

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)

Special Meeting
January 14, 2016
7:00 p.m.

Secretary: Savith Iyengar, Deputy City Attorney

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

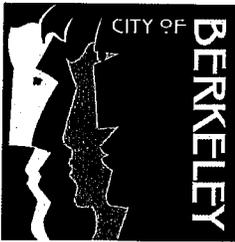
The Commission may act on any item on this agenda

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 November 19, 2015 meeting.
6. Discussion and action regarding changes to BERA for Paid Electronic Advertising.
7. Discussion and action regarding public financing charter and ordinance amendment.
8. Discussion and action regarding recommendation made by Slate Mailer Subcommittee.
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
November 19, 2015

Members Present: Brad Smith (Chair), Patrick O'Donnell, Alex Mabanta, Al Murray, Daniel Newman, Dave Ritchie, Sherry Smith, Emma Soichet

Members Absent: None

Also Present: Savith Iyengar, Secretary/Deputy City Attorney

1. **Call to Order**

Chair called the meeting to order at 7:08 p.m.

2. **Roll Call**

Roll call taken.

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

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

4. **Reports**

- a. Report from Chair
- b. Report from Staff
- c. Report from Chair of Slate Mailer Subcommittee

Chair welcomed new commissioners and discussed the City Council's consideration of the Commission's item regarding the Berkeley Fair Elections Public Campaign Financing Ballot Measure at its special meeting on November 10, 2015.

5. **Approval of minutes for the September 17, 2015 Regular Meeting**

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

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

6. **Discussion and action regarding establishing meeting schedule for 2016**

Motion to approve the following meeting schedule for the Commission for 2016: Third Thursday of the following months at 7:00 p.m.: January, February, March, April, May, July, September, October and November (M/S/C: Murray/Mabanta; Ayes: B. Smith, O'Donnell, Mabanta, Murray, Newman, Ritchie, S. Smith, Soichet; Noes: None; Abstain: None; Absent: None).

7. **Discussion and possible action regarding the City Council's consideration of public financing charter amendment and ordinance amendment.**

- a. Public comment: 3 speakers.
- b. Commission discussion and action.

Motion to endorse the following four amendments to the public financing charter amendment and ordinance amendment proposal previously adopted by the Commission at its Special Meeting on June 18, 2015: (1) limit the eligible offices to only Mayor and City Council, eliminating City Auditor, School Board Member, and Rent Board from the proposed measure; (2) allow participating candidates to raise money from individual donors residing in any location, but restrict public matching funds to match only contributions that come from City of Berkeley residents. In all cases, contributions to participating candidates must still be \$50 or less and come from individuals (not political action committees or other entities); (3) after each of the first two election cycles for which the Fair Elections system is in effect, the Fair Campaign Practices Commission will review the program and make recommendations for policy changes to improve and refine the system; (4) increase the maximum Fair Election funds a participating candidate for Mayor can receive, from \$100,000 to \$120,000 (M/S: Newman/Murray).

Substitute motion to work with the Chair and staff to set an appropriate date for a Special Meeting to consider the City Council's November 10, 2015 referral to the Commission regarding the Commission's public financing charter amendment and ordinance amendment proposal in time for the Commission to return to Council in February 2016 (M/S/C: Ritchie/O'Donnell; Ayes: B. Smith, O'Donnell, Ritchie, S. Smith, Soichet; Noes: Murray, Newman; Abstain: Mabanta; Absent: None).

8. **Review staff report regarding compliance review of campaign statements; discussion and possible action**

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

Motion to accept staff report and authorize Chairperson to enter into the stipulations attached thereto with Soto-Vigil for Council 2014 and Linda Maio for Council 2014 (M/S/C: Newman/Murray; Ayes: B. Smith, O'Donnell, Mabanta, Murray, Newman, Ritchie, Smith, Soichet; Noes: None; Abstain: None; Absent: None).

Meeting temporarily adjourned at 7:58 p.m., reconvened at 10:30 p.m.

9. **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 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).

