

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 981-6342 (V) or 981-6345 (TDD) at least three business days before the meeting date. Please refrain from wearing scented products to this meeting.

North Berkeley Senior Center
1901 Hearst Street
Classroom C (Upstairs)

Regular Meeting
April 21, 2016
7:00 p.m.

Secretary: Savith Iyengar, Deputy City Attorney

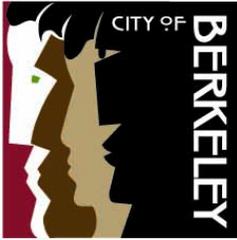
The Commission may act on any item on this agenda

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 March 17, 2016 meeting.
6. Discussion and possible action regarding Commission work-plan for 2016.
7. Review of BERA regarding mass mailings language.
8. Examination of the use of loan money in campaigns.
9. Change in procedure regarding Slate Mailer Organizations.
10. Adjournment.

Communications

One communication from Sherry Smith re UC Berkeley School of Law Article, dated 3/23/16.

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 located at 2180 Milvia St., 4th Floor, Berkeley, CA.



Fair Campaign Practices Commission

MINUTES

North Berkeley Senior Center
1901 Hearst Street
Classroom C (Upstairs)

Regular Meeting
March 17, 2016

Members Present: Brad Smith (Chair), Al Murray (Vice Chair), Dean Metzger, Patrick O'Donnell, Dave Ritchie, Sherry Smith, Emma Soichet

Members Absent: Alex Mabanta (excused) Mark McLean (excused)

Also Present: Savith Iyengar, 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)**

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

4. **Reports**

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

Chair noted that City Council will be considering public financing of elections item further.

5. **Approval of minutes for the February 18, 2016 meeting**

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

Motion to approve minutes (M/S/C: S. Smith/Murray; Ayes: B. Smith, Murray, Metzger, Ritchie, S. Smith; Noes: None; Abstain: None; Absent: Mabanta (excused), McLean (excused), O'Donnell, Soichet).

*Commissioner O'Donnell arrived at 7:09 p.m.
Commissioner Soichet arrived at 7:10 p.m.*

6. **Discussion and action regarding draft FCPC Regulation on Paid Electronic Advertising**

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

Motion to adopt the draft regulation as Regulation No. R2.12.335, with the replacement of the phrase “for a period of at least four seconds and” with “until the user clicks through the disclosure information and the disclosure information must” – to become effective immediately; Regulation No. R2.12.335 will read, in full, as follows:

R2.12.335 Text or Graphic Electronic Media Advertisement

The disclosure information in a text or graphic electronic media advertisement must appear in letters at least as large as the majority of the text in the advertisement, or alternatively, if the advertisement is limited in size (e.g., a micro bar, button ad, paid text advertisement that is limited to 500 characters or less in length, or small paid graphic or picture link), the disclosure is displayed via link to a webpage with disclosure information or other technological means that provide the user with disclosure information. In addition, the disclosure information must be visible until the user clicks through the disclosure information, and the disclosure information must appear with a reasonable degree of color contrast between the background and text of the statement as to be legible.

(M/S/C: Ritchie/Metzger; Ayes: B. Smith, Murray, Metzger, O'Donnell, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: Mabanta (excused), McLean (excused).)

7. **Discussion and action regarding updating the FCPC Campaign Filing Manual**

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

Motion to direct the Chair to work with staff to finalize and publish the updated FCPC Campaign Filing Manual (M/S/C: Soichet/Murray; Ayes: B. Smith, Murray, Metzger, O'Donnell, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: Mabanta (excused), McLean (excused)).

8. **Discussion and possible action regarding Commission work-plan for 2016**

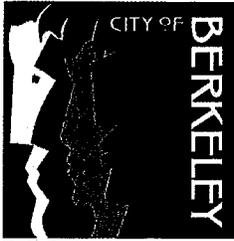
- a. Public comment: no speakers.
- b. Commission discussion and possible action.

Motion to add the item “change in procedure regarding Slate Mailer Organizations” to the work plan (M/S/C: Murray/Soichet; Ayes: B. Smith, Murray, Metzger, O'Donnell, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: Mabanta (excused), McLean (excused)).

9. **Adjournment**

Motion to adjourn (M/S/C: O'Donnell/Soichet; Ayes: B. Smith, Murray, Metzger, O'Donnell, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: Mabanta (excused), McLean (excused)).

The meeting adjourned at 7:41 p.m.



