

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 (1st Floor)

Regular Meeting
November 21, 2019
7:00 p.m.

Secretary: Samuel Harvey, Deputy City Attorney

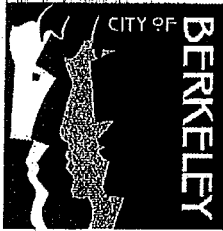
The Commission may act on any item on this agenda

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 September 19, 2019 regular meeting.
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.
7. Recommendation from Officeholder Accounts Subcommittee; discussion and possible action.
8. Adjournment.

Communications

- Email from Cordell Hindler.
- Notice from City Clerk re: Non-Payment of Late Filing Penalty
- Notices from City Clerk re: Amended Committee Forms
- Email from Barbara Gilbert.

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., 4th Fl., Berkeley, CA.



Fair Campaign Practices Commission

AGENDA ITEM 5

DRAFT MINUTES

Civic Center
2180 Milvia Street
Cypress Room (1st Floor)

Regular Meeting
September 19, 2019

Members Present: Dean Metzger (Chair), Jessica Blome, Janis Ching, Patrick O'Donnell, Daniel Saver, Jedidiah Tsang

Members Absent: Mark McLean, Brad Smith (excused)

Also Present: Emmanuelle Soichet, Staff Secretary/Deputy City Attorney

1. **Call to Order**

Chair called the meeting to order at 7:00 p.m.

2. **Roll Call**

Roll call taken.

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

Two members of the public in attendance. One speaker for public comment on matters not on agenda.

4. **Reports**

- a. Report from Chair.
- b. Report from Subcommittee on Officeholder Accounts
- c. Report from Staff.

5. **Approval of Minutes for the June 20, 2019 Regular Meeting**

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

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

6. **Approval of Cost of Living Adjustment ("COLA") to Contribution Limits for Fair Elections Funding; discussion and possible action.**

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

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

7. **Staff report regarding possible BERA violation by Candidate-Controlled Committee Lacey for City Council 2018; discussion and possible action.**

- a. Public comment: 1 speaker.
- b. Commission discussion and action.

Motion to find probable cause of a violation of BERA. (M/S/C: O'Donnell/Saver; Ayes: Ching, O'Donnell, Saver, Tsang; Noes: Metzger; Abstain: Blome (recused); Absent: McLean, Smith (excused)).

———— Meeting temporarily adjourned at 8:00 p.m., reconvened at 8:01 p.m. ————

Motion to request staff to enter in settlement negotiations with the committee to enter into a stipulation finding a violation of BERA, acknowledging there was no evidence of intent to violate the law, and seeking reimbursement of \$100. (M/S/C: Saver/Ching; Ayes: Ching, Metzger, O'Donnell, Saver, Tsang; Noes: None; Abstain: Blome (recused); Absent: McLean, Smith (excused)).

———— Meeting temporarily adjourned at 8:24 p.m., reconvened at 9:44 p.m. ————

8. **Recommendations for Implementation of Proposals Submitted by the Ad Hoc Subcommittee on Independent Expenditures and Discussed by the Commission on March 21, 2019; discussion and possible action.**

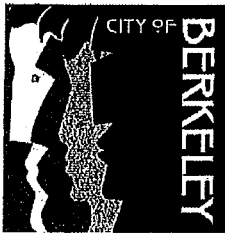
- a. Public comment: No speakers.
- b. Commission discussion and action.

No action taken.

9. **Adjournment**

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

The meeting adjourned at 9:50 p.m.



Fair Campaign Practices Commission

DATE: October 7, 2019

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: EMMANUELLE SOICHET, Commission Secretary

SUBJECT: Staff Report Regarding Approval of Regulation Codifying Cost of Living Adjustment ("COLA") to Contribution Limits for Fair Elections Funding Approved by the Commission on September 19, 2019

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.

Staff then considered the best means of implementing this COLA and informing candidates and the public of the new operative thresholds, given that the BERA provisions above still reflect the unadjusted dollar amounts.

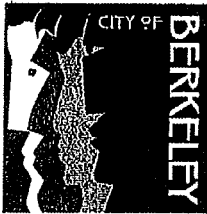
As a result, staff recommends that the Commission adopt a regulation setting forth these adjusted levels. This follows the State's model, in which the Fair Political Practices Commission adjusts contribution limits on a biennial basis through regulation. (See Attachment 2, FPPC regulation, 2 Cal. Code Regs. 18545.) This also allows for a quick implementation of the COLA this year (as the election cycle is beginning) and for the routine COLAs in the future.

In addition, staff recommends the Commission also amend the affected BERA provisions to indicate to candidates and the public that the dollar amounts set forth in the Municipal Code have been adjusted in regulation. This would provide increased clarity and avoid any confusion.¹

Attachments

1. Sept. 19 FCPC Staff Report regarding COLA
2. FPPC Regulation 18545 (2 Cal. Code Regs. § 18545)
3. Draft Amendment to FCPC Regulation R.2.12.500
4. Draft Amendments to BERA, BMC, §§ 2.12.167, 2.12.500, 2.12.505, 2.12.530, 2.12.545

¹ The draft amendments also include a minor correction to BMC section 2.12.545, the provision requiring the Commission to make regular COLA increases. This amendment is to reflect that the capital asset cap was moved from 2.12.530.B.2.c to 2.12.530.B.3.b in the May 2019 amendments adopted by the Commission and later City Council.



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

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.

AGENDA ITEM 6

Attachment 1

Attachment 1 - Public Financing Adjusted Amounts

Item Subject to Inflation	Starting Amount (Dec 2016)	Inflation	Adjusted Amount 2019	Rounding	Rounded Amount 2019	Timing of Adjustment	Amount Reference	Inflation 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

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18545. Contribution Limit and Voluntary Expenditure Ceiling Amounts.

(a) Campaign Contribution Limits

(1) For purposes of Section 85301(a), the adjusted contribution limit in effect for candidates for the Senate or Assembly and candidates for elected seats to the Board of Administration of the Public Employees Retirement System or the Teachers' Retirement Board, for an election occurring during the period January 1, 2019 through December 31, 2020 is \$4,700 per person.

(2) For purposes of Section 85301(b), the adjusted contribution limit in effect for candidates for Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, Insurance Commissioner and Board of Equalization members for an election occurring during the period January 1, 2019 through December 31, 2020 is \$7,800 per person.

(3) For purposes of Section 85301(c), the adjusted contribution limit in effect for candidates for Governor for an election occurring during the period January 1, 2019 through December 31, 2020 is \$31,000 per person.

(4) For purposes of Section 85302(a), the adjusted contribution limit in effect for candidates for Senate or Assembly and candidates for elected seats to the Board of Administration of the Public Employees Retirement System or the Teachers' Retirement Board, for an election occurring during the January 1, 2019 through December 31, 2020 is \$9,300 per small contributor committee

(5) For purposes of Section 85302(b), the adjusted contribution limit in effect for candidates for Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, Insurance Commissioner and Board of Equalization members for an election occurring during the period January 1, 2019 through December 31, 2020 is \$15,500 per small contributor committee.

(6) For purposes of Section 85302(c), the adjusted contribution limit in effect for candidates for Governor for an election occurring during the period January 1, 2019 through December 31, 2020 is \$31,000 per small contributor committee.

(7) For purposes of Section 85303(a), the adjusted annual contribution limit to any committee, other than a political party committee, in effect for an election occurring during the period January 1, 2019 through December 31, 2020 is \$7,800 per person.

(8) For purposes of Section 85303(b), the adjusted annual contribution limit to any political party committee in effect for an election occurring during the period January 1, 2019 through December 31, 2020 is \$38,800 per person.