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

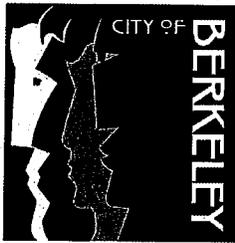
- a. Public comment: no speakers.
- b. Commission discussion and possible action.

Motion to continue item 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).

11. **Adjournment**

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

The meeting adjourned at 10:33 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.**

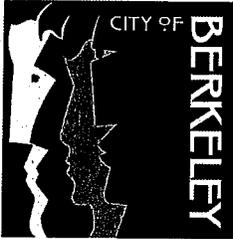
....
(3) The disclosures shall be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of the person(s) or committee(s) that paid for the communication, as specified below.

.....
(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 PUBLIC FINANCING CHARTER AND
ORDINANCE AMENDMENT

On June 18, 2015, the Commission moved to adopt the public funding proposal from MapLight and the League of Women Voters (dated January 5, 2015), and recommend that council consider this proposal for possible further consideration for the ballot (M/S/C: Newman/Smart; Ayes: Murray, Newman, O'Donnell, Ritchie, Smart; Noes: B. Smith, Metzger, S. Smith; Abstain: None; Absent: Lombardi).

Accordingly, on September 15, 2015, the Chair submitted the "Report Regarding Berkeley Fair Elections Public Campaign Financing Ballot Measure" to the City Council. The report recommended that Council consider the public financing proposal from MapLight and the League of Women Voters (dated January 5, 2015) for possible further consideration for the November 2016 ballot. This report and proposal dated January 5, 2015 are attached as **Attachment 1**.

At its September 15, 2015 regular meeting, Council moved the item to the consent calendar to be scheduled for a special meeting on November 10, 2015. At the November 10, 2015 special meeting, the Berkeley Fair Elections Coalition presented Council with a document proposing amendments to the public financing proposal previously recommended to Council for consideration by the Commission. This document is attached as **Attachment 2**. Council moved on the item as follows:

Action: 17 speakers. M/S/C (Bates/Moore) to refer to the Fair Campaign Practices Commission to merge the amendments submitted by the Berkeley Fair Elections Coalition regarding limiting the offices covered, allowing contributions from outside Berkeley with certain restrictions, a built in review of the program with the original draft of the proposed measure, and an increase to the matching cap for Mayor to \$120,000 and return to Council with a new draft in February 2016.

Vote: All Ayes.

Council's referral is attached as **Attachment 3**. Between November 12 and 23, 2015, the Commission received communications from the public regarding the item. While the communications were not timely received for inclusion in the Commission's packet for the November 19, 2015 regular meeting, those sent prior to the meeting time were provided by staff to the Commissioners and made available to the public at the meeting. All communications are attached here as **Attachment 4**.

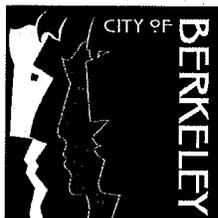
At the November 19 meeting, the Commission also received the document proposing amendments to the public financing proposal previously circulated by the Berkeley Fair Elections Coalition to Council on November 10. The Commission moved to work with the Chair and staff to set an appropriate date for a special meeting to consider Council's November 10 referral to the Commission regarding the Commission's public financing charter amendment and ordinance amendment proposal in time for the Commission to return to Council in February 2016 (M/S/C: Ritchie/O'Donnell; Ayes: B. Smith, O'Donnell, Ritchie, S. Smith, Soichet; Noes: Murray, Newman; Abstain: Mabanta; Absent: None). The Chair and staff set this special meeting for January 14, 2016.

For this meeting, the Chair has submitted a report to the Commission titled "Considerations Regarding the Proposed Fair Elections Public Financing Charter Amendment and Ordinance Amendment," dated January 14, 2016. This report and its four attachments are attached as **Attachment 5**.

Attachments:

1. Report from Chair to Council titled "Report Regarding Berkeley Fair Elections Public Campaign Financing Ballot Measure," dated September 15, 2015.
2. Document proposing amendments to the January 5, 2015 MapLight/League of Women Voters proposal, presented to Council November 10, 2015 and the Commission November 19, 2015.
3. Council's referral to the Commission, dated November 10, 2015.
4. Communications from the public, dated between November 12 and 23, 2015.
5. Report by Chair to the Commission titled "Considerations Regarding the Proposed Fair Elections Public Financing Charter Amendment and Ordinance Amendment," dated January 14, 2016.