Fair Campaign Practices Commission

DATE: April 21, 2016

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: SAVITH IYENGAR, FCPC Secretary/Staff Counsel

SSI 4/14/16

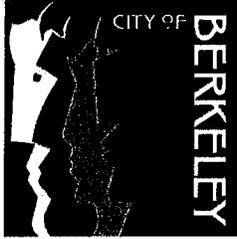
SUBJECT: REPORT RE: 2016 Work Plan

At its February 18, 2016 regular meeting, the Commission reviewed its work plan for 2015 and took no action. The Commission considered the draft work plan further at the March 17, 2016 regular meeting. The Commission moved to add one item to the work plan, underlined below. Staff presents the updated work plan to the Commission for its consideration and acceptance at the April 21, 2016 regular meeting.

2016 Work-Plan

Potential items identified by the Chair and staff for consideration by the Commission in 2016 include:

- Review of BERA regarding Mass Mailings language.
- Ongoing compliance review of campaign statements.
- Ongoing review of alleged violations of BERA.
- Examination of the use of loan money in campaigns.
- Change in procedure regarding Slate Mailer Organizations.



Fair Campaign Practices Commission

DATE: April 21, 2016
TO: FAIR CAMPAIGN PRACTICES COMMISSION
FROM: SAVITH IYENGAR, FCPC Secretary/Staff Counsel
SUBJECT: REPORT RE: Mass Mailings Language

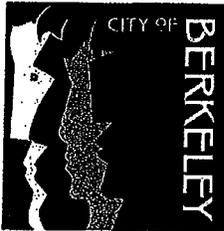
SSI 4/14/16

In a report dated January 15, 2015 regarding committees' compliance with the City's mass mailing certification requirements, the former and current Commission Secretaries recommended that the Commission place on a future work plan revisions to the regulations to more clearly state those requirements.

This report is attached as **Attachment 1** for the Commission's further consideration at the April 21, 2016 regular meeting.

Attachments

1. Report Regarding Compliance Review of Mass Mailing Certifications and Campaign Statements, dated January 15, 2015



Fair Campaign Practices Commission

DATE: January 15, 2015

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: KRISTY VAN HERICK, Deputy City Attorney *KVA 1/8/15*
SAVITH IYENGAR, FCPC Secretary/Staff Counsel

SUBJECT: **REPORT REGARDING COMPLIANCE REVIEW OF MASS MAILING CERTIFICATIONS AND CAMPAIGN STATEMENTS**

Mass Mailings

Staff has had a chance to review the 2014 mass mailing certifications filed through the date of the election. There were at least 60 mass mailings filed with the City Clerk by Berkeley committees during the 2014 election cycle. More than 75% of the mailings were timely filed with the City Clerk. Attached as Exhibit A is a chart regarding the mass mailing certifications filed with the City Clerk which staff determined to be late.

By way of background, "Mass mailing" means "two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry." (BMC § 2.12.150.) BERA requires that "A copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the commission. Such copies sent to the commission shall be public record." (BMC §2.12.325.) BERA does not specify a filing deadline for mass mailings. Commission regulations, however, specify a process and timeline for filing mass mailings and a certification form, including in relevant part:

"Three copies of all mailings as defined in BMC Section 2.12.150 shall be filed with the City Clerk's Office no later than one day of the date the mass mailing was first placed in the U.S. mail. Filing shall be made by hand-delivery to the City Clerk's Office no later than one day after the mailing or by depositing three originals addressed to the City Clerk's Office in the U.S. mail on the same day as the first pieces are deposited in the U.S. mail. Mass mailings may be filed with the City Clerk prior to the date of the actual mailing. Each mass mailing required to be filed with the City Clerk pursuant to BMC Section 2.12.325 shall be accompanied by a certification

of the date the mass mailing was (or will be) deposited in the U.S. mail.
..." (FCPC R2.12.325.2(b).)

As mass mailings continue to arrive late, further educational efforts and outreach to the committees might be beneficial. Staff also recommends that the Commission place on a future work plan revisions to the regulations, including R2.12.250. This regulation could more clearly state the filing deadlines for the certification and three mailed copies. Additionally, the certifications do not have an automatic late filing penalty to encourage timely compliance. Now that the Commission has the ability to issue appropriate penalties for violations pursuant to BERA § 2.12.231, there may be an additional tool to encourage timely compliance with the mass mailing certification requirement.