(b) Voluntary Expenditure Ceilings

(1) For purposes of Section 85400(a)(1), the adjusted voluntary expenditure ceiling in effect for Assembly candidates for an election occurring during the period January 1, 2019 through December 31, 2020 is \$620,000 in the primary or special primary election and \$1,085,000 in the general or special general election.

(2) For purposes of Section 85400(a)(2), the adjusted voluntary expenditure ceiling in effect for Senate candidates for an election occurring during the period January 1, 2019 through December 31, 2020 is \$930,000 in the primary or special primary election and \$1,395,000 in the general or special general election.

(3) For purposes of Section 85400(a)(3), the adjusted voluntary expenditure ceiling in effect for State Board of Equalization candidates for an election occurring during the period January 1, 2019 through December 31, 2020 is \$1,550,000 in the primary election and \$2,326,000 in the general election.

(4) For purposes of Section 85400(a)(4), the adjusted voluntary expenditure ceiling in effect for a candidate for Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, and Insurance Commissioner for an election occurring during the period January 1, 2019 through December 31, 2020 is \$6,201,000 in the primary election and \$9,302,000 in the general election.

(5) For purposes of Section 85400(a)(5), the adjusted voluntary expenditure ceiling in effect for a candidate for Governor for an election occurring during the period January 1, 2019 through December 31, 2020 is \$9,302,000 in the primary election and \$15,503,000 in the general election.

(c) Officeholder Contribution Limits (per contributor per calendar year)

(1) For purposes of Section 85316, the adjusted contribution limit in effect for officeholders in the Senate or Assembly for calendar year 2019 and 2020 is \$3,900 per person per calendar year.

(2) For purposes of Section 85316, the adjusted contribution limit in effect for officeholders in statewide elected state offices (other than Governor) for calendar year 2019 and 2020 is \$6,400 per person per calendar year.

(3) For purposes of Section 85316, the adjusted contribution limit in effect for the officeholder in the Governor's office for calendar year 2019 and 2020 is \$25,700 per person per calendar year.

(d) Officeholder Contribution Limits (aggregate)

(1) For purposes of Section 85316, the adjusted aggregate officeholder contribution limit in effect for officeholders in the Senate or Assembly for calendar years 2019 and 2020 is \$64,400 per calendar year.

(2) For purposes of Section 85316, the adjusted aggregate officeholder contribution limit in effect for officeholders in statewide elected state offices (other than Governor) for calendar years 2019 and 2020 is \$128,700 per calendar year.

(3) For purposes of Section 85316, the adjusted aggregate officeholder contribution limit in effect for the officeholder in the Governor's office for calendar years 2019 and 2020 is \$257,500 per calendar year.

(e) The contribution limit and the voluntary expenditure ceiling adjustments shall be made pursuant to Regulation 18544.

(f) The contribution limit and voluntary expenditure ceiling adjustments of this regulation also will apply to elections held after December 31, 2020, until these limits are adjusted by the Commission for the next biennial period.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 83124, 85301, 85302, 85303, 85316 and 85400, Government Code.

HISTORY

1. New section filed 1-16-2003; operative 1-1-2003. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (~~FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements~~)
(Register 2003, No. 3).

2. Amendment filed 12-31-2004; operative 1-1-2005 pursuant to Government Code section 11343.4 (Register 2004, No. 53).
3. Amendment filed 12-18-2006; operative 1-1-2007. Submitted to OAL pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).
4. Amendment of section and Note filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27).
5. Amendment filed 10-31-2008; operative 11-30-2008. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2008, No. 44).
6. Amendment filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (~~FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements~~) and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

7. Amendment of subsections (a)(1)-(8), (b)(1)-(5), (c)(1)-(3) and (d)(1)-(3) filed 1-7-2013; operative 2-6-2013. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2013, No. 2).
8. Amendment filed 12-15-2014; operative 1-1-2015 pursuant to section 18312(e)(1)(A), title 2, California Code of Regulations. Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2014, No. 51).
9. Amendment filed 12-1-2016; operative 12-31-2016 pursuant to Cal. Code Regs. tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 49).
10. Amendment filed 12-12-2018; operative 1-11-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing and printing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974

AGENDA ITEM 6
Attachment 2

Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2018, No. 50).

Proposed FCPC Regulations & Amendments

R.2.12.500.1 Eligibility for Fair Elections campaign funding

For purposes of the requirement that the Commission certify that a candidate applicant is or is not eligible to be a Participating Candidate at the earliest practicable time under Berkeley Municipal Code section 2.12.500.B, the Commission shall make the certification determination no later than the next regular Commission meeting following the Secretary's receipt of the completed written application, provided that the completed application is received in time to provide copies to the Commission prior to the meeting, and to be placed on the agenda consistent with the Brown Act.

R.2.12.500.2 Qualified Contributions

For an election occurring during the period of December 1, 2019 through December 31, 2020, the dollar amounts listed in Berkeley Municipal Code section 2.12.500 are adjusted pursuant to section 2.12.545 as follows:

(a) Before the close of the qualifying period, a participating candidate must 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 and forty dollars (\$540).

R.2.12.505.1 Fair Elections Fund payments

(a) A Participating Candidate's initial request for Fair Elections funds shall include all information and documentation required by the City to process electronic payments which may include, but is not limited to, the Vendor Information Form, W-9 Form, Electronic Funds Transfer Form, and Federal Tax ID Number. Disbursement of Fair Elections funds will be made through electronic funds transfers to the Participating Candidate's campaign account.

(b) Payment is not final determination. A payment of Fair Elections funds to a Participating Candidate does not constitute a final determination of the amount that the candidate is entitled to receive. Post-election review may lead to a determination that payments to the candidate were in excess, in which case the Commission will notify the Participating Candidate. The Participating Candidate must pay back an amount equal to the amount of excess payments to the City's Fair Elections Fund. A Participating Candidate's repayment of excess payments of Fair Elections funds does not limit the Commission's existing authority to administer, investigate potential violations of, enforce, and determine appropriate remedies for violations of the Berkeley Election Reform Act.

(c) A Participating Candidate's request for a payment of Fair Elections funds in the City's electronic filing system must comply with instructions in the Fair Campaign Practices Commission Campaign Filing Manual and instructions regarding uploading of supporting documentation in the electronic filing system.

(d) A Participating Candidate who wishes to appeal a determination by the Commission for non-payment of Fair Elections funds must submit a written appeal to the Commission within seven days of receipt of the Commission's determination. The appeal must include a clear, concise, and accurate statement of the factual basis for the appeal and any evidence or documentation supporting the appeal. Documents that are not based upon personal knowledge shall identify the source of information. The appeal must be signed by the Participating Candidate under penalty of perjury. Appeals that are not signed under penalty of perjury or do not meet the standards for completeness will not be deemed received until such a declaration is made or the appeal is amended to be complete.

R.2.12.505.2 Fair Elections Fund Payment Amounts

For an election occurring during the period of December 1, 2019 through December 31, 2020, the dollar amounts listed in Berkeley Municipal Code section 2.12.505 are adjusted pursuant to section 2.12.545 as follows:

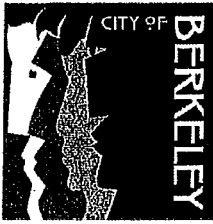
The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:

- 1) \$129,000 for a candidate running for the office of Mayor;
- 2) \$43,000 for a candidate running for the office of City Council.

R.2.12.530 Use of Fair Elections Funds

For an election occurring during the period of December 1, 2019 through December 31, 2020, the dollar amounts listed in Berkeley Municipal Code section 2.12.530 are adjusted pursuant to section 2.12.545 as follows:

A participating candidate shall not use Fair Elections funds or contributions for indirect campaign purposes, including but not limited to capital assets having a value in excess of five hundred and forty dollars (\$540) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles.