ATTACHMENT 1



Fair Campaign Practices Commission

ACTION CALENDAR

November 10, 2015

(Continued from September 15, 2015)

To: Honorable Mayor and Members of the City Council
 From: Fair Campaign Practices Commission
 Submitted by: Brad Smith, Chair, Fair Campaign Practices Commission
 Subject: Berkeley Fair Elections Public Campaign Financing Ballot Measure

RECOMMENDATION

Consider the public funding proposal from MapLight and the League of Women Voters (dated January 5, 2015) for possible further consideration for the November 2016 ballot.

FISCAL IMPACTS OF RECOMMENDATION

None.

CURRENT SITUATION AND ITS EFFECTS

In May 2014, Councilmember Kriss Worthington presented an action item to the City Council recommending a referral to the City Manager to place a publicly financed elections measure on the November 2016 ballot. Councilmember Worthington attached a draft Charter Amendment and Ordinance Amendment. Councilmember Worthington's action item, dated May 20, 2014, and draft Charter Amendment and Ordinance Amendment, dated April 28, 2014, are attached as Attachment 1.

Council considered the item and referred the draft ballot measure to the Fair Campaign Practices Commission for review and recommendation for the November 2016 ballot as follows:

36. City Manager Referral; Berkeley Publicly Financed Elections Measure on November Ballot

From: Councilmember Worthington

Recommendation: Refer to the City Manager to place Berkeley Publicly Financed Elections Measure on November Ballot.

Financial Implications: See report

Contact: Kriss Worthington, Councilmember, District 7, 981-7170

Action: 11 speakers. M/S/C (Bates/Wozniak) to refer the draft ballot measure to the Fair Campaign Practices Commission for review and recommendation for the November 2016 ballot.

Vote: Ayes – Maio, Moore, Arreguin, Capitelli, Wengraf, Worthington, Wozniak, Bates; Noes – None; Abstain – Anderson.

At the Commission's June 2014 meeting, staff recommended that the Commission set the item for further discussion and possible action at a future meeting, and noted that the Commission may consider taking additional action, such as creating an *ad hoc* subcommittee to further explore this issue or scheduling work sessions or a public hearing to obtain community feedback.

At the Commission's September 2014 meeting, the Commission continued to review the Council referral of the draft public financing ballot measure. The Commission moved to schedule a workshop session on public financing and hold a pre-planning discussion on the workshop session and proposals at a future Commission meeting. The Commission discussed these topic at its February, March and April general meetings.

The Commission held a public financing workshop session at a special meeting on April 23, 2015. At its next general meeting on May 21, the Commission moved to add a June 18, 2015 special meeting and continued its discussion of the public financing ballot measure to that meeting.

At the June special meeting, the Commission moved as follows:

Motion to adopt the public funding proposal from MapLight and the League of Women Voters (dated January 5, 2015), and recommend that council consider this proposal for possible further consideration for the ballot (M/S/C:

Newman/Smart; Ayes: Murray, Newman, O'Donnell, Ritchie, Smart; Noes: B. Smith, Metzger, S. Smith; Abstain: None; Absent: Lombardi).

A copy of the public funding proposal from MapLight and the League of Women Voters dated January 5, 2015, is attached as Attachment 2.

The proposal seeks to amend the City's Charter to appropriate four dollars (\$4.00) per Berkeley resident per year from the City's General Fund to a Fair Elections Fund. The total amount in the Fair Elections Fund would not exceed \$2 million.

The proposal also seeks to amend the Berkeley Municipal Code ("BMC"). Pursuant to these amendments, the Fair Elections Fund would provide public financing for the election of eligible participating candidates for the offices of Mayor, City Council, City Auditor, School Board Director, and Rent Board Commissioner. The Fair Elections Fund would also pay for the City's administrative and enforcement costs related to the public campaign financing program. Eligible participating candidates would receive payment from the Fair Election Fund equal to six-hundred percent (600%) of the amount of qualified contributions received by the candidate during the election subject to the following aggregate limits: Mayor (\$100,000), City Council (\$40,000), City Auditor (\$15,000), School Board Director (\$15,000), and Rent Board Commissioner (\$5,000).