Looking at the mailings themselves, the various ballot measure committees were generally in compliance with the requirements to list "Major Funding By" information on mailers. However, staff noted that very few of the candidate mass mailings listed the "Major Funding By" disclosure for contributions or loans from the candidate to his or her own campaign. This is an additional area for education and outreach in the next election cycle.

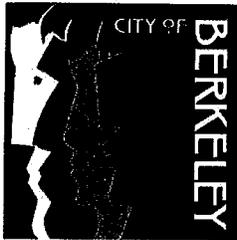
Incomplete or Erroneous Filings:

Overall, the campaign committees have been largely compliant with the BERA. Again, the electronic filing system has assisted committees file more complete statements. Committees continue to omit employer and occupation information, or provide incomplete vendor or sub-vendor information on expenditures requiring staff follow up. Staff has contacted a number of committees, and is currently completing follow up on a few open compliance issues. Committees have been cooperative filing amendments where possible.

Staff will continue to follow up with treasurers and candidates on the noncompliant statements and report back on any open compliance issues.

Upcoming Filing Deadlines:

Semi-Annual/post-election reports covering the period of October 19 through December 31 are due on by the end of January. Staff will provide an update to the Commission about any compliance matters raised by these statements at a future meeting.



Fair Campaign Practices Commission

DATE: April 21, 2016
TO: FAIR CAMPAIGN PRACTICES COMMISSION
FROM: SAVITH IYENGAR, FCPC Secretary/Staff Counsel
SUBJECT: REPORT RE: Loan Money in Campaigns

SSI 4/14/16

Attached as **Attachment 1** is a communication from Commissioner Dean Metzger regarding the use of loans and donations by candidates to their campaigns for the Commission's consideration at the April 21, 2016 regular meeting.

Attachments

1. Examination of the Use of Loan/Donations Monday in Campaigns by Commissioner Dean Metzger, dated April 6, 2016

Examination of the Use of loan/Donations Money in Campaigns

ISSUE: Candidates Loans/Donations to Their Campaigns

CONCERNS:

1. Loans or donations by candidates to their campaigns are unregulated and have no limits.
2. The reporting time lines are not specific enough.
3. How are loans from candidates to their campaigns restricted?
4. How are fund raisers used to retire the loans after the election controlled?
5. Transparency of campaign contributions and sources.

POSSIBLE SOLUTIONS:

1. Loans or donations by a candidate to their campaign are unregulated and have no limits. BERA is silent on these subjects. **Section 2.12.335 Disclosure on campaign communications and of certain contributions and loans** is the only place where the word "loan" is raised. In **Article 6. C Limitations on Contributions, Section 2.12.415 Persons other than candidate – Maximum permitted amount**, the candidate is specifically eliminated from any regulation of loans/donations contributions to their own campaign.

This can be corrected by revising Section 2.12.415 to include the candidate. It would eliminate the hidden contributor who helps pay off the candidates' loan or donation to his self/herself after the election is over. By including the candidate and limiting loans and donations to his/her campaign to two hundred fifty dollars (\$250.00), the outside hidden money will no longer be a concern.

2. The reporting times are not specific enough. This issue is not addressed clearly in BERA. There needs to be a very clear cutoff date for accepting contributions and loans/donations from candidates and supporters/opponents of initiatives and candidates.

Article 4. Disclosure requirements and Procedures does not have a section on time lines for contributions and filings. If it does, it is hidden in the body of one of the sections in Article 4.

A new section needs to be added that clearly states a time requirement and does not allow contributions or loans after that date. A suggested section might read "all contributions and loans/donations cannot be accepted and used by the campaign treasurer or candidate one week (7 calendar days) before the election. All contributions and loans/donations must be recorded on the campaign treasurers' report 5 calendar days before the election." This will allow the public to see all of the moneys that have been raised for the initiative or candidate.

3. How are loans from candidates to their campaigns restricted? BERA places no restrictions on candidates loaning/donating themselves any amounts of moneys or other types of contributions to their own campaigns. Why is this a problem? It is a problem because it allows candidates who are wealthy and/or have connections to those who are, can contribute large sums to their campaigns, a clear advantage over any competitor. All the candidate has to do is loan/donate themselves a large sum, knowing that he/she can get the

money back later, after the election is over. While BERA may attempt to address this problem the FCPC has no way of controlling how the loan is repaid after the election. If a successful candidate holds a fund raiser months after the election, first, how does the FCPC even know about it and second, if the FCPC does learn of it, what can be done about the fact that supporters can contribute any amount, thus violating the \$250.00 rule?