Fair Campaign Practices Commission

AGENDA ITEM 6
ATTACHMENT 4

PUBLIC HEARING

[Meeting Date (Month Day, yyyy)]

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 November 21, 2019.

Action: M/S/C (/ /) to adopt the proposed amendments to BERA related to public financing.

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 Campaign Practices, which also regularly issues cost-of-living adjustments through regulation. (See, e.g., FPPC Regulation 18545, 2 Cal. Code Regs., § 18545.)

At the November meeting, the Commission also adopted minor amendments to the corresponding Berkeley Election Reform Act (BERA) provisions to state expressly that cost-of-living adjustments are issued by regulation. This will avoid any possible confusion by candidates and the public about the operative dollar amounts, while allowing the Commission to make routine cost-of-living adjustments without needing to amend BERA.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

The proposed amendments to BERA will provide clarifying language for several passages.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

The City Manager concurs with the recommendation in this report.

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 2.12.167 is amended to read as follows:

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. This dollar amount may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

Section 2. That Berkeley Municipal Code Section 2.12.500 is amended to read as follows:

2.12.500 Eligibility for Fair Elections campaign funding.

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

1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the Commission a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:

a) The candidate has complied with the restrictions of this chapter during the election cycle to date;

b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and

c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.

2) Meet all requirements to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;

3) Before the close of the qualifying period, collect and submit at least 30 qualified contributions, from at least 30 unique contributors, of at least ten dollars (\$10), for a

AGENDA ITEM 6
Attachment 4

total dollar amount of at least five-hundred dollars (\$500). These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

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

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

4) Maintain such records of receipts and expenditures as required by the Commission;

5) Obtain and furnish to the Commission any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission;

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

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

8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee.

9) Not accept loans from any source.

(10) The Commission has the authority to approve a candidate's application for public financing, despite a violation by the candidate related to participation and qualification in the public financing program, if the violation is minor in scope and the candidate demonstrates a timely, good-faith effort to remedy the violation. The Commission may

adopt regulations setting forth guidelines for what constitutes a minor violation under this provision.

Section 3. That Berkeley Municipal Code Section 2.12.505 is amended to read as follows:

2.12.505 Fair Elections fund payments.

A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.505.B.

B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:

- 1) \$120,000 for a candidate running for the office of Mayor;
- 2) \$40,000 for a candidate running for the office of City Council.

These dollar amounts may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge.

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

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

outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. The City shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

E. The City shall make an initial payment of Fair Elections funds within seven business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.

F. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.

G. The City shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within seven business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

H. Unspent funds of any Participating Candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a Participating Candidate following the date of the election for which they were distributed shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the date of the election.

Section 4. That Berkeley Municipal Code Section 2.12.530 is amended to read as follows:

2.12.530 Use of Fair Elections funds.

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds or contributions for:

- 1) Costs of legal defense in any campaign law enforcement proceeding under this Act, or penalties arising from violations of any local, state, or federal campaign laws;
 - 2) The candidate's personal support or compensation to the candidate or the candidate's family;
 - 3) Indirect campaign purposes, including but not limited to:
 - a) Any expense that provides a direct personal benefit to the candidate, including clothing and other items related to the candidate's personal appearance;
 - b) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
 - c) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
 - d) An independent expenditure as defined in Berkeley Municipal Code Section 2.12.142 as may be amended;
 - e) Any payment or transfer for which compensating value is not received;
- C. The term "Contribution" is defined in 2.12.100 and includes "Qualified Contributions" as defined in 2.12.167 and contributions from non-residents of Berkeley as described in 2.12.500.A.7.
- D. The dollar amounts in Section 2.12.530.B.3.b may be adjusted for cost-of-living changes by the Commission through regulation, pursuant to Section 2.12.545.

Section 5. 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-~~e~~3.b 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.

Section 6. 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 as of [date of agenda posting].

For further information, please contact Emma Soichet, Commission Secretary at 981-6998.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

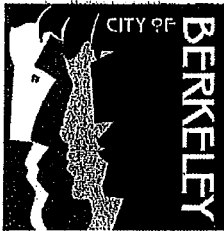
Published: [Publication Date in Newspaper]

