



Fair Campaign Practices Commission

PUBLIC HEARING

November 21, 2023

(Continued from November 14, 2023)

To: Honorable Mayor and Members of the City Council

From: Jim Hynes, Chair, Fair Campaign Practices Commission

Submitted by: Samuel Harvey, Secretary, Fair Campaign Practices Commission

Subject: Amendments to the Berkeley Election Reform Act to ensure consistency within the Act for cost of living adjustments and committee reporting requirement thresholds

RECOMMENDATION

Conduct a public hearing and, upon conclusion, adopt first reading of an ordinance amending the Berkeley Election Reform Act (BMC Chapter 2.12) to (1) amend provisions related to filing requirement thresholds to be consistent with recent amendment to qualification threshold for committees; and (2) add two dollar amount thresholds to the list of amounts subject to cost of living adjustments in order to maintain consistency with other associated amounts.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

These recommended amendments to the Berkeley Election Reform Act (“BERA”) were approved by the Fair Campaign Practices Commission (“FCPC”) at its regular meeting of October 19, 2023.

Action: M/S/C (Isselbacher/Saginer) Motion to approve amendments to the Berkeley Election Reform Act for submission to the City Council.

Vote: O’Donnell, Ching, Saginer, Isselbacher, Hernandez, Hynes; Noes: none; Abstain: none; Absent: Blome.

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.

BACKGROUND

The Fair Campaign Practices Commission has approved a set of proposed technical amendments to the Berkeley Election Reform Act (BERA) to amend sections of BERA which have been affected by the 2021 adoption of a cost of living adjustment for the candidate contribution limit and subsequent amendments. (See BMC § 2.12.415.)

1. Amendment #1

Section 2.12.545 Cost of living adjustments

Section 2.12.271 Campaign statements--Additional filing requirements

Section 2.12.335 Disclosure on campaign communications of certain contributions and loans

This proposed amendment addresses sections of BERA which use the now-obsolete \$250 amount to set thresholds for filing and disclaimer requirements. The \$250 threshold was presumably adopted in these contexts to parallel the candidate contribution limit. Now that the candidate contribution limit changes with cost of living, and is currently set at \$270, these other thresholds will need to be amended so that they will similarly change as cost of living adjustments are made to the candidate contribution limit.

Both Section 2.12.271 and Section 2.12.335 have dollar amount thresholds that are related to the now-obsolete \$250 contribution limit. These two sections have been added to the list of indexed dollar amounts contained in Section 2.12.545. Section 2.12.545 requires that the amounts are adjusted in January of odd-numbered years. In order for the amounts in 2.12.271 and 2.12.335 to “catch-up” to the previously indexed amounts, language has been added to provide for the amounts in these sections to be adjusted immediately after the clean-up amendments have been adopted.

Section 2.12.271 adds additional filing requirements for committees that make contributions for or against ballot measures. The quarterly filing requirement in this section is for committees that make expenditures in excess of \$250 in support of or in opposition to a city ballot measure. In order to keep this threshold tied to the contribution limit.

Section 2.12.335 requires the listing of the top-four contributors under “Major Funding Provided By” on certain campaign materials. The threshold for the top-four was established at “over \$250” so that it only captured contributions that exceeded the individual person candidate contribution limit of \$250.

2. Amendment #2

2.12.270 Campaign statement—filing requirements

This proposed amendment provides changes to provisions related to filing requirements in order to parallel the new threshold for qualification as a “committee,” which was increased from \$250 to \$1,000 following adoption of the cost of living adjustment for the candidate contribution limit.

The definition of a campaign committee was changed from a \$250 threshold to a \$1,000 threshold in Section 2.12.095. The related change to Section 2.12.270 reflects this update, but uses a cross-reference to Section 2.12.095 in order to keep the language relevant and current even if future amendments are adopted. Also, the amendment deletes the use of “telegram” as a communication method to help modernize the code.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACTS

None.

RATIONALE FOR RECOMMENDATION

The purpose of these technical amendments is to ensure consistency between BERA’s interrelated provisions by amending sections of BERA which have been affected by the 2021 adoption of a cost of living adjustment for the candidate contribution limit and subsequent amendments.

