

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
February 18, 2016
7:00 p.m.

Secretary: Savith Iyengar, Deputy City Attorney

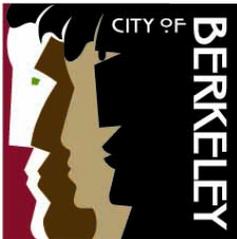
The Commission may act on any item on this agenda

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 January 14, 2016 special meeting.
6. Discussion and action regarding election of Chair and Vice-Chair.
7. Discussion and action regarding existing law and practices and potential changes to BERA for Paid Electronic Advertising.
8. Discussion and action regarding recommendation made by Slate Mailer Subcommittee.
9. Discussion and possible action regarding Commission work-plan for 2016.
10. Adjournment.

Communications

None.

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)

Special Meeting
January 14, 2016

Courtyard by Marriott Convention Center
900 F St NW, Room 1020
Washington, DC, District of Columbia, 20004

Members Present: Brad Smith (Chair), Dean Metzger (Vice Chair), Patrick O'Donnell, Alex Mabanta, Dave Ritchie, Sherry Smith, Emma Soichet (by teleconference)

Members Absent: Al Murray

Also Present: Savith Iyengar, Secretary/Deputy City Attorney

1. **Call to Order**

Chair called the meeting to order at 7:18 p.m.

2. **Roll Call**

Roll call taken.

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

No public comments on matters not on agenda. Six members of the public in attendance.

4. **Reports**

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

5. **Approval of minutes for the November 19, 2015 Regular Meeting**

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

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

6. **Discussion and action regarding changes to BERA for Paid Electronic Advertising**

- a. Public comment: 1 speaker.

- b. Commission discussion and action.

Motion to continue item to Commission's next meeting to specifically discuss existing law and practices (M/S/C: Ritchie/Metzger; Ayes: B. Smith, Metzger, O'Donnell, Mabanta, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: Murray).

7. **Discussion and action regarding public financing charter and ordinance amendment**

- a. Public comment: 4 speakers.
- b. Commission discussion and action.

————— *Meeting temporarily adjourned at 7:59 p.m., reconvened at 9:30 p.m.* —————

Motion to adopt the amendments and return the item to the City Council in February 2016, and recommend that Council direct staff to (i) merge the amendments with the draft public funding proposal recommended to Council by the Commission on September 15, 2015 and (ii) make clearer which changes are charter amendments and which changes are ordinance amendments (M/S/C: Mabanta/O'Donnell; Ayes: Metzger, Mabanta, O'Donnell, Ritchie, Soichet; Noes: B. Smith; Abstain: S. Smith; Absent: Murray).

8. **Discussion and action regarding recommendation made by Slate Mailer Subcommittee**

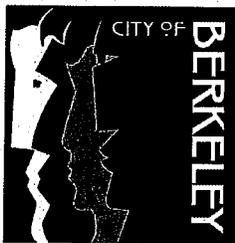
- a. Public comment: no speakers.
- b. Commission discussion and possible action.

Motion to continue item to Commission's next meeting (M/S/C: Mabanta/O'Donnell; Ayes: B. Smith, Metzger, O'Donnell, Mabanta, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: Murray).

9. **Adjournment**

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

The meeting adjourned at 10:08 p.m.



Fair Campaign Practices Commission

DATE: January 14, 2016
TO: FAIR CAMPAIGN PRACTICES COMMISSION
FROM: SAVITH IYENGAR, Staff Secretary/Deputy City Attorney
SUBJECT: REPORT REGARDING CHANGES TO BERA FOR PAID ELECTRONIC ADVERTISING SI 1/6/16

On March 19, 2015, the Commission moved to adopt a work-plan for 2015 that included "review of [the Berkeley Election Reform Act (BERA)] regarding disclosure for Paid Electronic Advertising." The Commission considered the item at its June 18, 2015 special meeting, moving to continue the item to the Commission's July 16, 2015 meeting (M/S/C: Smart/S. Smith; Ayes: B. Smith, Metzger, Murray, Newman, O'Donnell, Ritchie, Smart, S. Smith; Noes: None; Abstain: None; Absent: Lombardi).