Indicate BMC or other code requirement that sets forth noticing requirements

~~~~~  
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].

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Mark Numainville, City Clerk



Fair Campaign Practices Commission

**DATE:** November 21, 2019

**TO:** FAIR CAMPAIGN PRACTICES COMMISSION

**FROM:** Officeholder Accounts Subcommittee

**SUBJECT:** Recommendation Regarding Officeholder Accounts

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Attached is the Officeholder Accounts Subcommittee's recommendation for the item to be sent to the Mayor and Members of the City Council regarding amendments to BERA to prohibit Officeholder Accounts.

The following motion was made and passed at the June 20, 2019 meeting of the Fair Campaign Practices Commission:

Motion to create a subcommittee that will look into differences between regulation and abolishment of officeholder accounts. ((M/S/C: Tsang/Smith: Ayes: Blome, Ching, O'Donnell, Saver, Smith, Tsang; Noes: None; Abstain: None; Absent: McLean (excused, Metzger (excused))).

Ching, O'Donnell, Smith and Tsang were appointed to the Subcommittee by Vice Chair Blome. The subcommittee met four times: July 2, 2019, July 17, 2019, September 24, 2019 and October 2, 2019. It was agreed unanimously at the July 2, 2019 meeting that the goal of the Subcommittee was to examine the options of (1) eliminating, (2) restricting or (3) doing nothing regarding Officeholder Accounts and to make a recommendation to the full FCPC regarding which course of action to take at the November 21, 2019 meeting of the FCPC. At the July 17, 2019 meeting, a motion was adopted unanimously not to recommend doing nothing. At the October 2, 2019 meeting, a motion to recommend amending BERA to prohibit Officeholder Accounts was adopted unanimously.

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~~Consideration of restricting rather than prohibiting Officeholder Accounts was done by attempting to amend the Oakland Municipal Code regulating Officeholder Accounts to fit the situation in Berkeley. The Subcommittee also carefully considered objections to prohibiting Officeholder Accounts provided by Councilmember Sophie Hahn on June 20, 2019.~~

Attachments:

1. Minutes of Officeholder Account Subcommittee October 2, 2019 Meeting
2. Officeholder Account Subcommittee Recommendation

MINUTES  
OFFICEHOLDER ACCOUNT SUBCOMMITTEE MEETING

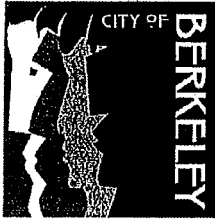
2180 Milvia  
4<sup>TH</sup> Floor  
Oak Room

Special Meeting  
October 2, 2019  
1:00 p.m.

1. Call to Order: Chair called the meeting to order at 1:30 p.m.
2. Roll Call: All Subcommittee members were present.
3. Public Comment: No members of the public were present.
4. Minutes for the September 24, 2019 meeting were approved unanimously (M/S/C: Tsang/Ching)
5. There was discussion about whether to eliminate or regulate Officeholder Accounts. The following motion was made and approved unanimously:

Motion to recommend to the full Commission amending BERA to prohibit Officeholder Accounts. With changes identified by the Subcommittee amending the item on the June 20, 2019 Agenda, Chair Smith to prepare an item for the November 21, 2019 FCPC meeting: (M/S/C: O'Donnell/Ching: Ayes: Ching, O'Donnell, Smith, Tsang; Noes: None; Abstain: None.)

6. Scheduled meeting on Wednesday, October 30 to be cancelled.
  7. Meeting adjourned at 2:15.
-



Fair Campaign Practices Commission

AGENDA ITEM 7  
Attachment 2

PUBLIC HEARING  
[Meeting Date (MM dd, yyyy)]

To: Honorable Mayor and Members of the City Council  
From: Fair Campaign Practices Commission  
Submitted by: Dean Metzger, Chairperson, Fair Campaign Practices Commission  
Subject: Amendments to the Berkeley Election Reform Act to prohibit Officeholder Accounts

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt an ordinance amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts (See Section 18531.62. Elected State Officeholder Bank Accounts, Regulations of the Fair Political Practices Commission).

SUMMARY

Contributions to and expenditures from Officeholder Accounts provide an unfair advantage to incumbents. They also increase the reliance on private campaign contributions and risk increasing the perception of corruption. Amending the Berkeley Elections Reform Act to prohibit Officeholder Accounts will help to level the playing field in municipal elections, which was also a goal of the Fair Elections Act of 2016.

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 November 21, 2019.

**Action:** M/S/C ( / ) to adopt the proposed amendments to BERA related to Officeholder Accounts.

**Vote:**

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

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING

**BACKGROUND**

The Fair Campaign Practices Commission has supported creating the circumstances in which the incumbent and challengers during an election play on as level a playing field as possible and reducing the influence of private campaign contributions. For instance, the Berkeley Fair Elections Act of 2016, which was passed by voters and recommended to Council by the Commission, included the following express purposes:

- Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- Help reduce the influence of private campaign contributions on Berkeley government.
- Reduce the impact of wealth as a determinant of whether a person becomes a candidate.

(Section 2.12.490(B)-(D).)

A recent inquiry to the Commission Secretary regarding the regulation of Officeholder Accounts resulted in a request from a Commissioner to have discussion of these accounts placed on the May 16, 2019 agenda for possible action. The following motion was made and passed at that meeting:

Motion to request staff work with Commissioner Smith to bring to a future meeting background information and a proposal to eliminate officeholder accounts (M/S/C: O'Donnell/Blome; Ayes: Blome, Ching, McLean, Metzger, O'Donnell, Saver, Smith, Tsui; Noes: None; Abstain: None; Absent: Harper (excused)).

**Definition of an Officeholder Account**

Under state law, an "officeholder account" refers to the funds held in a single bank account at a financial institution in the State of California separate from any other bank account held by the officeholder and that are used for "paying expenses associated with holding public office." Officeholder Account funds cannot be used to pay "campaign expenses." This definition is drawn from state law applicable to statewide elected officials: Government Code section 85316 (Attachment 2), and the accompanying regulation by the Fair Political Practices Commission (FPPC) codified at Title 2, Division 6, of the California Code of Regulations, Section 18531.62 (Attachment 3).

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Contributions to or expenditures from an Officeholder Account are not subject to BERA's reporting requirements. (The FPPC still requires the reporting of activity relating to Officeholder Accounts, which is available to view on Berkeley's Public Access Portal.) If, however, a complaint is filed that an Officeholder Account is used for

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING

campaign contributions or to pay "campaign expenses," BERA can be used to respond to the complaint. The legal arguments for these statements are contained in a memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert, dated December 28, 1999 and a December 9, 1991 memorandum by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, that is attached to the December 28, 1999 memo. (Attachment 4.) Because the BERA provisions relied on in these memoranda have not been amended, and because no other BERA provisions have been added to regulate officeholder accounts, the memoranda's conclusions remain valid and are still controlling guidance.

### **Contributions to Officeholder Accounts**

Funds raised for Officeholder Accounts in Berkeley are not subject to any limitations, either from the FPPC or BERA. Neither is there a limit on the total amount the Officeholder Account fund may receive in contributions per year. Contributions to an elected official's Officeholder Account may put that contributor in a more favorable light with the elected official than might otherwise be the case.

### **Expenditures from Officeholder Accounts**

Except for the restriction that Officeholder Account funds cannot be used for "campaign expenses," BERA does not restrict how funds from Officeholder Accounts can be used.

There are a number of permissible expenditures from Officeholder Accounts that could put an elected official in a favorable light with voters that are not available to a challenger for that office. A donation to a nonprofit organization, although technically not a "campaign expense," would be seen favorably by those receiving the funds as well as individuals favorably disposed to the nonprofit organization receiving the funds. An individual running against this incumbent would have to draw on their own resources to make contributions to nonprofit organizations.

As long as political campaigns are not included, newsletters mailed to constituents related to events, information, or an officeholder's position on matters before the Council are a permissible Officeholder Account expenditure. This keeps the incumbent's name in front of the voter in a way unavailable to a challenger unless they pay for a newsletter and its distribution from their own resources.

Expenditures from Officeholder Account funds for flowers and other expressions of condolences, congratulations, or appreciation, while technically not "campaign expenses," also increase the probability that the recipient will be favorably predisposed toward the elected official as a candidate for reelection or election to another office. Again, a challenger would have to draw on their own resources to express condolences, congratulations, or appreciation to their potential supporters.

