



Fair Campaign Practices Commission
Open Government Commission

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

MEETING AGENDA

January 19, 2023

6:00 p.m.

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting of the Fair Campaign Practices Commission and Open Government Commission will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of attendees. Therefore, no physical meeting location will be available.

Members of the public interested in attending will be able to observe and address the meeting using the following information:

Please use the following link to join the meeting: <https://us02web.zoom.us/j/82530486544>

Or Telephone: +1 669 900 6833

Meeting ID: 825 3048 6544

Secretary: Samuel Harvey

The Commission may act on any item on this agenda

1. Call to Order 6:00 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 Commission hears those items.*
4. Approval of minutes for November 17, 2022 FCPC-OGC Special Meeting

Fair Campaign Practices Commission (FCPC) Agenda

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

6. Amendments to BERA sections 2.12.415 and 2.12.545 to clarify method for cost of living adjustments for campaign contribution and public financing dollar amounts and to better coordinate adjustments with timing of relevant data availability; discussion and possible action.
7. Report from contribution limits subcommittee under BMC § 2.12.415; discussion and possible action.

Open Government Commission (OGC) Agenda

8. Reports.
 - a. Report from Chair.
 - b. Report from Staff.
9. Commission meeting minutes posting requirements; discussion and possible action.
10. Use of Live Transcription for teleconferenced meetings; discussion and possible action.

Joint FCPC-OGC Calendar

11. Adoption of 2023 FCPC-OGC Joint Concurrent Meeting Schedule; discussion and possible action.
12. Chair and Vice-Chair elections to be held at February meeting; discussion and possible action.

Informational items

13. November 8, 2022 General Election Public Finance Matching Funds Report
14. Adjournment.

Communications

- None

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). 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
Open Government Commission

DRAFT MINUTES

November 17, 2022

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

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting was conducted exclusively through teleconference and Zoom videoconference.

Secretary: Samuel Harvey

Members Present: Jessica Blome, Janis Ching, Pedro Hernandez, Patrick O'Donnell, Jedidiah Tsang, James, Hynes

Also Present: Samuel Harvey, Staff Secretary

1. **Call to Order**

Chair called the meeting to order at 6:05 p.m.

2. **Roll Call**

Roll call taken.

3. **Public Comment**

One speaker.

4. **Approval of Minutes:**

a. October 20, 2022 FCPC-OGC Concurrent Regular Meeting

a. Public comment: none.

b. Commission discussion and action.

Motion to approve minutes (M/S/C: Blome/O'Donnell; Ayes: Blome, Ching, Hernandez, O'Donnell, Hynes; Noes: none; Abstain: Tsang; Absent: Bernstein.)

FCPC Agenda

5. **Reports**
 - a. Report from Chair
 - b. Report from Staff

6. **Complaint alleging violation of BERA by Elgstrand for Rent Board 2022**
 - a. Public comment: One speaker.
 - b. Commission discussion and action.

Motion to accept staff's recommendation to Commission direct the Secretary to investigate the complaint further regarding the alleged failure to provide the proper disclaimer on one or more campaign communications and return at a future meeting with a subsequent report (M/S/C: Blome/Tsang; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

7. **Complaint alleging violation of BERA by the Committee for an Affordable and Resilient Berkeley – Yes on Measure L**
 - a. Public comment: One speaker.
 - b. Commission discussion and action.

Motion to dismiss complaint (M/S/C: Tsang/Blome; Ayes: Blome, Ching, Tsang, Hynes; Noes: none; Abstain: O'Donnell; Absent: Bernstein; Recusal: Hernandez out of abundance of caution due to work with nonprofits.)

8. **Staff referral regarding failure to file copy of mass mailings by Berkeleyans for Better Planning No on Measure L**
 - a. Public comment: One speaker.
 - b. Commission discussion and action.

Motion to direct the Secretary to investigate this matter and return at a future meeting with a subsequent report (M/S/C: Blome/Tsang; Ayes: Blome, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein; Recusal: Hernandez out of abundance of caution due to work with nonprofits and based on recusal from Item 7; Ching out of abundance of caution based on work with persons involved in respondent committee.)

9. **Report from contribution limits subcommittee**
 - a. Public comment: none.
 - b. Commission discussion

OGC Agenda

10. **Reports**
 - a. Report from Chair.
 - b. Report from Staff.

11. **Complaint and request for action regarding posting of minutes by City commissions and use of Live Transcription for public meetings**

- a. Public comment: two speakers.
- b. Commission discussion and action.