BACKGROUND

The Berkeley Election Reform Act of 1974 ("BERA") is codified in Chapter 2.12 of the BMC. Section 2.12.010 of the BMC includes the following "Findings":

- B. Public officials, whether elected or appointed, should perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.
- C. Costs of conducting election campaigns have increased greatly in recent years, and candidates have been forced to finance their campaigns by seeking large contributions from persons and organizations who thereby gain disproportionate influence over governmental decisions.

The Fair Campaign Practices Commission has the specific duty to "[p]rovide assistance to . . . public officials in administering the provisions of [BERA]." To that end, Council referred a draft public financing ballot measure to the Commission for review and recommendation for the November 2016 ballot. The Commission considered the draft public financing ballot measure and various public financing proposals before moving to recommend that Council consider the January 5, 2015 draft by MapLight and the League of Women Voters.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with this report.

RATIONALE FOR RECOMMENDATION

See report.

ALTERNATIVE ACTIONS CONSIDERED

Before the Commission moved to recommend that Council consider the January 5, 2015 public financing charter/ordinance amendment (Attachment 2), the Commission considered various alternative public financing proposals. These included the April 28, 2014 draft charter/ordinance amendment attached to Councilmember Worthington's action item (Attachment 1), an April 16, 2015 draft charter/ordinance amendment proposed by Commission Chair Brad Smith, a June 10, 2015 draft charter/ordinance amendment proposed by Commission Vice Chair Dean Metzger, and various communications and comments from MapLight, the League of Women Voters, SEEDS, and members of the public.

CITY MANAGER

The City Manager takes no position on the content and recommendations of this report.

CONTACT PERSON

Brad Smith, Chair, Fair Campaign Practices Commission

(510) 926-2046

Savith Iyengar, Secretary, Fair Campaign Practices Commission (510) 981-6998

Attachments:

1. Councilmember Worthington Action Item (May 20, 2014) and draft Charter Amendment and Ordinance Amendment (April 28, 2014)
2. Draft Charter Amendment and Ordinance Amendment (January 5, 2015) by MapLight and the League of Women Voters



Kriss Worthington

Councilmember, City of Berkeley, District 7
 2180 Milvia Street, 5th Floor, Berkeley, CA 94704
 PHONE 510-981-7170 FAX 510-981-7177 kworthington@ci.berkeley.ca.us

ACTION CALENDAR

May 20, 2014

To: Honorable Mayor and Members of the City Council

From: Councilmember Kriss Worthington

Subject: City Manager Referral; Berkeley Publicly Financed Elections Measure on November Ballot

RECOMMENDATION

Refer to the City Manager to place Berkeley Publicly Financed Elections Measure on November Ballot.

BACKGROUND

Many reputable organizations strongly support money and politics reform. Some of these groups include Common Cause, Democracy NOW!, MapLight, the National Conference of State Legislatures, the Greenlining Institute, CALPIRG, and many others. According to CALPIRG's 2014 Priorities, its "democracy program is focused on limiting special interest influence in politics through supporting increased transparency, campaign finance reform, and increased voter participation in our elections." Across the nation, numerous states and cities have implemented campaign finance reforms. According to the Public Policy and Education Fund of New York, "26 states have enacted some kind of public financing of election system including Maine, Arizona, New Mexico, North Carolina and Vermont. New York City has used a "matching funds" public financing system for its citywide and city council races since 1980."

The Berkeley Public Financing of Elections Measure will promote fair elections by establishing a Fair Election fund, from which candidates will have the option to receive matching campaign funds in proportion to the amount that they raise privately. The measure is modeled after the successful matching funds program operating in New York City.

The measure would appropriate funds to the Fair Elections fund, at a cost of \$4 per citizen annually—amounting to \$461,612 per year and \$1.85 million per four-year cycle. These amounts would be adjusted for inflation, and the total amount in the fund would not exceed \$2 million. Moreover, administrative costs would not exceed \$250,000 per four-year cycle.