Amendments to the Berkeley Election Reform Act  
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Further, officeholder accounts can be used to pay for a broad range of office expenses, such as meals, travel, parking tickets, or contributions to other candidates or political parties.<sup>1</sup> Eliminating officeholder accounts would reduce reliance on and the influence of private contributions for these expenditures.

**Recommendation**

To make elections more equitable between challengers and incumbent and for the reasons given above, the Fair Campaign Practices Commission recommends prohibiting Officeholder Accounts.

Berkeley will not be the first to prohibit Officeholder Accounts. The San Jose Municipal Code was amended to prohibit officeholder accounts in January 2008. (Chapter 12.06 – ELECTIONS, San Jose, CA Code of Ordinances, p. 10)

**Part 8 - OFFICEHOLDER ACCOUNTS**

**12.06.810 - Officeholder account prohibited.**

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform Act, California Government Code Section 8100 et seq. as amended, for the solicitation or expenditure of officeholder funds. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

The following additions to BERA are proposed:

**2.12.157 Officeholder Account**

“Officeholder Account” means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

**2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.

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<sup>1</sup> Under state law applicable to state elected officials, officeholders may use campaign contributions for “expenses that are associated with holding office.” (Govt. Code, § 89510.) To qualify, expenditures must be “reasonably related to a legislative or governmental purpose.” (*Id.*, § 89512.) “Expenditures which confer a substantial personal benefit shall be directly related to a political, legislative, or governmental purpose.” (*Ibid.*)



Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING

- C. This provision does not affect a candidate's ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

ENVIRONMENTAL SUSTAINABILITY

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

RATIONALE FOR RECOMMENDATION

This proposed change to BERA will help to level the playing field between challengers and the incumbent running for elective office.

ALTERNATIVE ACTIONS CONSIDERED

A Subcommittee was formed to consider the options of (1) amending the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts, (2) amending BERA to mitigate possible advantages incumbents with an Officeholder Accounts have over challengers, or (3) doing nothing with regard to Officeholder Accounts. The four members of the Subcommittee recommended unanimously to the full Commission to amend the Berkeley Elections Reform Act, BMC Chapter 2.12, to prohibit Officeholder Accounts.

CITY MANAGER

The City Manager [TYPE ONE] concurs with / takes no position on the content and recommendations of the Commission's Report. [OR] Refer to the budget process.

**Note: If the City Manager does not (a) concur, (b) takes any other position, or (c) refer to the budget process, a council action report must be prepared. Indicate under the CITY MANAGER heading, "See companion report."**

CONTACT PERSON

Dean Metzger, Chair, Fair Campaign Practices Commission. 981-6998

Attachments:

1: Proposed Ordinance

2: Government Code section 85316

3: Section 18531.62 (Elected State Officeholder Bank Accounts), Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations

Amendments to the Berkeley Election Reform Act  
to prohibit Officeholder Accounts

PUBLIC HEARING

4: Memorandum signed by City Attorney Manuela Albuquerque to Aide to Mayor Shirley Dean, Barbara Gilbert (including attached memorandum signed by Secretary and Staff Counsel to the FCPC, Sarah Reynoso, to the FCPC)

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

OFFICERHOLDER ACCOUNT PROHIBITED

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

Section 1. That Berkeley Municipal Code section 2.12.157 is added to read as follows:

**BMC 2.12.157 Officeholder account**

"Officeholder Account" means any bank account maintained by an elected officer or by any person or committee on behalf of an elected officer, and whose funds are used for expenses associated with holding office and not for direct campaign purposes.

Section 2. That Berkeley Municipal Code section 2.12.441 is added to read as follows:

**BMC 2.12.441 Officeholder account prohibited**

- A. No elected officer, or any person or committee on behalf of an elected officer, may establish an officeholder account.
- B. No elected officer, or any person or committee on behalf of an elected officer, may use contributions, as defined in 2.12.100, for expenses associated with holding office.
- C. This provision does not affect a candidate's ability to establish a legal defense fund or the requirements for such a fund, as set forth in the Political Reform Act or by regulation.
- D. Any active Officeholder Account on the date this change to BERA is adopted on a second reading by the City Council has one year from that date to terminate their Officeholder Account.

Section 3. 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



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**GOVERNMENT CODE - GOV**

**TITLE 9. POLITICAL REFORM [81000 - 91014]** ( Title 9 added June 4, 1974, by initiative Proposition 9. )

**CHAPTER 5. Limitations on Contributions [85100 - 85802]** ( Chapter 5 added June 7, 1988, by initiative Proposition 73. )

**ARTICLE 3. Contribution Limitations [85300 - 85321]** ( Article 3 added June 7, 1988, by initiative Proposition 73. )

**85316.** (a) Except as provided in subdivision (b), a contribution for an election may be accepted by a candidate for elective state office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

(b) Notwithstanding subdivision (a), an elected state officer may accept contributions after the date of the election for the purpose of paying expenses associated with holding the office provided that the contributions are not expended for any contribution to any state or local committee. Contributions received pursuant to this subdivision shall be deposited into a bank account established solely for the purposes specified in this subdivision.

(1) No person shall make, and no elected state officer shall receive from a person, a contribution pursuant to this subdivision totalling more than the following amounts per calendar year:

(A) Three thousand dollars (\$3,000) in the case of an elected state officer of the Assembly or Senate.

(B) Five thousand dollars (\$5,000) in the case of a statewide elected state officer other than the Governor.

(C) Twenty thousand dollars (\$20,000) in the case of the Governor.

(2) No elected state officer shall receive contributions pursuant to paragraph (1) that, in the aggregate, total more than the following amounts per calendar year:

(A) Fifty thousand dollars (\$50,000) in the case of an elected state officer of the Assembly or Senate.

(B) One hundred thousand dollars (\$100,000) in the case of a statewide elected state officer other than the Governor.

(C) Two hundred thousand dollars (\$200,000) in the case of the Governor.

(3) Any contribution received pursuant to this subdivision shall be deemed to be a contribution to that candidate for election to any state office that he or she may seek during the term of office to which he or she is currently elected, including, but not limited to, reelection to the office he or she currently holds, and shall be subject to any applicable contribution limit provided in this title. If a contribution received pursuant to this subdivision exceeds the allowable contribution limit for the office sought, the candidate shall return the amount exceeding the limit to the contributor on a basis to be determined by the Commission. None of the expenditures made by elected state officers pursuant to this subdivision shall be subject to the voluntary expenditure limitations in Section 85400.

(4) The commission shall adjust the calendar year contribution limitations and aggregate contribution limitations set forth in this subdivision in January of every odd-numbered year to reflect any increase or decrease in the Consumer Price Index. Those adjustments shall be rounded to the nearest one hundred dollars (\$100).

(Amended by Stats. 2007, Ch. 130, Sec. 149. Effective January 1, 2008. Note: This section was added by Stats. 2000, Ch. 102, and approved in Prop. 34 on Nov. 7, 2000.)

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

**§ 18531.62. Elected State Officeholder Bank Accounts.**

(a) Application and Definitions. For purposes of Section 85316(b) and this regulation, the following definitions apply:

- (1) "Officeholder" means an elected state officer.
- (2) "Officeholder controlled committee" means a committee formed pursuant to subdivision (c) of this regulation.
- (3) "Officeholder account" means the bank account established at a financial institution located in the State of California pursuant to Section 85316(b).
- (4) "Officeholder funds" means money in the officeholder account.

(b) Establishing the Officeholder Account: For purposes of Section 85316(b), an officeholder shall maintain officeholder funds in a single bank account separate from any other bank account held by the officeholder.

(c) Establishing the Officeholder Controlled Committee, Reporting and Recordkeeping:

- (1) Formation: The officeholder shall establish a controlled committee by filing a statement of organization pursuant to Section 84101 if the officeholder receives \$2,000 or more in officeholder contributions in a calendar year.
