2.12.167, 2.12.500.A.3,~~ 2.12.505.B and 2.12.530.B.2.c for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections ~~2.12.167, 2.12.500.A.3 and~~ 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Section 2.12.505.B. (Ord. 7564-NS § 10, 2017; Ord. 7524-NS § 3.6 (part), 2016)

### **Attachments**

1. BMC sections 2.12.075, 2.12.167, 2.12.500 and 2.12.545
2. Cal. Gov. Code section 82001
3. Sep. 19 FCPC Staff Report re: COLA
4. Draft Amendments to BERA, BMC, § 2.12.545

**Election Reform Act**  
**Chapter 2.12**

**Public Financing of Elections**

**2.12.075 Adjusting an amount for cost of living changes.**

"Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index as last computed in accordance with State of California Government Code, Section 82001. (Ord. 4977-NS § 1 (part), 1977; Ord. 4700-NS § 201, 1974)

**2.12.167 Qualified contribution.**

"Qualified Contribution" means a monetary contribution, excluding loans, made directly in aid of the nomination or election of one or more candidates not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley. (Ord. 7564-NS § 3, 2017; Ord. 7524-NS § 3.2 (part), 2016)

**2.12.500 Eligibility for Fair Elections campaign funding.**

A. To be eligible to be certified as a participating candidate, a candidate must:

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).

a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

**2.12.545 Cost of living adjustments.**

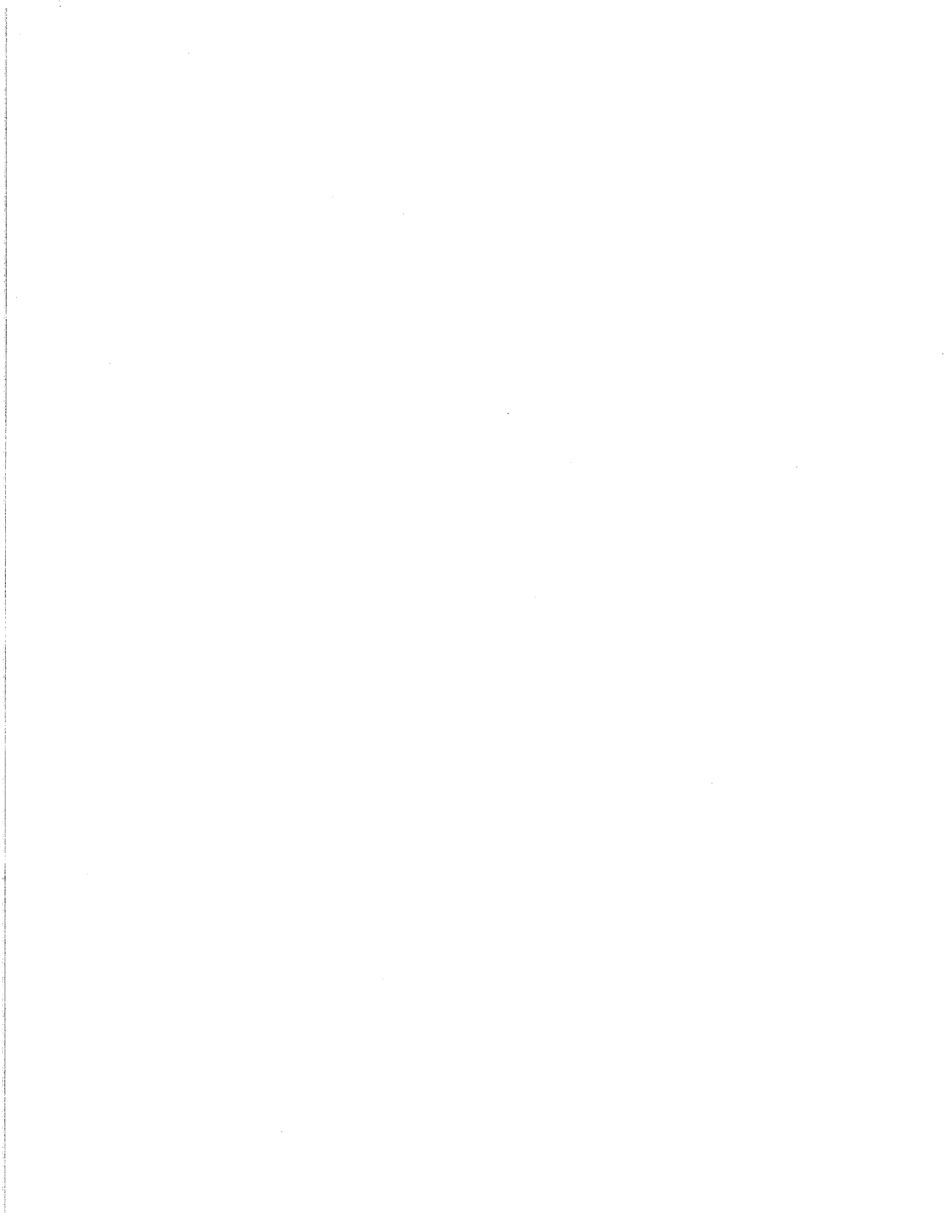
The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.500.A.3, 2.12.505.B and 2.12.530.B.2.c for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections 2.12.167, 2.12.500.A.3 and 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Section 2.12.505.B. (Ord. 7564-NS § 10, 2017; Ord. 7524-NS § 3.6 (part), 2016)



