

**CONCURRENT MEETING OF THE FAIR CAMPAIGN PRACTICES COMMISSION
AND THE OPEN GOVERNMENT COMMISSION**

MEETING AGENDA

Civic Center
2180 Milvia St.
Cypress Room (1st Floor)

Regular Meeting
February 20, 2020
7:00 p.m.

Secretary: Samuel Harvey, Deputy City Attorney

The Commissions 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 Commissions' purview are heard at the beginning of meeting. Speakers may comment on agenda items when the Commissions hear those items.*

Fair Campaign Practices Commission Agenda

4. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
5. Approval of minutes for the January 16, 2020 regular meeting.
6. Approval of minutes for the February 6, 2020 special meeting.
7. Officeholder Accounts and Office Expense Accounts; discussion and possible action.
8. Links to public financing information in the Municipal Code; discussion and possible action.
9. Public financing certification process; discussion and possible action.
10. Annual election of Chair and Vice Chair; discussion and possible action.

Open Government Commission Agenda

11. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
12. Approval of minutes for the January 16, 2020 regular meeting.
13. Annual election of Chair and Vice Chair; discussion and possible action.
14. Adjournment.

Communications

FCPC:

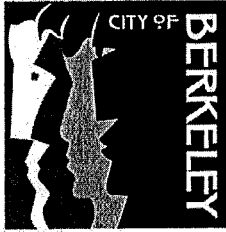
- None

OGC:

- Email from Cordell Hunter
- Email from Steve Martinot

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.

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

DRAFT MINUTES

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

Regular Meeting
January 16, 2020

Members Present: Dean Metzger (Chair), Patrick O'Donnell, Janis Ching, Daniel Saver, Jessica Blome, Mark McLean, Brad Smith

Members Absent: Jedidiah Tsang (excused)

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

1. **Call to Order**

Chair called the meeting to order at 7:01 p.m.

2. **Roll Call**

Roll call taken.

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

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

4. **Reports**

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

5. **Approval of Minutes for the November 21, 2019 Regular Meeting**

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

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

6. **Revising COLA amounts for candidate eligibility to receive public funds under the Election Reform Act; discussion and possible action.**

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

Motion to table item and direct staff to research whether current dollar amounts can be noted in the City's online version of the Municipal Code and continue discussion at next regular

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

7. **Commission 2020 regular meeting schedule; discussion and possible action.**

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

Motion to approve 2020 regular meeting schedule (M/S/C: Metzger/Blome; Ayes: Metzger, Ching, Saver, Blome, McLean, Smith, O'Donnell; Noes: none; Abstain: none; Absent: Tsang (excused))

8. **Discussion regarding nomination and voting procedures for Commission Chair and Vice-Chair; discussion and possible action.**

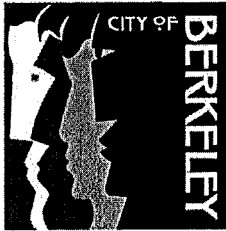
- a. Public Comment: 1 speaker.
- b. Commission discussion.

No action taken.

9. **Adjournment**

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

The meeting adjourned at 7:41 p.m.



Fair Campaign Practices Commission

DRAFT MINUTES

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

Special Meeting
February 6, 2020

Members Present: Dean Metzger (Chair), Patrick O'Donnell, Janis Ching, Mark McLean, Jedidiah Tsang

Members Absent: Daniel Saver, Jessica Blome (excused), Brad Smith

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

1. **Call to Order**

Chair called the meeting to order at 7:04 p.m.

2. **Roll Call**

Roll call taken.

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

No Speakers

4. **Public Campaign Financing Program certification application for Alexander Sharenko; discussion and possible action.**

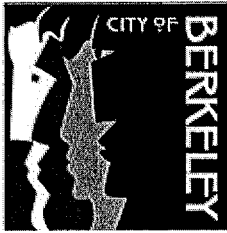
- a. Public comment: No speakers.
- b. Commission discussion and action.

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

5. **Adjournment**

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

The meeting adjourned at 7:08 p.m.