- (2) Committee Name: The controlled committee name shall include the officeholder's last name, the office held, the year the officeholder was elected to the current term of office, and the words "Officeholder Account." The statement of organization shall include the name, account number, and address of the financial institution where the committee established the officeholder account.

**AGENDA ITEM 7**  
**Attachment 2**

(3) Filing Requirements: The controlled committee shall file campaign statements and reports pursuant to Chapters 4 and 5, except Sections 85200 and 85201, of Title 9 of the Government Code at the same times and in the same places as it otherwise would be required to do for any other controlled committee formed by the officeholder for election to state office.

(4) Required Recordkeeping and Audits. The officeholder and treasurer shall be subject to recordkeeping requirements under Section 84104. The officeholder account and officeholder controlled committee shall be subject to audits under Chapter 10 of Title 9 of the Government Code. Any audit of the officeholder, or any of his or her controlled committees, under Section 90001 shall include all officeholder accounts and officeholder controlled committees maintained by the officeholder during the audit period as described in Regulation 18996(a)(1).

(d) Prohibitions:

(1) Officeholder funds may not be contributed or transferred to another state or local committee, including any other controlled committee of the officeholder, except as permitted in subdivisions (g) (2) and (g)(3).

(2) Officeholders may not use officeholder funds to pay "campaign expenses" as defined in Regulation 18525(a).

(3) The officeholder may not transfer or contribute funds from any other committee he or she controls to the officeholder account, except as permitted in subdivision (g)(2) and (g)(3).

(e) Contributions to the Officeholder Account:

(1)(A) Required Notices: In addition to the requirements of Regulation 18523.1, a written solicitation for contributions to the officeholder account shall include the following: "For purposes of the Political Reform Act's contribution limits, a contribution to an officeholder

**AGENDA ITEM 7**  
**Attachment 2**

account is also considered to be a contribution to all campaign committees for future elective state office the officeholder seeks during his or her current term of office."

(B) In addition to the requirements of subparagraph (A) above, an officeholder who files a statement of intention to be a candidate for any elective state office during the officeholder's term of office shall provide notice of this filing to every person that has made a contribution to his or her officeholder account. The notice shall contain the language in subparagraph (A) and be transmitted or mailed within 10 days of filing the statement of intention to be a candidate.

(2) Cumulation: A contribution to the officeholder account shall also be deemed a contribution to the officeholder's controlled committee for election to elective state office for the purposes of Section 85316(b)(3) only under all of the following circumstances:

(A) The contributor makes the contribution between the day the election was held for the term of office for which the officeholder account was established and the end of that term of office;

(B) The officeholder maintains the controlled committee, established for a future term of elective state office, at any time during the period covered in subparagraph (A).

(3) Cumulation and Primary and General Elections: A person's contributions to the officeholder account, when combined with contributions from the same person for a primary and general election to the elective state office may not exceed the contribution limits applicable to the primary and general election.

(4) Multiple Officeholder Accounts: When an officeholder maintains more than one officeholder account in the same calendar year, he or she may not receive the following contributions to any of those accounts during that calendar year:

(A) Contributions from a single contributor that, when cumulated for all the accounts, exceed the maximum amount the contributor could give to the officeholder account having the highest per-person contribution limit under Section 85316(b)(1).

(B) Contributions from all contributors that, when cumulated for all the accounts, exceed the maximum amount in total contributions the officeholder could receive in the officeholder account having the highest aggregate contribution limit under Section 85316(b)(2).

(f) Contributions Over the Limits:

(1) An officeholder shall return to the contributor the portion of any contribution to his or her officeholder account that exceeds the limits of Section 85301, 85302 (after cumulation) or 85316 (either alone or after cumulation) by the earlier of 14 days of receipt or 14 days of the date the officeholder files a statement of intention to be a candidate for elective state office pursuant to Section 85200.

(2) A contributor to the officeholder account does not violate the contribution limits applying to the officeholder's election to a future elective state office as otherwise provided under Section 85316(b)(3) if, when he or she makes the contribution, the officeholder has not filed a statement of organization to establish a controlled committee for election to a future elective state office.

(g) Terminating Officeholder Accounts and Committees:

(1) The officeholder may not accept contributions after the officeholder's term of office ends or the date he or she leaves that office, whichever is earlier.

(2) The officeholder may redesignate the officeholder account as an officeholder controlled committee for a future term of the same office by amending the statement of



organization for the committee to reflect the redesignation for the future term of office prior to the date the officer's term of office ends.

(3) An officeholder may redesignate officeholder funds in the redesignated officeholder account as officeholder funds for the new term of office, subject to the limitations in subdivision (e)(4).

(4) Once the officeholder's term of office ends or he or she leaves that office, whichever is earlier, the officeholder may only use his or her officeholder funds for the following purposes:

(A) Paying outstanding officeholder expenses.

(B) Repaying contributions to contributors to the officeholder account.

(C) Making a donation to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization, if no substantial part of the proceeds will have a material financial effect on the officeholder, a member of his or her immediate family, or his or her committee treasurer.

(D) Paying for professional services reasonably required by the officeholder controlled committee to assist in the performance of its administrative functions.

(5) The officeholder shall terminate the officeholder controlled committee within 90 days of the date the officer's term of office ends or he or she leaves that office, whichever is earlier. The Executive Director may for good cause extend the termination date or permit the candidate to reopen the account.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 84104, 85316 and 90000-90007, Government Code.

**HISTORY**

1. New section filed 7-3-2007; operative 8-2-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2007, No. 27). For prior history, see Register 2007, No. 26.
2. Change without regulatory effect amending section filed 3-22-2016; operative 4-21-2016 pursuant to 2 CCR 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2016, No. 13).



Office of the  
City Attorney

**DATE:** December 28, 1999

**TO:** BARBARA GILBERT,  
Aide to Mayor Shirley Dean

**FROM:** MANUELA ALBUQUERQUE, City Attorney *MA*  
By: CAMILLE COUREY, Deputy City Attorney

**SUBJECT:** APPLICATION OF BERKELEY ELECTION REFORM ACT TO OFFICELHOLDER ACCOUNTS

**ISSUE:**

Does the Berkeley Election Reform Act (BERA) govern officeholder accounts?

**CONCLUSION:**

No. The BERA does not govern true officeholder accounts per se. However, the mere fact that an account may be designated an officeholder account does not insulate it from scrutiny under the BERA or other applicable local law if the officeholder account is not used strictly for officeholder purposes or if some action taken with respect to the officeholder account implicates campaign contributions and expenditures or other applicable local laws.

**ANALYSIS:**

Sarah Reynoso, former secretary and staff counsel to the Fair Campaign Practices Commission (FCPC), issued an opinion to the FCPC dated December 2, 1991, a copy of which is attached, stating that the BERA's contribution limit does not apply to contributions made to an officeholder account. The opinion reasons that the BERA's contribution limit applies only to "contributions" as defined in the BERA, i.e., which are made directly or indirectly in support of or in opposition to the nomination or election of one or more candidates to elective office. (See Berkeley Municipal Code (BMC) § 2.12.100.) Contributions to a true officeholder account are not made for the purpose of nominating or electing a candidate to office, but rather for the use of an officeholder in carrying out the duties of his or her office. Therefore, the contribution limit of the BERA is inapplicable to officeholder accounts.<sup>1</sup> For similar reasons, the BERA does not

<sup>1</sup> However, the opinion also provided that contributions to officeholder accounts still had to be reported on campaign statements because the State Fair Political Practices Commission (FPPC) Regulations broadly defined contributions as any contribution for "political purposes." Since officeholder expenses are for political purposes, they must be reported to the State.

Barbara Gilbert  
Re: Application of Berkeley Election Reform Act To Officeholder Accounts  
December 28, 1999  
Page 2