Candidates who choose to participate in this voluntary program may raise contributions of \$50 or less, which must come from individuals residing in the City of Berkeley, and

may not be contributions made by political action committees. They must also meet existing qualifications to appear on the ballot for the office of Mayor, City Councilmember, Rent Board Commissioner, or School Board Director. For each qualified contribution, a participating candidate receives a 6:1 matching contribution from the designated fund. For example, a contribution of \$50 (the maximum amount) would be matched by \$300 from the Fair Elections fund. The total amount paid by the fund to a given candidate is capped as follows

- Mayor: \$100,000
- City Council: \$45,000
- Rent Board Commissioner: \$8,000
- School Board Director: \$25,000

Text of the proposed measure is attached.

FINANCIAL IMPLICATIONS

\$10,000 to place the measure on the November ballot. If adopted by voters, up to \$461,612 annually.

CONTACT PERSON

Councilmember Kriss Worthington	510-981-7170
Councilmember Darryl Moore	510-981-7120

Attachment

1: Text of proposed Berkeley Fair Elections measure

Berkeley, CA
Fair Elections Public Financing
Charter Amendment and Ordinance Amendment
Draft April 28, 2014

**AMENDMENT TO CITY OF BERKELEY CHARTER ARTICLE III
(ELECTIONS) AND MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM
ACT) TO CREATE A FAIR ELECTIONS PUBLIC CAMPAIGN FINANCING
SYSTEM**

Section 1. FINDINGS

The People of the City of Berkeley find that the City of Berkeley's current campaign finance system:

- A. Discourages many otherwise qualified candidates from running for office because of the need to raise substantial sums of money to be competitive;
- B. Fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions;
- C. Creates a danger of actual corruption by encouraging elected officials to take money from private interests that are directly affected by governmental actions;
- D. Forces candidates to raise larger and larger percentages of money from interest groups that have a specific financial stake in matters before Berkeley City government to keep pace with rapidly increasing campaign costs;
- E. Diminishes elected officials' accountability to their constituents by compelling them to be disproportionately accountable to the contributors who finance their election campaigns;
- F. Violates the rights of all citizens to equal and meaningful participation in the democratic process;
- G. Disadvantages challengers, because campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive;
- H. Burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities; and
- I. Necessitates the creation of a Fair Elections public financing system to address these concerns.

Section 2. That Section 7 is added to Article III ("ELECTIONS") of the City of Berkeley Charter to read as follows:

Section 7. Fair Elections Fund

(1) Establishment of Fair Elections Fund.

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the Mayor and Council for the purpose of:

- (a) Providing public financing for the election campaigns of certified participating candidates; and
- (b) Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission and City staff related to the Fair Elections Fund public campaign financing program. The administrative and enforcement costs shall not exceed \$250,000 in any four year election cycle.

(2) Appropriations to the Fair Elections Fund.

- (a) The Mayor and City Council shall annually appropriate \$4 per Berkeley Resident per year, as determined by the most recent official United States Census Bureau Population Estimate for the City of Berkeley, from the City General Fund to the Fair Elections Fund. The Council's duty to appropriate funds for the public financing program shall cease upon the termination of the public financing program.
- (b) Other sources of revenue to be deposited in the Fund shall include:
 - 1) Unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which they were distributed;
 - 2) Fines levied by the Commission against candidates for violation of election laws;
 - 3) Voluntary donations made directly to the Fair Elections Fund;
 - 4) Other funds appropriated by the Mayor and City Council;
 - 5) Any interest generated by the Fund; and
 - 6) Any other sources of revenue determined as necessary by the Mayor and City Council.
- (c) The amount in the Fair Elections Fund shall not exceed \$2 million. In order to comply with this limitation, revenue that would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.
- (d) The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

(3) Cost of Living Adjustments.

The Commission shall adjust the dollar amounts specified in subsections (1)(b), (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

Section 3. Be it Ordained by the People of the City of Berkeley that Berkeley Municipal Code, Title 2, Chapter 2.12, Election Reform Act, is hereby amended as follows:

That Article 2 ("Definitions") of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.123 Election Cycle.