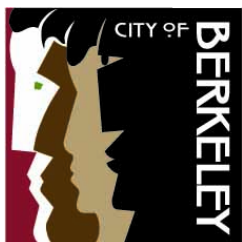
Motion to direct Commissioners Tsang and Hernandez to draft a letter to City Council and work with staff to investigate rules and procedures for timely posting of commission minutes (M/S/C: Hernandez/Tsang; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

Motion to direct staff to research use of Live Transcription, including what policies currently exist, and provide information on its use, and for OGC to enable Live Transcription at its meetings. (M/S/C: Ching/Blome; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

12. **Adjournment**

Motion to adjourn. (M/S/C: Blome/Hernandez; Ayes: Blome, Ching, Hernandez, O'Donnell, Tsang, Hynes; Noes: none; Abstain: none; Absent: Bernstein.)

The meeting adjourned at 8:51 p.m.



Fair Campaign Practices Commission

DATE: January 19, 2023

TO: Fair Campaign Practices Commission

FROM: Sam Harvey, Commission Secretary

SUBJECT: **Amendments to BERA sections 2.12.415 and 2.12.545 to clarify method for cost of living adjustments for campaign contribution and public financing dollar amounts and to better coordinate adjustment with timing of relevant data availability**

Under the Berkeley Election Reform Act (BMC Ch. 2.12.) (“BERA”), the Commission is required to adjust various dollar amounts in accordance with changes in cost of living every odd-numbered year.

These dollar amounts include the following amounts under the City’s Fair Elections (public financing) program:

1. Qualified contributions (BMC § 2.12.167)
2. Minimum qualified contributions required for public financing qualification (BMC § 2.12.500.A.3)
3. Aggregate per-candidate matching funds payments (BMC § 2.12.505.B.)
4. Maximum value of capital assets purchased with public financing funds (2.12.530.B.3.b.)

In 2021, the Commission and City Council approved an amendment to BERA which provides that the \$250 contribution limit for candidates not participating in public financing shall be adjusted for cost of living in every odd-numbered year. (BMC § 2.12.415.)

This proposed amendment would make the following changes:

- 1. Clarify that the \$250 contribution limit shall be adjusted in \$10 increments**

Pursuant to section 2.12.545, the above adjustments for the public financing program are to be rounded to the nearest \$10 (or \$1,000 for aggregate candidate payments

under 2.12.505.B). This ensures that dollar amounts are adjusted to simple numbers that do not include fractions of a dollar. It also ensures that amounts will not be changed if the cost of living results in an adjustment of less than \$5.

During the FCPC's 2021 discussion of adjusting the \$250 contribution limit it was understood that the same \$10 adjustment threshold would apply. However, this change was not enshrined in the resulting amendment. As a result, the required adjustment to \$250 could result in an adjustment of only a few dollars, including fractions of a dollar. The proposed amendment would clarify that the \$10 rounding applied to other adjustment amounts will also apply to the \$250 limit

2. Adjust timing of adjustment to coincide with availability of data

The City Clerk Department prepares the proposed adjustments based on data made available by the Bureau of Labor Statistics ("BLS"). BLS has informed City staff that the adjustment data will likely not be available until the end of January 2023. This was also the case during the last round of adjustments in 2021. The proposed amendment would adjust the timing of the adjustment from January to March in order to allow sufficient time for City staff to acquire the needed data, calculate the necessary adjustments, and prepare a proposal for the FCPC.

The above changes may be accomplished by amending BERA sections 2.12.415 and 2.12.545. A proposed amendment is included as Attachment 1. 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 amendment by a two-thirds vote, and that the City Council then hold a public hearing and adopt the amendments by a two-thirds vote.

ORDINANCE NO. _____

AMENDING BERKELEY MUNICIPAL CODE CHAPTER 2.12

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

Section 1. That Berkeley Municipal Code Section 2.12.415 is amended to read as follows:

2.12.415 Persons other than candidate – Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars (\$250). The Commission shall adjust the dollar amount in this Section for cost of living changes pursuant to 2.12.075 in JanuaryMarch of every odd-numbered year, or as soon thereafter as practicable. Such adjustments shall be rounded to the nearest ten dollars (\$10). For purposes of this section single election is a primary, general, special, runoff or recall election

Section 2. The 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 2.12.530B.3.b for cost of living changes pursuant to Section 2.12.075 in JanuaryMarch of every odd-numbered year, or as soon thereafter as practicable, 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.3.b and one thousand dollars (\$1,000) with respect to Section 2.12.505.B.



Fair Campaign Practices Commission
Open Government Commission

Date: January 19, 2023
To: Fair Campaign Practices Commission and Open Government Commission
From: Sam Harvey, Secretary
Subject: Adoption of 2023 FCPC-OGC Joint Concurrent Meeting Schedule

The FCPC and OGC (“Commissions”) must set their annual meeting schedule for 2023. Traditionally, the Commissions have met in a concurrent meeting on each third Thursday of the month. Starting last year, the Commissions began meeting at 6 p.m. rather than 7 p.m.

In recent years, the Commissions have not had a regular meeting scheduled in August or December. This practice is continued in the proposed schedule below. The Commissions may need to schedule additional meetings as needed throughout the year.