apply to true officeholder accounts.

The BERA requires the filing of statements to report the amounts received and expended in municipal elections. (See BMC §§ 2.12.015, 2.12.030 through 2.12.050) Specifically, a "campaign statement" required to be filed under the BERA is an itemized report which provides the information required by Sections 2.12.245 through 2.12.325 of the BERA. (BMC § 2.12.080.) Sections 2.12.245 through 2.12.325 govern the reporting of contributions and expenditures. "Contributions" and "expenditures" are defined by the BERA as any amounts received or expended, respectively, in aid of or in opposition to the nomination or election of one or more candidates to elective office. (See BMC §§ 2.12.100 and 2.12.130.) Contributions to or expenditures from a true officeholder account are not subject to the BERA's reporting requirements because they are made for the purpose of carrying out the duties of elective office, and not for the purpose of aiding or opposing the nomination or election of one or more candidates to elective office.<sup>2</sup> Therefore, the BERA does not apply to true officeholder accounts.

However, the fact that an account may be designated as an officeholder account will not shield it from scrutiny under the BERA if the officeholder account is, in fact, being used for the receipt of contributions or the making of expenditures in aid of the nomination or election of a candidate for local elective office. Nor will BERA requirements, such as the \$250 contribution limit or the prohibition against contributions from businesses to candidates, be held inapplicable if contributions made initially to an officeholder account are transferred subsequently to a campaign account. Where the actions taken with respect to an officeholder account implicate campaign contributions and expenditures in municipal elections, the officeholder account will be scrutinized under the BERA and other applicable local law.

Attachment

cc: Fair Campaign Practices Commission  
Sherry Kelly, City Clerk

City Attorney Opalco Index: H.E.L. and H.G.

CCM

PAUSERS\BEL2\offhldr.mam.doc

<sup>2</sup> Again, however, the State FPPC still requires the reporting of activity relating to an officeholder account. (See footnote 1.)

CITY OF BERKELEY

DATE: December 9, 1991

Memorandum

TO: FCPC COMMISSIONERS

FROM: Sarah Reynolds, Secretary & Staff Counsel

SUBJECT: APPLICABILITY OF BERA'S CONTRIBUTION LIMIT TO FUNDS RAISED FOR OFFICEHOLDER EXPENSES.

BACKGROUND AND ISSUE

I received the attached letter from Richard N. Lerner, treasurer of Friends of Loni Hancock Committee ("Committee"), regarding the applicability of BERA's (Berkeley Election Reform Act) \$250 contribution limit to funds raised to cover officeholder expenses. The Committee would like to raise money to cover activities by the Mayor for which the City has not allocated funds, for example, distribution of a newsletter and international travel to visit Berkeley Sister Cities.

Thus, the issue presented to the Commission is as follows: Is BERA's \$250 contribution limit applicable to funds raised for officeholder expenses?

CONCLUSION

No. The BERA's contribution limitation is only applicable to money raised "in aid of or in opposition to the nomination or election" of a candidate. Since the Committee intends to raise these funds for activities unrelated to the nomination or election of the Mayor, they are not subject to the BERA's \$250 contribution limitation. However, such funds must be reported as contributions under the State Political Reform Act and their expenditure itemized on the disclosure forms.

ANALYSIS

The BERA prohibits candidates for elective office from soliciting or accepting a contribution of more than \$250 from any one contributor. (BERA section 2.12.415.) Thus, funds which fall within BERA's definition of a contribution, are subject to the \$250 limit. In order to determine whether funds raised for officeholder expenses are subject to the contribution limitation, BERA's definition of contribution must be reviewed.

The BERA defines contribution, in part, as follows:

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or

FCPC COMMISSIONERS  
December 9, 1991  
Page 2

in opposition to the nomination or election of one or more candidates . . . . (Emphasis added.)

Thus, the plain language of the BERA requires that a contribution be solicited for purposes related to the nomination or election of a candidate for office to be subject to its contribution limitation. Since the Committee intends to raise funds for purposes unrelated to the Mayor's nomination or election for elective office, such funds do not fall within the BERA's definition and are therefore not subject to its \$250 limitation.

However, because the state Political Reform Act defines contribution to include any funds raised for political purposes, funds raised for officeholder expenses are considered contributions and must be reported on campaign disclosure forms.<sup>1/</sup> (Government Code section 82015.) Additionally, since the court's ruling in SEIU v. FPCC invalidated the state's \$1,000 contribution limit, funds raised for officeholder expenses are not subject to any limitation.

As a final precaution, the Committee should be advised that the FPCC has issued regulations concerning officeholder expenses and it should review them with respect to their interaction with the BERA.

Attachment

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<sup>1/</sup>I spoke with the FPCC's legal staff and confirmed that funds raised for officeholder expenses must be reported as contributions on the campaign disclosure forms.

# COMMUNICATIONS

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**Harvey, Samuel**

---

**From:** Cordell Hindler <cordellhindler@ymail.com>  
**Sent:** Monday, September 30, 2019 5:22 PM  
**To:** FCPC (Fair Campaign Practices Commission)

hello Emma, the Next Contra Costa Mayor's conference will be on the 5th of December

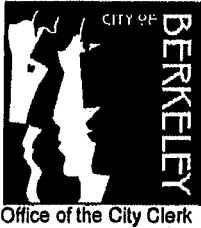
hosted by the City of Martinez

Location to be To be Determined

55.00 dollars a person

Sincerely  
Cordell





**NOTICE OF NON-PAYMENT OF LATE FILING PENALTY**

September 25, 2019

Noah Sochet, Treasurer  
Maria Poblet for Rent Board 2022  
1009 Madison Street #5  
Oakland, CA 94607

Dear Noah:

This letter serves as notice that the fine of \$230.00 that was levied against you for the late filing of Form 460 for the campaign committee *Maria Poblet for Rent Board 2022* has not been paid.

The "Notice of Penalty" letter dated August 28, 2019 stated that the fine was due 20 days from the date of the letter. The fine was due in full on September 17, 2019.

Please submit payment immediately to:

City Clerk Department  
2180 Milvia Street  
Berkeley, CA 94704

**Failure to pay the fine by October 15, 2019 will result in the matter being referred to the Finance Department for collection.**

Additionally, the letter noted discrepancies in your filing resulting in a negative balance and requested an amendment to that filing no later than September 7, 2019, which has not been filed. Please file as soon as possible; your campaign committee will remain open and your filing obligations will continue until this issue can be resolved.

Sincerely,

Mark Numainville  
City Clerk

cc: Fair Campaign Practices Commission  
Maria Poblet, Assistant Treasurer, Maria Poblet for Rent Board 2022

**Harvey, Samuel**

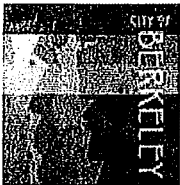
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**From:** Rome, Leslie on behalf of Elections  
**Sent:** Wednesday, September 25, 2019 2:50 PM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Subject:** Amended Committee forms  
**Attachments:** Committee for Berkeley Public Schools 2019-09-25 410A Int.pdf; Committee for Berkeley Public Schools 2019-09-23 SORGA Int.pdf

Please find attached an amended Form 410 and Berkeley Statement of Organization, changing the name of campaign committee *Berkeley Schools Educational Excellence Act of 2016* to *Committee for Berkeley Public Schools*, and changing the committee type from primarily formed measure to general purpose.

*Leslie S. Rome*  
*Assistant Management Analyst*  
*City Clerk Department*  
*2180 Milvia Street*  
*Berkeley, CA 94704*  
*Ph. (510) 981-6908 Fax (510) 981-6901*  
*website: [www.cityofberkeley.info](http://www.cityofberkeley.info)*  
*email: [lrome@cityofberkeley.info](mailto:lrome@cityofberkeley.info)*

\*\* To ensure a timely response from staff, please send all commission related requests and information to the **Commission Inbox** at [commission@cityofberkeley.info](mailto:commission@cityofberkeley.info). Election related requests and information should be sent to the **Elections Inbox** at [elections@cityofberkeley.info](mailto:elections@cityofberkeley.info).





# CITY OF BERKELEY - STATEMENT OF ORGANIZATION

CITY OF BERKELEY  
CITY CLERK DEPT

2019 SEP 23 PM 4:22

Date Formed: 5/3/2016

Initial  
 Amendment

### INSTRUCTIONS:

The Berkeley Election Reform Act (BERA) requires every committee to file with the City Clerk a Statement of Organization within ten (10) days after it is formed as a committee (Berkeley Municipal Code (BMC) § 2.12.255). "Committee" means any person or combination of persons that directly or indirectly receives contributions or makes expenditures exceeding \$250 in a calendar year for the purpose of influencing or attempting to influence the voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party. (BMC § 2.12.095.)

The information required to be reported on the statement of organization is set forth in BMC § 2.12.260. In order to comply with the disclosure requirements of Section 2.12.260, all committees must complete and file both the City of Berkeley Statement of Organization as well as the State Form 410.