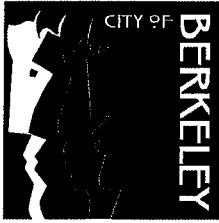


**California Government Code Sec. 82001**

Adjusting an amount for cost-of-living changes means adjusting the amount received the previous year by an amount determined at the beginning of each fiscal year by the Director of Finance corresponding to amounts authorized from the salary and price increase items as set forth in the Budget Act and other cost-of-living adjustments on the same basis as those applied routinely to other state agencies.



**AGENDA ITEM 6**  
**Attachment 3**



City Clerk Department

September 12, 2019

To: Fair Campaign Practices Commission  
From: Mark Numainville, City Clerk  
Subject: Mandated Cost of Living Adjustments for Public Financing Program

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Under the Fair Elections Act of 2016 (Public Financing), certain data points and dollar amounts are required to be adjusted by the Commission in January of each odd-numbered year (BMC 2.12.545).

The adjustment for the dollar amounts is Consumer Price Index for the San Francisco Area. The formula established by the State Fair Political Practices Commission for adjusting contribution limits for state candidates is the formula that was used for the adjusting the limits for Berkeley's Public Financing Program. The factors labeled "2016 Dollar Amounts" and "2016 Annual CPI" will remain constant when the formula is applied in all subsequent odd-numbered years because those reflect the original amounts in the ballot measure. The numerator will change to reflect the year in which the adjustment is calculated.

$$2016 \text{ Dollar Amounts} \times \frac{2019 \text{ Annual CPI}}{2016 \text{ Annual CPI}} = 2019 \text{ Dollar Amounts}$$

The CPI numbers used are the December 2016 number (269.5) and the December 2018 number (289.9). The December number is used because the State Department of Finance does not calculate the standard CPI-U in January.

The chart in Attachment 1 shows all of the amounts that are subject to the inflator, the original amount, the new amount (raw and rounded), and the code reference.

Upon approval by the Commission, all manuals and materials related to Public Financing will be updated to reflect the new dollar amounts.

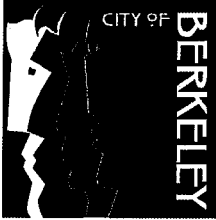
2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-6900 • TDD: (510) 981-6903 • Fax: (510) 981-6901  
E-Mail: [clerk@cityofberkeley.info](mailto:clerk@cityofberkeley.info) Website: <http://www.cityofberkeley.info/clerk>

# AGENDA ITEM 6 Attachment 3

## Attachment 1 - Public Financing Adjusted Amounts

Item Subject to Inflator	Starting Amount (Dec 2016)	Inflator	Adjusted Amount 2019	Rounding	Rounded Amount 2019	Timing of Adjustment	Amount Reference	Inflator Reference
Population	120,972	Census Data	122,324	Up to nearest whole number	122,324	Not stated	Art. III, Sec. 6.2 (2)(a)	Art. III, Sec. 6.2 (3)
Admin Costs (four year cycle)	\$250,000	289.9/269.5	\$268,923.93	None	\$268,923.93	Not stated	Art. III, Sec. 6.2 (1)(b)	Art. III, Sec. 6.2 (3)
Per Resident Allocation	\$4.00	289.9/269.5	\$4.30	None	\$4.30	Not stated	Art. III, Sec. 6.2 (1)(b)	Art. III, Sec. 6.2 (3)
Cap in Fund Balance	\$2,000,000	289.9/269.5	\$2,151,391.47	None	\$2,151,391.47	Not stated	Art. III, Sec. 6.2 (1)(b)	Art. III, Sec. 6.2 (3)
Qualified Contribution	\$50.00	289.9/269.5	\$53.78	Nearest \$10	\$50.00	January of odd-year	2.12.167	2.12.545
Initial Qualified Contributions	\$10.00	289.9/269.5	\$10.76	Nearest \$10	\$10.00	January of odd-year	2.12.500.A.3.	2.12.545
Initial Qualified Contributions - Total	\$500.00	289.9/269.5	\$537.85	Nearest \$10	\$540.00	January of odd-year	2.12.500.A.3.	2.12.545
Aggregate Totals for Fund Payments - Mayor	\$120,000	289.9/269.5	\$129,083.49	Nearest \$1,000	\$129,000.00	January of odd-year	2.12.505.B.	2.12.545
Aggregate Totals for Fund Payments - Council	\$40,000	289.9/269.5	\$43,027.83	Nearest \$1,000	\$43,000.00	January of odd-year	2.12.505.B.	2.12.545
Capital Asset Cap	\$500.00	289.9/269.5	\$537.85	Nearest \$10	\$540.00	January of odd-year	2.12.530.B.2.c.	2.12.545

**AGENDA ITEM 6**  
**Attachment 4**



Fair Campaign Practices Commission

PUBLIC HEARING  
XXXXX XX, XXXX

To: Honorable Mayor and Members of the City Council  
From: Dean Metzger, Chair, Fair Campaign Practices Commission  
Submitted by: Samuel Harvey, Secretary, 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 Elections Reform Act, BMC Chapter 2.12, regarding the public financing program.