"Election cycle" means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending on the date of the next general election for that office or seat.

2.12.137 Fund.

"Fund" means the Fair Elections Fund created by City Charter Article III Section 7.

2.12.138 General Election.

"General election" means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4.

2.12.156 Nomination Period

"Nomination period" means the period specified by state law during which candidates must submit nomination papers for City offices.

2.12.158 Participating Candidate.

"Participating candidate" means a candidate who qualifies for Fair Elections campaign funding.

2.12.166 Qualified Elector

"Qualified elector" means a person who is properly registered to vote pursuant to state law.

2.12.167 Qualified Contribution.

“Qualified contribution” means a contribution that meets each of the following requirements:

- A. Totaling less than \$50;
- B. Made by an individual donor, not a political action committee;
- C. Made by a resident of the city of Berkeley.

2.12.168 Qualifying Period.

“Qualifying period” means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending at the close of the nomination period.

2.12.169 Special Election.

“Special election” means an election other than a general municipal election held pursuant to City Charter Article III Section 4.

Section 4. That Section 2.12.205 of Berkeley Municipal Code is amended to read as follows:

2.12.205 Administrative responsibility.

The Commission has the primary responsibility for the impartial, effective administration of this chapter. The Commission may delegate its responsibility for administration of this chapter to City staff.

Section 5. That Article 4 (“Disclosure Requirements and Procedures”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.283 Campaign statement—Additional Information Required From Participating Candidates.

Each participating candidate shall file reports of receipts and expenditures of Fair Elections funds at such times and in such manners as the Commission may by regulation prescribe, including, but not limited to, reports containing information necessary to verify that qualified contributions received by participating candidates and Fair Elections funds spent by participating candidates comply with the restrictions and requirements of this chapter.

Section 6. That Section 2.12.435 of Berkeley Municipal Code is amended to read as follows:

2.12.435 Excess amounts—Payment to City required.

Berkeley, CA
Fair Elections Public Financing
Charter Amendment and Ordinance Amendment
Draft January 5, 2015

**AMENDMENT TO CITY OF BERKELEY CHARTER ARTICLE III
(ELECTIONS) AND MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM
ACT) TO CREATE A FAIR ELECTIONS PUBLIC CAMPAIGN FINANCING
SYSTEM**

Section 1. FINDINGS

The People of the City of Berkeley find that the City of Berkeley's current campaign finance system:

- A. Discourages many otherwise qualified candidates from running for office because of the need to raise substantial sums of money to be competitive;
- B. Fuels the public perception of corruption and undermines public confidence in the democratic process and democratic institutions;
- C. Creates a danger of actual corruption by encouraging elected officials to take money from private interests that are directly affected by governmental actions;
- D. Forces candidates to raise larger and larger percentages of money from interest groups that have a specific financial stake in matters before Berkeley City government to keep pace with rapidly increasing campaign costs;
- E. Diminishes elected officials' accountability to their constituents by compelling them to be disproportionately accountable to the contributors who finance their election campaigns;
- F. Violates the rights of all citizens to equal and meaningful participation in the democratic process;
- G. Disadvantages challengers, because campaign contributors tend to give their money to incumbents, thus causing elections to be less competitive;
- H. Burdens candidates with the incessant rigors of fundraising and thus decreases the time available to carry out their public responsibilities; and
- I. Necessitates the creation of a Fair Elections public financing system to address these concerns.

Section 2. That Section 7 is added to Article III ("ELECTIONS") of the City of Berkeley Charter to read as follows:

Section 7. Fair Elections Fund

(1) Establishment of Fair Elections Fund.

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the Mayor and Council for the purpose of:

- (a) Providing public financing for the election campaigns of certified participating candidates; and
- (b) Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission and City staff related to the Fair Elections Fund public campaign financing program. The administrative and enforcement costs shall not exceed \$250,000 in any four year election cycle.

(2) Appropriations to the Fair Elections Fund.