Fair Campaign Practices Commission

Date: February 12, 2020
To: FAIR CAMPAIGN PRACTICES COMMISSION
From: Dean Metzger, Commission Chair
Subject: Council discussion and action with regards to the Officeholder Accounts FCPC proposal.

At the Special City Council meeting of Tuesday February 4, 2020, the City Council had a lengthy discussion about their D13 accounts, and the lack of discretionary funds Council Members have to spend. They then decided not to approve the FCPC recommendation to prohibit Officeholder Accounts.

To remedy this concern the FCPC should request from the City Manager the amount each Council Member receives in their D13 accounts and after some discussion make a recommendation to Council. If the D13 account is large enough to allow Council members to make the expenditures they feel will keep their constituents informed of their activities, travel to local meetings, provide transportation expenses and meals - there would be no need for Officeholders Accounts.

A search of the City's Budget documents did not reveal the amounts allocated to the Council D13 accounts. Once the information is available the FCPC can make its recommendations to City Council.

Attachments:

1. Mayor and City Council Financial Summary
2. Draft request to City Manager for budget details of the Mayor and each individual Council Member

ITEM 7
ATTACHMENT 1

MAYOR AND CITY COUNCIL FINANCIAL SUMMARY

	FY 2015 Actual	FY 2016 Actual	FY 2017 Adopted	FY 2018 Proposed	FY 2019 Proposed
EXPENDITURES					
By Type:					
Salaries and Benefits	1,660,661	1,760,619	1,723,617	1,833,734	1,880,031
Services and Materials	36,942	43,407	113,526	113,526	113,526
Capital Outlay	1,953	7,674			
Internal Services	89,100	81,181	81,181	81,181	81,181
Indirect Cost Transfer					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Division:					
Mayor's Office	515,095	558,137	584,877	554,389	566,917
Council Offices	1,273,561	1,334,744	1,333,447	1,474,052	1,507,821
Exiting Officials					
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
By Fund:					
General Fund	1,788,656	1,892,881	1,918,324	2,028,441	2,074,738
	<u>1,788,656</u>	<u>1,892,881</u>	<u>1,918,324</u>	<u>2,028,441</u>	<u>2,074,738</u>
General Fund FTE					
	12.00	12.00	12.00	12.00	12.00
Total FTE					
	12.00	12.00	12.00	12.00	12.00

ITEM 7
ATTACHMENT 2

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Date: February 20, 2020

To: Dee Williams-Riley
City Manager

From: Fair Campaign Practices Commission

Subject: **Request for budget details of the Mayor and each individual Council Member.**

At the Special Council meeting of Tuesday, February 4, 2020 the Council heard and took action on the FCPC recommendation to amend the Berkeley Municipal Code to prohibit Officeholder Accounts. The Council discussion went to great lengths about why they needed the Officeholder Account before declining to approve the FCPC recommendation.

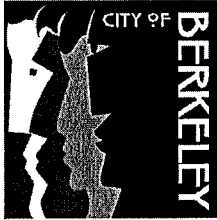
The FCPC needs to understand why the Council took the action it did.

To help the Commission determine if any further action on its part would be helpful, the Commission requests that your office provide the FCPC with the detailed budgets of the Mayor and each Council Member. The Commission has the budget summaries of the Mayor and City Council but it is of little use for the discussion.

Please provide the requested information in time for the FCPC meeting on March 19, 2020.


Thank you,

Fair Campaign Practices Commission



City Clerk Department

February 6, 2020

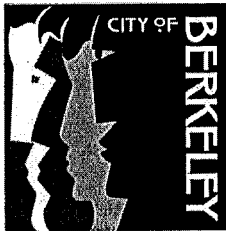
To: Fair Campaign Practices Commission
From:  Mark Numainville, City Clerk
Subject: Links to Public Financing Information in the Municipal Code

At the January 16, 2020 commission meeting, the Fair Campaign Practices Commission (FCPC) discussed the recent amendments to the Berkeley Election Reform Act (BERA) regarding the addition of language to notify candidates and committees that the dollar amounts in public financing may be adjusted over time. While the new dollar amounts are listed in the informational and reference materials provided to all candidates and committees, there was a concern that despite the new language, the actual dollar amounts would not be shown in the online municipal code.

