

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
July 21, 2016
7:00 p.m.

Secretary: Savith Iyengar, Deputy City Attorney

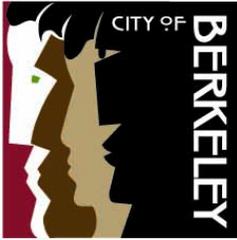
The Commission may act on any item on this agenda

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.
 - c. Report from loan subcommittee.
5. Approval of minutes for the May 19, 2016 meeting.
6. Discussion and action regarding election of Vice Chair.
7. Staff report regarding changes in mass mailings language, penalties, and filing.
8. Staff report regarding change in procedure regarding Slate Mailer Organizations.
9. 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)

Regular Meeting
May 19, 2016

Members Present: Brad Smith (Chair), Al Murray (Vice Chair), Alex Mabanta, Mark McLean, Patrick O'Donnell, Dave Ritchie, Sherry Smith

Members Absent: Dean Metzger (excused), Emma Soichet (excused)

Also Present: Savith Iyengar, Secretary/Deputy City Attorney

1. **Call to Order**

Chair called the meeting to order at 7:03 p.m.

2. **Roll Call**

Roll call taken.

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

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

4. **Reports**

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

Chair explained that item 8 re-appears on the agenda so the Commission may formally create the subcommittee. Staff provided an update on the Commission's recent actions.

5. **Approval of minutes for the April 21, 2016 meeting**

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

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

6. **Review of adopted Commission work-plan for 2016**

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

No action taken.

Commissioner Ritchie arrived at 7:10 p.m.

7. **Staff report regarding changes in mass mailings language**

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

Motion to direct chair to work with staff to bring back an amended draft of FCPC Regulation R2.12.325 that includes the following additional language – “The three copies of the mass mailing and the certification must be hand delivered or sent by guaranteed overnight delivery to comply with the requirement that they 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.” – and to consider adding an option to file electronically (M/S/C: McLean/Murray; Ayes: B. Smith, Murray, Mabanta, McLean, O’Donnell, Ritchie, S. Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Soichet (excused)).

Motion to direct chair to work with staff to bring back penalties language for late filing, and consider language to clarify penalties for failure to file, including whether the regulation should reference Berkeley Municipal Code Section 2.12.485 or specify the monetary penalty in Regulation R2.12.325 (M/S/C: O’Donnell/Murray; Ayes: B. Smith, Murray, Mabanta, McLean, O’Donnell, Ritchie, S. Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Soichet (excused)).

8. **Discussion and action regarding loan subcommittee**

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

Motion to create ad hoc single purpose subcommittee consisting of Commissioners Soichet, Murray, Ritchie and Metzger (as interim chair) to examine the use of loan money in campaigns (M/S/C: S. Smith/O’Donnell; Ayes: B. Smith, Murray, Mabanta, McLean, O’Donnell, Ritchie, S. Smith; Noes: None; Abstain: None; Absent: Metzger (excused), Soichet (excused)).

9. **Staff report regarding change in procedure regarding Slate Mailer Organizations**

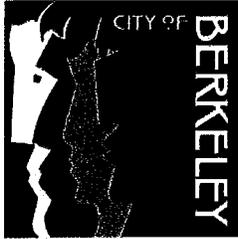
- a. Public comment: no speakers.
- b. Commission discussion and possible action.

No action taken.

10. **Adjournment**

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

The meeting adjourned at 7:55 p.m.



Fair Campaign Practices Commission

DATE: July 21, 2016
TO: FAIR CAMPAIGN PRACTICES COMMISSION
FROM: SAVITH IYENGAR, FCPC Secretary/Staff Counsel *SSI 7/14/16*
SUBJECT: REPORT RE: Mass Mailings Language

FCPC Regulation R2.12.325

At its regular meeting on May 19, 2016, the Commission moved to direct the chair to work with staff to bring back an amended draft of FCPC Regulation R2.12.325 that includes the following additional language:

The three copies of the mass mailing and the certification must be hand delivered or sent by guaranteed overnight delivery to comply with the requirement that they 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.