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) at its regular meeting of January 16, 2020.

**Action:**

**Vote:**

Pursuant to Berkeley Municipal Code Section 2.12.051, the 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

The City's public-financing program, created by the Fair Elections Act of 2016, sets specific dollar amounts for contribution limits, the fundraising threshold to qualify to participate in the program, the total funding available to candidates, and the value of capital assets purchased with public campaign funds.

The Act requires the Fair Campaign Practices Commission to make cost-of-living adjustments to these dollar amounts, among others, during every odd-numbered year

based on the Consumer Price Index. (See BMC, §§ 2.12.075, 2.12.545.) The Commission approved cost-of-living adjustments for the 2020 election cycle at its September 19, 2019 meeting and adopted a regulation codifying these adjustments at its November 21, 2019 meeting. The Commission followed the formula set by the State Fair Political Practices Commission, which also regularly issues cost-of-living adjustments through regulation. (See, e.g., FPPC Regulation 18545, 2 Cal. Code Regs., § 18545.)

At its January meeting, the Commission adopted an amendment to the Berkeley Election Reform Act (BERA) to exempt sections 2.12.167 and 2.12.500 from the cost-of-living adjustment required by section 2.12.545 so that the qualified contribution amounts which a candidate must meet in order to be eligible for Fair Elections campaign funding will not be increased based on the cost-of-living adjustment.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects related to the recommendation in this report.

RATIONALE FOR RECOMMENDATION

This needs to be done because a person trying to decide if they want to use the public financing program cannot know what the amount to be raised to qualify is by reading the ordinance and State Code (BMC Sections 2.12.167 and 2.12.500 and California Government Code, Section 82001). As we saw during the last election cycle there are too many ways for candidates using public financing to be in violation of the ordinance without knowing it.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission, 981-6998  
Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission, 981-6998

Attachments:  
1: Ordinance

ORDINANCE NO. -N.S.

AMENDMENTS TO THE BERKELEY ELECTION REFORM ACT RELATED TO  
PUBLIC FINANCING FOR CAMPAIGNS

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

Section 1. That Berkeley Municipal Code Section 2.12.545 is amended to read as follows:

**2.12.545 Cost of living adjustments.**

The Commission shall adjust the dollar amounts specified in Sections ~~2.12.167, 2.12.500.A.3,~~ 2.12.505.B and 2.12.530.B.2.c for cost of living changes pursuant to Section 2.12.075 in January of every odd-numbered year following Council implementation. Such adjustments shall be rounded to the nearest ten dollars (\$10) with respect to Sections ~~2.12.167, 2.12.500.A.3 and~~ 2.12.530.B.2.c and one thousand dollars (\$1,000) with respect to Section 2.12.505.B. (Ord. 7564-NS § 10, 2017; Ord. 7524-NS § 3.6 (part), 2016)

Section 2. Copies of this Ordinance shall be posted for two days prior to adoption in the display case located near the walkway in front of 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 related to the public financing program for campaigns.

The hearing will be held on, [date of hearing] at [6:00 p.m.] 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](http://www.CityofBerkeley.info) as of [date of agenda posting].

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](mailto:clerk@cityofberkeley.info) for further information.

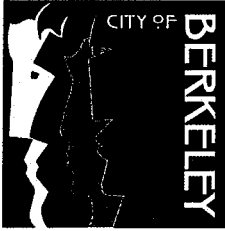
**Published:** [Publication Date in Newspaper]  
Pursuant to Berkeley Municipal Code Section 2.12.051

~~~~~  
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 [Enter Date].

\_\_\_\_\_  
Mark Numainville, City Clerk



## AGENDA ITEM 7



Fair Campaign Practices Commission

**DATE:** January 16, 2020  
**TO:** FAIR CAMPAIGN PRACTICES COMMISSION  
**FROM:** SAMUEL HARVEY, Commission Secretary  
**SUBJECT:** Commission 2020 regular meeting schedule

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The Commission must set its annual meeting schedule for 2020. In recent years, the Commission has limited the number of times it meets over the summer. Because this is an election year, the Commission may need to schedule additional meetings as needed later in the year.

Based on the current format of meeting every third Thursday at 7 p.m., the proposed schedule for the remainder of the year would be:

- Thursday, February 20
- Thursday, March 19
- Thursday, April 23\*
- Thursday, May 21
- Thursday, June 18
- Thursday, July 16
- Thursday, September 17
- Thursday, October 15
- Thursday, November 19

\*The Commission secretary will be unavailable on the third Thursday in April and therefore this meeting is listed as occurring one week later.