Throughout the COVID-19 pandemic, City commissions have met via videoconference. Under the Brown Act, City commissions have been able to meet via videoconference while the statewide COVID-19 emergency is in place. It is anticipated that the Governor will end the statewide emergency on February 28, 2023, at which point City commissions will be required to resume in-person meetings. This will mean that the Commissions will resume in-person meetings at their March meeting.

The Commission Secretary has generated the following proposed schedule for the remainder of the year, which the Commissions should feel free to adjust as they see fit:

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

All meetings to begin at 6 p.m.

* indicates videoconference meeting.



Fair Campaign Practices Commission
Open Government Commission

DATE: January 19, 2023
TO: Fair Campaign Practices Commission & Open Government Commission
FROM: Sam Harvey, Commission Secretary
SUBJECT: Election of Commission Officers

City commissions must annually elect a Chair and Vice-Chair. Pursuant to the FCPC's Rules of Procedure, the Chair and Vice-Chair are to be elected at the February regular meeting. The purpose of this agenda item is to allow the Commissions an opportunity to discuss the process prior to the February officer election.

The Chair and Vice-Chair are elected by the majority of the commission for a one-year term and hold office until their successors are elected or until their terms as members of the commission expire. No commissioner shall serve as chair for more than two consecutive years. There is no term limit for vice-chair.

The FCPC's Rules of Procedure outline the following responsibilities for the Chair:

1. Preside at all Commission meetings
2. Appoint committees and chairpersons of committees
3. Approve the agenda prior to distribution
4. Sign correspondence on behalf of the Commission
5. Administer oaths and affirmations to persons testifying before the Commission
6. Provide guidance to the Secretary regarding staff execution of Commission business, including, but not limited to, investigations, reviewing campaign statements and audits of candidates and committees
7. Represent the Commission in dealings with the City Manager, the City Attorney, and other City staff
8. Represent the Commission before the City Council

FCPC

January 19, 2023

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9. Exercise the authority of the Commission with regard to administrative matters

The role of the Vice-Chair is to assume the above roles in the absence of the Chair.



PUBLIC FINANCE MATCHING FUNDS NOVEMBER 8, 2022 GENERAL ELECTION

Committee	Office	Amount Disbursed	Date Certified
Kate Harrison for City Council 2022	District 4	\$ 47,000.00	1/19/2022
Kesarwani for Berkeley City Council 2022	District 1	\$ 47,000.00	3/24/2022
Mara Kolesas for School Board 2022	School Board	\$ 10,606.50	7/14/2022
Mary-Lee Smith for Berkeley City Council 2022	District 8	\$ 10,500.00	7/21/2022
Shanoski for Berkeley School Board 2022	School Board	\$ 20,000.00	7/27/2022
Re-Elect Jenny Wong for City Auditor 2022	City Auditor	\$ 11,880.00	8/5/2022
Ida Martinac for Rent Board 2022	Rent Board	\$ 7,602.00	8/24/2022
Carole Marasovic for Berkeley Rent Board 2022	Rent Board	\$ 8,000.00	8/29/2022
Negeene Mosaed for Rent Board 2022	Rent Board	\$ 8,000.00	9/1/2022
Soli Alpert for Rent Board 2022	Rent Board	\$ 8,000.00	9/15/2022
Elisa Mikiten for Berkeley City Council 2022	District 1	\$ 47,000.00	9/21/2022
Wendy Saenz Hood for Berkeley Rent Board 2022	Rent Board	\$ 8,000.00	9/30/2022
Mark Humbert for City Council 2022	District 8	\$ 47,000.00	10/4/2022
Mari Mendonca for City Council 2022	District 8	\$ 21,072.00	10/19/2022
Nathan Mizell for Berkeley Rent Board 2022	Rent Board	\$ 8,000.00	10/28/2022
Vanessa Danielle Marrero 4 Rent Board 2022	Rent Board	\$ 8,000.00	10/28/2022
Rigel Robinson for Berkeley City Council 2022	District 7	\$ 20,725.38	11/3/2022
Mike Chang for Berkeley School Board 2022	School Board	\$ 15,930.00	11/4/2022
Tamar Michai Freeman for Berkeley City Council 2022	District 1	\$ 11,820.00	11/9/2022

Berkeley's voter-approved Public Financing Program allows certified candidates for Mayor, City Council, School Board, Rent Stabilization Board, and City Auditor seats to receive a 6-to-1 match on qualifying contributions of up to \$60 from Berkeley residents (e.g. for a \$50 qualifying contribution, a participating candidate receives \$300 in public matching funds), to a maximum of \$47,000 for City Council candidates \$140,000 for mayoral candidates, \$8,000 for Rent Stabilization Board candidates, and \$20,000 for School Board and City Auditor candidates

This document shows the cumulative amounts received by certified Public Finance candidates in the November 8, 2022 general election. It is updated weekly. For more information, visit the [Public Financing](#) page or contact the City Clerk department at elections@cityofberkeley.info.