Every committee that spends or receives contributions of \$250 or more in a calendar year must file both this form and State Form 410 with the City Clerk to comply with local law.

Provide the following information in addition to completing a State Form 410. File both forms with the City Clerk within 10 days of the date the committee is formed.

### Filing Information:

City Clerk Department  
2180 Milvia Street, 1<sup>st</sup> Floor  
Berkeley, CA 94704

### Contact:

elections@cityofberkeley.info  
(510) 981-6900

COB 03/2010

COMMITTEE NAME: Committee for Berkeley Public Schools  
(Berkeley Schools Educational Excellence Act of 2016)  
PHONE NUMBER: (415) 840-3695 E-MAIL: ukratzer@yahoo.com

THIS COMMITTEE IS (CHECK ONE):  INDEPENDENT -or-  CONTROLLED

IF CONTROLLED, LIST THE NAME, STREET ADDRESS, AND PHONE NUMBER OF THE CANDIDATE(S) OR COMMITTEE(S) BY WHICH THIS COMMITTEE IS CONTROLLED OR WITH WHICH IT ACTS JOINTLY:

|                |                |
|----------------|----------------|
| Name: _____    | Name: _____    |
| Address: _____ | Address: _____ |
| Phone: _____   | Phone: _____   |

Please attach additional sheets if necessary.

NAME, STREET ADDRESS, AND PHONE NUMBER OF CANDIDATE(S) AFFILIATED WITH COMMITTEE:

|                |                |
|----------------|----------------|
| Name: _____    | Name: _____    |
| Address: _____ | Address: _____ |
| Phone: _____   | Phone: _____   |
| Name: _____    | Name: _____    |
| Address: _____ | Address: _____ |
| Phone: _____   | Phone: _____   |

Please attach additional sheets if necessary.

AMOUNT OF CASH ON HAND AT TIME OF FILING: \$12,137.23

Upon dissolution, I verify that any surplus funds will be disposed of in accordance with state and local law.

### VERIFICATION:

I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date 9/23/19

Signature of Treasurer or Candidate \_\_\_\_\_

**Statement of Organization  
Recipient Committee**

Statement Type  Initial

Not yet qualified  or

Amendment  
List I.D. number: # 1385985

Termination - See Part 5  
List I.D. number: # \_\_\_\_\_

Date qualified as committee \_\_\_\_\_ / \_\_\_\_\_ / 2016  
(if applicable)

Date of Termination \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_

**1. Committee Information**

NAME OF COMMITTEE

Committee for Berkeley Public Schools

STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE  
Berkeley CA 94703 4152903695

MAILING ADDRESS (IF DIFFERENT)

FAX / E-MAIL ADDRESS

COUNTY OF DOMICILE JURISDICTION WHERE COMMITTEE IS ACTIVE

Alameda County Berkeley

**2. Treasurer and Other Principal Officers**

NAME OF TREASURER

Valerie Kratzer

STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE  
Berkeley CA 94703 4152903695

NAME OF ASSISTANT TREASURER, IF ANY

STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE

NAME OF PRINCIPAL OFFICER(S)

Ty Alper

STREET ADDRESS (NO P.O. BOX)

CITY STATE ZIP CODE AREA CODE/PHONE  
Berkeley CA 94703 510-593-4227

Attach additional information on appropriately labeled continuation sheets.

**3. Verification**

I have used all reasonable diligence in preparing this statement and to the best of my knowledge the information contained herein is true and complete. I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on 9/25/2019 By \_\_\_\_\_ IRER

Executed on \_\_\_\_\_ By \_\_\_\_\_ SIGNATURE OF CONTROLLING OFFICERHOLDER, CANDIDATE, OR STATE MEASURE PROponent

Executed on \_\_\_\_\_ By \_\_\_\_\_ SIGNATURE OF CONTROLLING OFFICERHOLDER, CANDIDATE, OR STATE MEASURE PROponent

Executed on \_\_\_\_\_ By \_\_\_\_\_ SIGNATURE OF CONTROLLING OFFICERHOLDER, CANDIDATE, OR STATE MEASURE PROponent

CALIFORNIA 410 FORM For Official Use Only  
Date Stamp  
CITY OF BERKELEY  
CITY CLERK DEP  
2019 SEP 25 AM 9: 0

**Statement of Organization  
Recipient Committee**

INSTRUCTIONS ON REVERSE

COMMITTEE NAME

Committee for Berkeley Public Schools

Page 2

I.D. NUMBER

1385985

- All committees must list the financial institution where the campaign bank account is located.

NAME OF FINANCIAL INSTITUTION

Mechanics Bank

AREA CODE/PHONE

(800) 797-6324

BANK ACCOUNT NUMBER

ADDRESS

Berkeley

STATE

CA

ZIP CODE

94704

**4. Type of Committee** Complete the applicable sections.

**Controlled Committee**

- List the name of each controlling officeholder, candidate, or state measure proponent. If candidate or officeholder controlled, also list the elective office sought or held, and district number, if any, and the year of the election.
- List the political party with which each officeholder or candidate is affiliated or check "nonpartisan."
- If this committee acts jointly with another controlled committee, list the name and identification number of the other controlled committee.

| NAME OF CANDIDATE/OFFICEHOLDER/STATE MEASURE PROponent | ELECTIVE OFFICE SOUGHT OR HELD<br>(INCLUDE DISTRICT NUMBER IF APPLICABLE) | YEAR OF ELECTION | PARTY                                |
|--------------------------------------------------------|---------------------------------------------------------------------------|------------------|--------------------------------------|
|                                                        |                                                                           |                  | <input type="checkbox"/> Nonpartisan |
|                                                        |                                                                           |                  | <input type="checkbox"/> Nonpartisan |

**Primarily Formed Committee**

Primarily formed to support or oppose specific candidates or measures in a single election. List below:

| CANDIDATE(S) NAME OR MEASURE(S) FULL TITLE (INCLUDE BALLOT NO. OR LETTER) | CANDIDATE(S) OFFICE SOUGHT OR HELD OR MEASURE(S) JURISDICTION<br>(INCLUDE DISTRICT NO., CITY OR COUNTY, AS APPLICABLE) |                          | CHECK ONE                |                          |
|---------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|--------------------------|
|                                                                           | SUPPORT                                                                                                                | OPPOSE                   | SUPPORT                  | OPPOSE                   |
|                                                                           | <input type="checkbox"/>                                                                                               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
|                                                                           | <input type="checkbox"/>                                                                                               | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**Statement of Organization  
Recipient Committee**

INSTRUCTIONS ON REVERSE

CALIFORNIA  
FORM **410**

Page 3

I.D. NUMBER

1385985

COMMITTEE NAME

Committee for Berkeley Public Schools

**4. Type of Committee** (Continued)

**General Purpose Committee**

Not formed to support or oppose specific candidates or measures in a single election. Check only one box:

CITY Committee  COUNTY Committee  STATE Committee

PROVIDE BRIEF DESCRIPTION OF ACTIVITY

Committee to support ballot and bond measures that support Berkeley public schools.

**Sponsored Committee**

List additional sponsors on an attachment.

NAME OF SPONSOR

INDUSTRY GROUP OR AFFILIATION OF SPONSOR

STREET ADDRESS

NO. AND STREET

CITY

STATE

ZIP CODE

**Small Contributor Committee**

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_  
Date qualified

**5. Termination Requirements**

By signing the verification, the treasurer, assistant treasurer and/or candidate, officeholder, or proponent certifies that all of the following conditions have been met:

- This committee has ceased to receive contributions and make expenditures;
  - This committee does not anticipate receiving contributions or making expenditures in the future;
  - This committee has eliminated or has no intention or ability to discharge all debts, loans received, and other obligations;
  - This committee has no surplus funds; and
  - This committee has filed all campaign statements required by the Political Reform Act disclosing all reportable transactions.
- There are restrictions on the disposition of surplus campaign funds held by elected officers who are leaving office and by defeated candidates. Refer to Government Code Section 89519.
- Leftover funds of ballot measure committees may be used for political, legislative or governmental purposes under Government Code Sections 89511 - 89518, and are subject to Elections Code Section 18680 and FPPC Regulation 18521.5.

**Harvey, Samuel**

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**From:** bgilbertca@aol.com  
**Sent:** Sunday, November 03, 2019 11:00 AM  
**To:** FCPC (Fair Campaign Practices Commission)  
**Cc:** drm1a2@sbcglobal.net  
**Subject:** Loaded Ballot Language

**To Berkeley FCPC:**

***There is substantial community concern about and evidence of loaded ballot language on City of Berkeley sponsored ballot measures. I personally have watched most public Council/City Attorney discussions about ballot language and have been dismayed by the way this language is "crafted" and manipulated to achieve the desired political result. I am also dismayed by the exceedingly short time frame for various interested parties to weigh in on ballot language and ballot arguments.***

***John Diaz of the SF Chronicle has recently been covering this on the state level.***

***Is this a matter within the jurisdiction of Berkeley's FCPC? Would the FCPC be willing/able to take this up?***

***Thank you for your prompt attention.***

***Sincerely, Barbara Gilbert***

***Barbara Gilbert  
476 Vincente Avenue  
Berkeley, CA 94707-1520***

***Phone: 510-559-8216  
E-mail: bgilbertca@aol.com***