ALTERNATIVE ACTIONS CONSIDERED

None.

CITY MANAGER

CONTACT PERSON

Jim Hynes, Chair, Fair Campaign Practices Commission, (510) 981-6998
Samuel Harvey, Commission Secretary, Fair Campaign Practices Commission (510) 981-6998

Attachments:

1. Proposed ordinance amending BERA

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 2.12.545 is amended to read as follows:

2.12.545 Cost of living adjustments

2.12.545 Cost of living adjustments.

A) The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.271, 2.12.335, 2.12.500.A.3, 2.12.500.A.6, 2.12.500.A.7, 2.12.500.A.8, 2.12.505.B, and 2.12.530.B.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.3.b and one thousand dollars (\$1,000) with respect to Section 2.12.505.B.

B) As soon as practicable after adoption of the amendments providing for the adjustment of Sections 2.12.271 and 2.12.335, but no later than December 31, 2024, the Commission shall perform an initial adjustment of the dollar amounts in those sections.

Section 2. That Berkeley Municipal Code Section 2.12.270 is amended to read as follows:

2.12.270 Campaign statement--Filing requirements.

A. Each candidate and each committee shall file no fewer than two campaign statements prior to an election, excluding run-off elections, and one campaign statement following the election, excluding run-off elections. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. The semi-annual campaign statement that is filed pursuant to state law following an election shall serve as the post-campaign statement required by this section. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

B. Each candidate and committee involved in a run-off election, and each committee supporting or opposing a candidate participating in a run-off election, shall file one campaign statement prior to the run-off election in addition to any other campaign statements required by this section and one campaign statement following the run-off election. The semi-annual statement that is filed pursuant to state law following a run-off election shall serve as the post-campaign statement required by this section. The campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law does not establish the filing dates for campaign statements in run-off elections, the commission shall set the necessary filing dates.

C. 1. Notwithstanding subsections A and B of this section, a candidate or officeholder who plans to receive contributions or make expenditures of less than the committee threshold in Section 2.12.095~~two hundred fifty dollars and who plans to make expenditures of less than two hundred fifty dollars~~ in a calendar year may file a short form

campaign statement for that calendar year as prescribed by state laws and regulations. The period covered by the short form is the calendar year. ~~If No other campaign statements must be filed by a~~ candidate or officeholder who has filed a short form campaign statement for activity in the calendar year ~~unless the candidate makes/receives two hundred fifty dollars or more in~~ expenditures ~~or receives contributions that exceed the committee threshold in Section 2.12.095, they must file campaign statements as required by subsections A or B, or other applicable sections of Chapter 2.12.~~

2. During the six months prior to an election in which the candidate or officeholder is being voted upon, a candidate or officeholder who files a short form campaign statement and subsequently receives contributions ~~or makes expenditures exceeding the committee threshold in Section 2.12.095 totaling two hundred fifty dollars or more or makes expenditures totaling two hundred fifty dollars or more~~ during the calendar year shall send written notification to the City Clerk, and each candidate or officeholder contending for the same office, as follows:

(a) The notification shall be sent within forty-eight hours of receiving contributions ~~or making expenditures- exceeding the committee threshold in Section 2.12.095 totaling two hundred fifty dollars or more or making expenditures of two hundred fifty dollars or more;~~

(b) The notification shall include the name and address of the candidate or officeholder, the elective office for which the short form campaign statement was filed, the date of the election, and the date contributions ~~exceeding the committee threshold in Section 2.12.095 totaling two hundred fifty dollars~~ or more were received or expenditures ~~exceeding the committee threshold in Section 2.12.095 totaling two hundred fifty dollars or more~~ were made;

(c) The notification shall be sent by ~~telegram,~~ guaranteed overnight delivery, personal delivery, or facsimile transmission.

**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 ensure consistency within the Act for cost of living adjustments and committee reporting requirement thresholds.

The hearing will be held on, November 14, 2023 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 November 2, 2023.

For further information, please contact Samuel Harvey, Commission Secretary at 981-6998.

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

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

Published: November 3, 2023

Pursuant to Berkeley Municipal Code section 2.12.051

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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