As requested by the FCPC, the City Clerk Department contacted Code Publishing, the City's online municipal code vendor. Code Publishing confirmed that their online system does have the ability to add a link in the code text that would link directly to a webpage or document that listed the actual dollar amounts currently in effect.

The City Clerk Department will operationalize this change for the 2020 election cycle. The amendments to notify candidates and committees that the dollar amounts in public financing may be adjusted over time will have their second reading on February 25, 2020 and become effective approximately 30 days later. After the effective date, Code Publishing will update the online municipal code and the links will be added. It is anticipated that the change will be made by the middle of April 2020.

If you have any questions, please contact me at mnumainville@cityofberkeley.info.



Fair Campaign Practices Commission

DATE: February 13, 2020
TO: Fair Campaign Practices Commission
FROM: Samuel Harvey, Commission Secretary
SUBJECT: Public financing certification process

Under the Berkeley Fair Elections Act of 2016 (BMC § 2.12.490 et seq.), the Commission is required to certify a candidate's eligibility to participate in the City's public campaign financing program before a candidate can receive Fair Elections funds. (BMC § 2.12.505.D.)

The Commission's regulations provide that "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 complete 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." (FCPC Regs. § R2.12.500.1.)

The City Clerk's office received the first application and accompanying Initial Qualifying Declaration for Public Funds of the current election cycle on January 22, 2020. Had the Commission not considered this application until its next regular meeting on February 20, 2020, the candidate would not have received the initial payment of Fair Elections funds until as late as February 27, 2020. (BMC § 2.12.505.E.) As a result, the Chair called a special meeting on February 6, 2020 to certify the candidate to participate in the public financing program.

Staff recommends the Commission consider adopting a policy establishing the timeframes in which the Commission will consider holding a special meeting to approve a public financing application rather than waiting until the next regular meeting. Setting a timeline would ensure fairness and provide clarity for candidates and staff. For reference, the relevant dates for the first application of the cycle were:

Application received: January 22, 2020
Next regular meeting: February 20, 2020 (29 days later)
Special meeting held: February 6, 2020 (15 days later)

ITEM 9

FCPC February 20, 2020 Meeting
Item 8 – Public financing certification process
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Additionally, the Commission may wish to consider directing staff to draft a proposed amendment to the Berkeley Election Reform Act (BERA) which would allow staff (e.g., the Office of the Clerk in consultation with the Commission Secretary) to certify public financing applications without Commission action.

Attachments

1. Fair Elections Act of 2016 (BMC § 2.12.490 et seq.)
2. FCPC Regulations § R2.12.500.1

Article 8. Berkeley Fair Elections Act of 2016**Section 2.12.490 Title and purpose.**

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.495 Offices covered.

Candidates for the offices of Mayor and City Council shall be eligible to participate in the public campaign financing program established by this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

Section 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 total dollar amount of at least five-hundred dollars (\$500).

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

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

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. (Ord. 7674-NS § 1, 2019; Ord. 7564-NS § 7, 2017; Ord. 7524-NS § 3.6 (part), 2016)

Section 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.

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

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

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

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

E. The City shall make an initial payment of Fair Elections funds within seven business days of the 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. (Ord. 7674-NS § 2, 2019; Ord. 7564-NS § 8, 2017; Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.510 Candidate statement notice.

A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6.1. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.515 Transition rule for current election cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.520 Special municipal elections.

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.525 Campaign accounts for participating candidates.

A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account as required by Section 2.12.250.

B. A participating candidate may maintain a campaign account other than the campaign account described in subsection A if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.

C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subsection B shall not be considered "contributions" to the candidate's current campaign.

D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles. (Ord. 7524-NS § 3.6 (part), 2016)

Section 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. (Ord. 7674-NS § 3, 2019; Ord. 7564-NS § 9, 2017; Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.535 Administrative modification of timelines.

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.540 Insufficient funds in the program.

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section 2.12.505.B. Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section 2.12.505.C, the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section 2.12.500.A.6. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.545 Cost of living adjustments.

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

Section 2.12.550 Fair Elections Act penalties.