- (a) The Mayor and City Council shall annually appropriate \$4 per Berkeley Resident per year, as determined by the most recent official United States Census Bureau Population Estimate for the City of Berkeley, from the City General Fund to the Fair Elections Fund. The Council's duty to appropriate funds for the public financing program shall cease upon the termination of the public financing program.
- (b) Other sources of revenue to be deposited in the Fund shall include:
 - 1) Unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which they were distributed;
 - 2) Fines levied by the Commission against candidates for violation of election laws;
 - 3) Voluntary donations made directly to the Fair Elections Fund;
 - 4) Other funds appropriated by the Mayor and City Council;
 - 5) Any interest generated by the Fund; and
 - 6) Any other sources of revenue determined as necessary by the Mayor and City Council.
- (c) The amount in the Fair Elections Fund shall not exceed \$2 million. In order to comply with this limitation, revenue that would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.
- (d) The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

(3) Cost of Living Adjustments.

The Commission shall adjust the dollar amounts specified in subsections (1)(b), (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.

Section 3. Be it Ordained by the People of the City of Berkeley that Berkeley Municipal Code, Title 2, Chapter 2.12, Election Reform Act, is hereby amended as follows:

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2.12.137 Fund.

"Fund" means the Fair Elections Fund created by City Charter Article III Section 7.

2.12.138 General Election.

"General election" means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4.

2.12.156 Nomination Period

"Nomination period" means the period specified by state law during which candidates must submit nomination papers for City offices.

2.12.158 Participating Candidate.

"Participating candidate" means a candidate who qualifies for Fair Elections campaign funding.

2.12.166 Qualified Elector

"Qualified elector" means a person who is properly registered to vote pursuant to state law.

2.12.167 Qualified Contribution.

"Qualified contribution" means a contribution not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley;

2.12.168 Qualifying Period.

"Qualifying period" means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending at the close of the nomination period.

2.12.169 Special Election.

"Special election" means an election other than a general municipal election held pursuant to City Charter Article III Section 4.

Section 4. That Section 2.12.205 of Berkeley Municipal Code is amended to read as follows:

2.12.205 Administrative responsibility.

The Commission has the primary responsibility for the impartial, effective administration of this chapter. The Commission may delegate its responsibility for administration of this chapter to City staff.

Section 5. That Article 4 ("Disclosure Requirements and Procedures") of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.283 Campaign statement—Additional Information Required From Participating Candidates.

Each participating candidate shall file reports of receipts and expenditures of Fair Elections funds at such times and in such manners as the Commission may by regulation prescribe, including, but not limited to, reports containing information necessary to verify that qualified contributions received by participating candidates and Fair Elections funds spent by participating candidates comply with the restrictions and requirements of this chapter.

Section 6. That Section 2.12.435 of Berkeley Municipal Code is amended to read as follows:

2.12.435 Excess amounts—Payment to City required.

If any person is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the City for deposit in the ~~general fund~~ Fair Elections Fund of the City.

Section 7. That Berkeley Municipal Code Chapter 2.12 Article 7 is amended to read as follows:

Article 7. Berkeley Fair Elections Act of 2015

2.12.445 Title and Purpose.

This Article shall be known as the Berkeley Fair Elections Act of 2015. Its purposes are to:

- A. Diminish the public perception of corruption and strengthen public confidence in the governmental and election processes.
- B. Eliminate the danger of actual corruption of Berkeley officials caused by the private financing of campaigns.
- C. Help reduce the influence of private campaign contributions on Berkeley government.
- D. Reduce the impact of wealth as a determinant of whether a person becomes a candidate.
- E. Foster more meaningful participation in the political process.
- F. Provide candidates who participate in the program with sufficient resources with which to communicate with voters.
- G. Increase the accountability of elected officials to the constituents who elect them, as opposed to the contributors who fund their campaigns.
- H. Free candidates from the time needed to raise campaign money, and allow officeholders more time to carry out their official duties.

2.12.450 Offices Covered.

Candidates for the offices of Mayor, City Council, City Auditor, School Board Director, and Rent Board Commissioner shall be eligible to participate in the public campaign financing program established by this chapter.