4. How are fund raisers used to retire the loans after the election controlled?

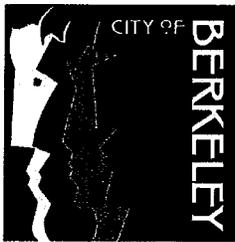
This issue will be avoided if the above suggested (or something like it) controls are put in place. By revising BERA to include the restrictions on amounts of contributions through loans/donations and the accepting and recording time required, this would allow the public to be well informed and makes for good government.

5. Transparency of campaign contributions and sources.

Since State PACs puts them outside of BERA regulations, something needs to be done to ensure that the public knows who is sending the information and why they can send it. Another issue is individuals sending information about a candidate or initiatives. Federal law allows this to also happen, so Berkeley seems to have no way of regulating it.

Section 2012.297 Independent expenditures in 40 days preceding election attempts to address this problem. It does not address the PAC issues, only individuals. However, if an independent expenditure is made two days before the election, the public would not know about it until after the election, regardless of who or what PAC sent the information. There is a need to examine this issue and find a solution that works toward more transparency. Perhaps we can equate State PACs to individual expenditures in BERA as the Supreme Court has made corporations citizens in "United Citizens v. Federal Election Commission".

The City Council will likely put the initiative for public financing of local elections on the ballot in November 2016. This may be a good step forward, but since it does not force every candidate to be part of the process nor even limit candidates' loaning/donating to themselves, the problem still remains. We still have not leveled the field for all candidates for local office.



Fair Campaign Practices Commission

DATE: April 21, 2016
TO: FAIR CAMPAIGN PRACTICES COMMISSION
FROM: SAVITH IYENGAR, FCPC Secretary/Staff Counsel *SSI 4/14/16*
SUBJECT: REPORT RE: Changes in Procedures Re. Slate Mailer Organizations

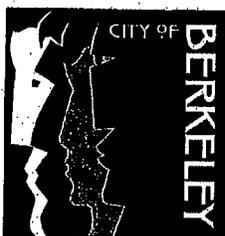
On September 17, 2015, the Commission's Slate Mailer Organization ("SMO") Subcommittee presented recommendations to the Commission regarding SMOs. The SMO Subcommittee's report is attached as **Attachment 1**.

The Commission considered the recommendation again at its February 18, 2016 regular meeting and moved unanimously to "recommend that the Chair work with staff to effect a change in procedure that would have all forms filed with the City Clerk by Slate Mailer Organizations and all candidate or measure forms that list payments to Slate Mailer Organizations as nonmonetary contributions to their committee provided to the Commission as soon as possible.

The SMO Subcommittee's recommendation and the Commission's action are included here for the Commission's further discussion and possible action at its April 21, 2016 regular meeting.

Attachments

1. SMO Subcommittee's Recommendations Regarding Slate Mailer Organizations, dated September 17, 2015



Fair Campaign Practices Commission

Date: September 17, 2015
To: Fair Campaign Practices Commission
From: Brad Smith, Al Murray & Sherry Smith
RE: Recommendations Regarding Slate Mailer Organizations

With the assistance of City staff, the Slate Mailer Organization Subcommittee discussed at length how the City of Berkeley might lower the probability of campaign contributions to a candidate or measure disproportionately benefiting other candidates or measures also appearing on a the same slate card. At every turn, we found ourselves blocked by the limits imposed by the State preemption of the laws governing SMOs. However, we do bring a proposal to you that, although not fully vetted, was reviewed enough by City staff to be seen as a viable possibility and to not run afoul of the State preemption of the laws governing SMOs. We propose a change in BERA and/or procedure that would have all forms filed with the City Clerk by SMOs and of all candidate or measure forms that listed payments to SMOs as nonmonetary contributions to their committee provided ASAP to the FCPC. This might take the form of providing the Commission with the URLs of the documents on the City's website. This disclosure would raise the visibility of SMOs with staff in the City Attorney and City Clerk's office; among FCPC commissioners, many of who are familiar with individuals and organizations involved in Berkeley politics; and the public through their inclusion in the FCPC packet. We can also imagine organizations like MapLight organizing and presenting the information in a way that is more informative and accessible to the public.

With regard to making recommended changes to state law governing SMOs based on local experience in Berkeley, we felt the probability for having any impact on state law was too low for Commission members or staff to spend time on this option.