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- C. The Commission shall, after a hearing held pursuant to Section 2.12.230, have the authority to impose the fine created by this section upon a two-thirds vote. (Ord. 7524-NS § 3.6 (part), 2016)

Section 2.12.555 Violation--Persons ineligible for public funds--Time limit.

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section 2.12.230. The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation. (Ord. 7524-NS § 3.6 (part), 2016)

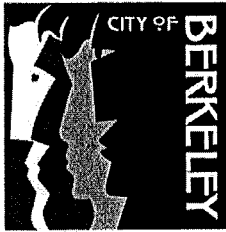
Section 2.12.560 Review by Commission.

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. (Ord. 7524-NS § 3.6 (part), 2016)

FCPC REGULATIONS

R2.12.500.1 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.



Open Government Commission

DRAFT MINUTES

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

Regular Meeting
January 16, 2020

Members Present: Dean Metzger (Chair), Jessica Blome, Janis Ching, Patrick O'Donnell, Daniel Saver, Mark McLean, Brad Smith

Members Absent: Jedidiah Tsang (excused)

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

1. **Call to Order**

Chair called the meeting to order at 8:00 p.m.

2. **Roll Call**

Roll call taken.

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

Three members of the public in attendance. Two speakers on matters not on agenda.

4. **Reports**

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

5. **Approval of Minutes for the November 21, 2019 Regular Meeting**

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

Motion to adopt minutes with edits (M/S/C: Smioth/Ching; Ayes: Metzger, Ching, Saver, Blome, McLean, Smith; Noes: none; Abstain: none; Absent: Tsang (excused))

6. **Form 700 disclosure of employment information; discussion and possible action.**

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

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

7. **Commission 2020 regular meeting schedule; discussion and possible action**

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

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

8. **Adjournment**

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

The meeting adjourned at 9:03 p.m.

COMMUNICATIONS

Harvey, Samuel

From: Cordell Hindler <cordellhindler@ymail.com>
Sent: Friday, January 17, 2020 2:10 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Meeting Procedures

hello Sam, i have an excerpt in regarding how the Procedures go at council Meetings:

This is the time for comments on any item within the Council's subject matter jurisdiction, if such item is NOT listed on tonight's agenda. The Council may not engage in discussion or take action on any item that is not specifically listed on the agenda. Your item may be referred to city staff for investigation, report or placement on a future agenda. Persons addressing the Council are required to limit their remarks to three (3) minutes unless an extension or decrease of time is ordered. Please file your name and address with the City Clerk on forms available at the speaker's podium.

sincerely
Cordell Hindler

Harvey, Samuel

From: Steve Martinot <martinot4@gmail.com>
Sent: Friday, January 24, 2020 10:52 AM
To: Harvey, Samuel
Subject: the rules of public comment
Attachments: on speech.doc

Hi,
Would you please send the attached article to the Open Government Commission. It is a communication about public comment as a procedure. And would you please put the issue on the agenda for the next meeting of that commission, which will be in February. Thank you.
Steve Martinot

A proposal about speech

By Steve Martinot

Let us talk about speech. Not "free speech," nor the "right" to free speech, which are simply abstractions. We wish to "talk" about speech in the sense of "having spoken." It is not abstract. To have spoken means someone has heard and understood. Without that, one simply duplicates the proverbial tree falling in the forest, etc.

We will be "talking" here about "speech" in its political incarnation. There will be a proposal about it at the end of this essay.

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There is a strange pro forma routine practiced in city government procedures (Councils, Commissions, etc.). it is frivolously called "Public Comment." When people avail themselves of this, they get two minutes. That is their "field ration." If ten or more people show up to speak on an item, then each gets only one minute. That is their "K-ration" (in WWII terminology). These are combat rations, the first referring to food carried during extended operations, and the latter to provisions for intense short-term engagement with the enemy.

Most people have gotten used to these time limits. They have long since ceased to be considered a travesty of democratic principles. They pretend to permit everyone to get their word in. Yet they form part of rules of engagement, on this field of battle for democracy between the necessities that bring people to speak versus council's eagerness to curtail speaking time. The sense of humiliation, or of being disparaged, means there are casualties.