At its July 16, 2015 special meeting, the Commission moved to request the Chair and staff to obtain the advice of relevant media and legal experts for the Commission's September 17, 2015 meeting (M/S/C: Ritchie/ Murray; Ayes: B. Smith, Metzger, Murray, Newman, O'Donnell, Ritchie, S. Smith; Noes: None; Abstain: None; Absent: Smart). At the September meeting, the Commission conducted a further review of the item with public comment from two representatives of Berkeleyside, a local news site. The Commission took no action at the meeting. The Commission considered the item again at its November 19, 2015 regular meeting and moved to continue the item to the Commission's next regular meeting (M/S/C: O'Donnell/Murray; Ayes: B. Smith, O'Donnell, Mabanta, Murray, Newman, Ritchie, Smith, Soichet; Noes: None; Abstain: None; Absent: None).

The Commission scheduled a special meeting for January 14, 2016 in lieu of its regular meeting on January 21, 2016, and the Chair added this item to its agenda. Accordingly, staff re-attaches the original December 3, 2014 letter from Stephen Wollmer regarding this issue (**Attachment 1**), which was included in the Commission's June 18, 2015 and July 16, 2015 packets.

Attachments:

1. Letter from Stephen Wollmer to the Commission, dated December 3, 2014.

ATTACHMENT 1

December 3, 2014

Stephen Wollmer

City of Berkeley Fair Campaign Practices Commission

Chairperson O'Donnell and fellow Commissioners

Reflections on paid electronic advertising currently displayed during last election cycle on Berkeleyside.

Well that was a fun election to watch from afar; fortunately I left instructions for my 'mail' screener to immediately recycle all print ads, but the electronic ads were overwhelming and unavoidable every time you visited any of the Berkeley oriented media outlets.

Given the rapid movement of campaign communications to electronic advertising, it is incumbent on the commission to clarify what performance standards Committees subject to disclosure (principally measure and independent expenditure committees but additionally some self-funded candidate committees) will be held to given the Ordinance and Regulation's intent to have the disclosures clearly and affirmatively inform the populace of who is speaking (name), how loud are they speaking (dollars), and where are they speaking from (domicile).

It is clear that expecting committees to effectively disclose their principal contributors to the public as the ordinance intends is not likely to happen unless there are clear standards put in place. Electronic advertising is by its nature difficult to regulate. I make the following suggestions to the Commission to more effectively deal with electronic advertising:

Electronic advertising and the internet's standards and methods constantly evolve requiring a clear statement of what the ordinance requires when the small size of the advertisement makes disclosure under (BMC §2.12.335. B.1) infeasible:

- Require that for ads without click-through to another webpage to disclose their contributors through a pop-up activated by any hovering or roll over pointer.
- If there is a click through to another web page it should first go to a plain text of the required disclosure before displaying any further communication from the committee.

Because its ephemeral nature electronic advertising leaves almost no trail to track making enforcement a burden on City staff and the concerned public:

- Require submission to the City Clerk by any committee subject to disclosure printed screenshots of each advertisement and either a popped up disclosure or the first click-through web page.
- Require submission to the City Clerk by any committee subject to disclosure copies of any emails or telephone calls subject to the ordinance's disclosure requirement (BMC §2.12.335. B.3).

**** BMC §2.12.335. B.** The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. For purposes of this section, "campaign communication" means any of the following items:

1. One thousand or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
2. Paid advertisements, including but not limited to advertisements in newspapers, magazines, and on the Internet;
3. One thousand or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.

****** §18450.4. Contents of Disclosure Statements. Advertisement Disclosure.**

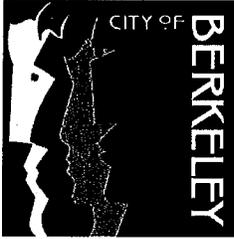
....
(3) The disclosures shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified below.