The Commission Secretary attaches a draft of FCPC Regulation R2.12.325.2 that includes this additional language in tracked changes (**Attachment 1**).

Automatic Penalties for Late Filing

The Commission also moved to direct the chair to work with staff to bring back penalties language for late filing, and consider language to clarify penalties for failure to file, including whether the regulation should reference Berkeley Municipal Code ("BMC") Section 2.12.485 or specify the monetary penalty in Regulation R2.12.325.

Currently, penalties for failure to timely file mass mailings are provided by BMC Section 2.12.231, which allows the Commission to order violators to (i) cease and desist the violation, (ii) file any documents required by the chapter, and/or (iii) pay a monetary penalty of up to \$1,000.00 per violation. If the Commission is satisfied with this penalty process, it does not need to make any further changes to BERA or the Regulations.

July 21, 2016

Page 2 Re: Mass Mailings Language

However, if the Commission would like staff to have the ability to automatically penalize violators of the mass mailing requirement, e.g., at \$10.00 per day for late filings, the Commission must amend Chapter 2.12, also known as the Berkeley Election Reform Act (BERA). Section 2.12.485 provides for late automatic filing penalties for certain filings (campaign statements, late contribution reports, late independent expenditure reports). To provide for similar penalties for late mass mailing filings, the Commission must amend BERA to reference Section 2.12.325 (Mass mailings--Copies to commission). The Commission may seek to amend BERA as follows:

2.12.485 Late filing penalties.

Any candidate or committee whose only requirement to file a campaign statement or report is pursuant to Sections [2.12.270](#), [2.12.295](#), ~~or [2.12.297](#)~~, or [2.12.325](#) of this chapter and who files such report ~~or~~ reports, or mass mailing after the deadlines imposed in these sections, shall, in addition to any other penalties or remedies established by this chapter, be liable for the penalties enumerated in California Government Code Section [91013](#), which is incorporated herein. (Ord. xxxx-NS § x, 20xx: Ord. 7234-NS § 5, 2012: Ord. 6096-NS, § 2 (part), 1991)

Please note that to amend BERA, both the Commission and City Council must approve the motion by a two-thirds vote.

Filing Mass Mailings Electronically

Finally, the Commission also moved to consider adding an option to file mass mailings electronically. Staff will present an oral report regarding this option at the Commission's July 21, 2016 regular meeting.

Attachments

1. Draft FCPC Regulation R2.12.325.2, draft dated July 11, 2015

R2.12.325.2 Filing of Mass Mailings - Method of Filing

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.

The three copies of the mass mailing and the certification must be hand delivered or sent by guaranteed overnight delivery to comply with the requirement that they 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.

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. The certification shall include the following information:

- (a) The name of the candidate, committee, officeholder, individual or organization with local filing requirements under the BERA responsible for the mass mailing.
- (b) The campaign filing identification number, if any.
- (c) The date that the mass mailing was (or will be) deposited in the U.S. mail.
- (d) The signature of the candidate, committee, officeholder, individual or organization with local filing requirements under the BERA responsible for the mass mailing. Where a committee or organization is responsible for the filing, the certification shall be signed by the committee or organization treasurer.

The certification may be hand- or type-written by the responsible candidate, committee, officeholder, individual or organization with local filing obligations under the BERA either directly on the mass mailing filed with the City Clerk's Office, or on a separate piece of paper if the piece of paper is attached to the mass mailing by staple. The certification shall be in a form substantially similar to the following:

I, _____, hereby certify under penalty of perjury that 200 or more copies of the document entitled or described as follows: _____, were (or will be) mailed on _____.

Signed: _____ Date: _____

Filing I.D. Number: _____

Dated: _____

The filing of a mass mailing in accordance with this regulation shall satisfy the requirement in BMC Section 2.12.325 that all mass mailings be sent to the Commission.