Why do people have to come to council to speak?

Many people look askance at long Public Comment lines on controversial topics. They think that people are only there to complain, or to be self-important, or to hear themselves talk. And sometimes it might appear like that when people sound vaguely repetitive, or making bland or emotive statements. Insofar as what speakers say rarely gets included in council's thinking, one might conclude that the comments have little importance for them. It is as if council subjects itself to the process to maintain a façade of democratic procedure. It is in tune with the notion that democracy can be summed up as simply the right to vote. The implication is, for those already elected, they have merely to oblige people by granting them the right to speak. But this is a very superficial view of democracy. The speakers are not recognized as having spoken.

The Fundamental Principle of Democracy is that those who will be affected by a policy should be the ones who articulate the issues at stake and decide on the policy that will affect them as people with respect to those issues.

That means it is more than just having a vote. Indeed, if all one has is a vote, one ends up voting on things other people have said or done, without real involvement in them.

When City Council passed a law controlling sleeping in an RV in city streets, were any of the RV dwellers, who were to be affected by that policy, included in the process of writing it? No. Not one. When council passed a mean little ordinance requiring homeless people to keep their possessions in a 9 square foot area, were there any homeless people involved in writing that? No. Not one. When council decided to stay inscribed in the Urban Shield program, were

any of the researchers, who opposed it on the basis of extensive study of its politics and technologies included in that decision? No. Not one. When the city hired a consultant to research racial bias in police department operations, and police use of force against peaceful demonstrators, were any of the victims of police tear gassing or harassment included in making the decision on what the consultant was to do? No.

Do you know where all those people end up politically, those who live in RVs, or on the street, or who organize anti-war and anti-militarism demonstrations (not mention those who abstain from complaining about police harassment out of fear that it could lead to retaliatory harassment)? You know where they end up? On the Public Comment line. They write letters, distribute petitions, call councilmembers, organize meetings, etc. But the closest they will ever get to City Council, where policy is made about these things, is the Public Comment line. They are the ones who know the problems, who are up against survival, who do the research, and who can offer real solutions. But all they get is one minute each on the Public Comment line.

It's a form of exclusion. It is not a corruption of democracy that restricts them to one minute of speech. It is an absence of democracy that puts them on that line in the first place.

Do you remember when black people didn't have a vote? Once even unenslaved black people didn't have citizenship (the Dred Scott decision). After the Civil War, the various levels of government broke civil existence into separate parts and wrote different laws for each one. Who made all the decisions that black people were to be denied a vote, or citizenship, or integration. And who make all the decisions that black people would be given the vote, made citizens, and sometimes able to gain admission to educational facilities. White people. Sometimes black people would make speeches, talk about Constitutional logic, and comment on what the white people did.

The exclusion of those who will be affected by a policy from participation in making that policy is not a detail of US politics. It is the center, the engine of everything that has gone on in this country.

Berkeley is an educated and liberal city. The population of this town and this area contains people educated at all levels of social existence. Higher education is only one form. Industrial experience and street experience are also forms of knowledge. Those who listen to Public Comment carefully are aware that the majority of speakers on controversial issues not only know what they are talking about, but they constitute a vast outpouring of knowledge, descriptions of problems, narratives of injustice, support for humanitarian approaches to people, proposals for the resolution of problems, etc. Those who come to speak about controversial issues often know a lot more about the issues and its background than the council members.

Speakers line up to raise issues of policy because they had been excluded from participating in it. When they speak from having been excluded, they are speaking in a critical voice of the way policy is made. They are speaking to become part of the public record.

It is not because they have small thoughts and make repetitive statements that they suffer time constraints. It is the constraint on time imposed on people with knowledge and experience that has forced their thinking into narrow, repetitive, and sometimes self-serving statements. They make repetitive statements because they have been shoe-horned into that time limit.

One minute is not enough to formulate complete thoughts. But it is perhaps all council wants to hear, as an extension of a more profound exclusionism.