.....
(G) Electronic Media: The disclosure statement on electronic media advertisements must be presented in a clear and conspicuous manner. A disclaimer is not clear and conspicuous if it is difficult to read or hear, or if the placement is easily overlooked. An electronic media disclosure statement is considered clear and conspicuous if it meets the following, as applicable to that advertisement:

1. 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, a button ad, a paid text advertisement that is limited to 500 characters or less in length, or a small paid graphic or picture link) the disclosure is displayed via rollover display, 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 for a period of at least four seconds and appear with a reasonable degree of color contrast between the background and text of the statement as to be legible.

.....
4. Electronic Media Advertisement Disclosure - Exception: In electronic media advertisements whose size, space, or character limit constraints (i.e., SMS text message) render it impracticable to include the full disclosure information specified in Sections 84503, 84504, 84506, 84506.5, or subsection (b)(3)(G)(i) of this regulation, the candidate or committee sending the mass mailing may provide abbreviated advertisement disclosure containing at least the committee's FPPC number (i.e., "FPPC # 185734") and when technologically possible a link to the webpage on the Secretary of State's website displaying the committee's campaign finance information, if applicable.

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



Fair Campaign Practices Commission

DATE: January 14, 2016

TO: FAIR CAMPAIGN PRACTICES COMMISSION

FROM: SAVITH IYENGAR, Staff Secretary/Deputy City Attorney *SI 1/6/16*

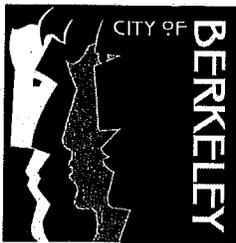
SUBJECT: REPORT REGARDING RECOMMENDATION MADE BY SLATE MAILER SUBCOMMITTEE

At its November 19, 2015 meeting, the Commission moved to continue its discussion and action regarding the recommendation made by the Slate Mailer Subcommittee to the Commission's next general meeting (M/S/C: O'Donnell/Murray; Ayes: B. Smith, O'Donnell, Mabanta, Murray, Newman, Ritchie, Smith, Soichet; Noes: None; Abstain: None; Absent: None). The Commission later scheduled a special meeting for January 14, 2016 in lieu of a general meeting on January 21, 2016, and the Chair added this item to its agenda. Accordingly, staff re-attaches the September 17, 2015 report to the Commission by the Slate Mailer Subcommittee (Chair Brad Smith and Commissioners Al Murray and Sherry Smith) titled "Recommendations Regarding Slate Mailer Organizations" (**Attachment 1**).

Attachments:

1. Slate Mailer Subcommittee Report to the Commission titled "Recommendations Regarding Slate Mailer Organizations," dated September 17, 2015

ATTACHMENT 1



Fair Campaign Practices Commission

Date: September 17, 2015

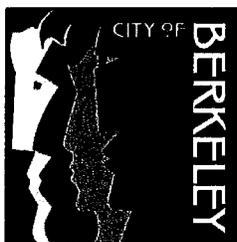
To: Fair Campaign Practices Commission

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.



Fair Campaign Practices Commission

DATE: April 16, 2015
TO: FAIR CAMPAIGN PRACTICES COMMISSION
FROM: SAVITH IYENGAR, FCPC Secretary/Staff Counsel
SUBJECT: REPORT RE: Updated 2015 Work Plan

SI 4/19/15

At the Commission's March 19, 2015 meeting, the Commission reviewed a draft work plan prepared by staff listing the items identified by the Commission during and following the Commission's February 19, 2015 meeting. The Commission moved to accept the staff report with two changes: (i) changing the fifth item to "Possible establishment of subcommittee to sample and review campaign reports," and (ii) adding the item: "Examination of consequences of filing late reports." These changes are reflected below in the Commission's updated work plan for 2015.

Updated 2015 Work-Plan

Potential items identified by the Commission for consideration by the Fair Campaign Practices Commission in 2015 include the following:

- Discussion and action regarding Public Financing of elections.
- Discussion and possible action regarding Slate Mailers.
- Review of BERA regarding disclosure for Paid Electronic Advertising.
- Review of BERA regarding Mass Mailings language.
- Possible establishment of subcommittee to sample and review campaign reports.
- Ongoing compliance review of campaign statements.
- Ongoing review of alleged violations of BERA.
- Examination of consequences of filing late reports.