Public Comment is about imparting knowledge to both council and the public

There is a huge difference between speaking at council and writing a letter to Council or just visiting a councilmember's office. In letters, one can develop complex arguments, or describe the logic of situations. But what one says in a letter remains in the letter, withdrawn from or even unadmitted to public discourse. To speak in council is to present ideas and narratives to public discourse. When people come in large numbers, they are also there to educate, to bring a mass of experience to the thinking not only of council, but to the people themselves.

City Council constitutes a center at which people can not only express themselves, and share their knowledge, but also meet and exchange ideas with each other about the issues that city government is addressing. It is not just for the edification of council. They speak to impart their knowledge to all, City Council and the listening public (the audience). It is to create dialogue among the people, as well as with councilmembers – dialogue that should have been at the core of all policy making. To speak in public, and on the public record, gives political existence to people. And that should be recognized. Yet representationism violates that political existence through its focus on procedures.

When Council addressed the issue of single use plastic utensils, over 70 people lined up to speak their minute, most in support of the measure. The importance of the knowledge they presented was enormous. If those statements had been collected, transcribed, and edited into a coherent document, it would have been a powerful indictment of corporate despoliation of the planet, of society's use of plastic, and of the plastics industry. They had a lot to add to the knowledge and wisdom of the city, far beyond what City Council had the heart to put together in its ordinance.

We know that such knowledge exists among the people. Along with the technicians and professors, all have something to add to the way in which this city and this society deal with critical issues. This is a knowledge base that City Council has available. But rather than cultivate it in the interest of social discourse, it gets silenced through procedure. It lurks underneath the time truncations that obstruct how one makes a point. The fact that something is missing at the hands of time constraint is discernible in just about every public comment made. That absence is the sound of silencing.

We the people are being deprived of this knowledge, and short-changed in our political thinking by the one-minute rule.

Efficiency must not be made the primary determinant of government operations.

The question of bias

What is implied, by this inversion – that time constraint is not the result of speaker banality, but its cause – is a question of bias. Bias against public speakers. They are disrespected, first of all, in having their time so severely constrained. They are disrespected in councilmembers not listening, just letting people go through the motions of speaking. Council indifference about what the people are bringing to them creates the impression that what is being spoken is without importance and without social critique. It creates an air of disdain. It says, "you are secondary, you don't count as much as we do, you are something we simply need to get through as fast as possible in order to look democratic."

People who get on the Public Comment line feel that disdain. They feel that sense of inferiority. Though we elected these councilmembers, we are somehow placed in a position of being responsible to them. When we speak, we are seen as just taking up time. That means they wish we would cease because we appear as obstacles to governing. It is like the xenophobe wishing the immigrants would get out of the way and go back where they came from.

Any pretended interest in what the people bring to that comment line gets falsified on two grounds, first, by the time constraint, and second, by the fact that Public Comment goes first before council says anything about the issue at hand. The public is left at sea about council's thoughts and feelings, with only the written agenda to go on.

But the real person who steps up to that microphone is speaking to councilmembers, not to an agenda. As a real person, one speaks in the hopes of speaking to real human beings who can give one a sense of participating in making policy.

Instead, council wants Public Comment to go first, to get it out of the way.

That sense of inferiority clouds a person's thoughts sometimes. One becomes self-conscious. More often it germinates as anger. Yet these speakers are the people of the city, the ones that city politics are all about. They are made to feel like interlopers, taking up council's valuable time.

Yet it is council that practices exclusion. And then practices disparagement by reducing speaking time to a segregation divided by signs that say "us" and "them," dialogue spoken here, and only monologue over there for you people. There is a subtle bigotry in it; "how could all those people have anything useful to say?"

Thus, Council procedure inferiorizes the people who come to participate.

And what does it really mean that people who will be affected by a policy might be disparaged for thinking they should have had some form of inclusion. How familiar is that?

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Proposal: Speakers should have 4 minutes each. They don't have to take the 4 minutes, and someone on the council can warn them when they ramble or repeating themselves. But the 4 minutes would be a serious gesture of faith in the people.

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The ProDemocracy Project will be talking about this and other proposed changes to council procedure at the Pittman Library (@ MLK and Russell St.), on Thursday, January 30, at 5:30 pm, in the Community Room. All are invited.