2.12.455 Eligibility for Fair Elections Campaign Funding.

- A. To be eligible to be certified as a participating candidate, a candidate must:
 - 1) During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the Commission a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:

- a) The candidate has complied with the restrictions of this chapter during the election cycle to date;
 - b) The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and
 - c) The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.
- 2) Meet all requirements of applicable law to be listed on the ballot;
 - 3) Before the close of the qualifying period, collect at least 30 qualified contributions of at least ten dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).
 - a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.
 - b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.
 - 4) Maintain such records of receipts and expenditures as required by the Commission;
 - 5) Obtain and furnish to the Commission any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission;
 - 6) Not make expenditures from or use his or her personal funds or property or the personal funds or property jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified contribution to his or her controlled committee;

- 7) Not accept contributions other than qualified contributions in connection with the election for which Fair Elections funds are sought;
- 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions to such candidate's controlled committee.
- B. At the earliest practicable time after a candidate files with the Commission a written application for certification as a participating candidate, the Commission shall certify that the candidate is or is not eligible. Eligibility can be revoked if the candidate commits a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. Such a determination shall be made by the Commission upon a two-thirds vote following a hearing held pursuant to Section 2.12.230.
- C. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section 2.12.235.
- D. If the Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates.

2.12.460 Fair Elections Fund Payments.

- A. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six-hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.460(B).
- B. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:
 - 1) \$100,000 for a candidate running for the office of Mayor;
 - 2) \$40,000 for a candidate running for the office of City Council;
 - 3) \$15,000 for a candidate running for the office of City Auditor;
 - 4) \$15,000 for a candidate running for the office of School Board Director;
 - 5) \$5,000 for a candidate running for the office of Rent Board Commissioner.
- C. A participating candidate's application for Fair Elections funds, including an initial request submitted with an application for certification as a participating candidate, shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts

and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge. The Commission shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.

- D. The Commission shall make an initial payment of Fair Elections funds within four business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.
- E. The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.
- F. The Commission shall provide each participating candidate with a written determination specifying the basis for any non-payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non-payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.

2.12.465 Candidate Statement Notice.

A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6 ½.

2.12.470 Transition Rule for Current Election Cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- A. Returned to the contributor;
- B. Held in a special campaign account and used only for retiring a debt from a previous campaign; or
- C. Submitted to the City for deposit in the Fair Elections Fund.

2.12.475 Special Elections.

The provisions of this chapter apply to special elections. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special election.

2.12.480 Campaign Accounts for Participating Candidates.

- A. During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account required by Section 2.12.250.
- B. A participating candidate may maintain a campaign account other than the campaign account described in subdivision (A) if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.
- C. Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subdivision B shall not be considered "contributions" to the candidate's current campaign.
- D. Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.

2.12.485 Use of Fair Elections Funds.

- A. A participating candidate shall use Fair Elections funds only for direct campaign purposes.
- B. A participating candidate shall not use Fair Elections funds for:
 - 1) Costs of legal defense in any campaign law enforcement proceeding under this Act;
 - 2) Indirect campaign purposes, including but not limited to:
 - a) The candidate's personal support or compensation to the candidate or the candidate's family;
 - b) Clothing and other items related to the candidate's personal appearance;

- c) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;
- d) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;
- e) An independent expenditure;
- f) Any payment or transfer for which compensating value is not received.

2.12.490 Administrative Modification of Timelines

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter.

2.12.495 Insufficient Funds in the Program.

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section 2.12.460(B). Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section 2.12.460(C), the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section 2.12.455(A)(6).

2.12.500 Cost of Living Adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167, 2.12.455(A)(3), 2.12.460(B) and 2.12.485(B)(2)(c) 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 and 2.12.485(B)(2)(c) and one thousand dollars (\$1,000) with respect to Sections 2.12.455(A)(3) and 2.12.460(B).

Section 8. That Article 7 ("Enforcement—Penalties for Violation") of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

Article 7. Article 8. Enforcement—Penalties For Violation

2.12.445 2.12.505 Complaints—Filing, investigation and Commission action.

2.12.450 2.12.510 Actions for compliance—Who is authorized to institute.

2.12.455 2.12.515 Actions for compliance—Procedure required and Commission authority.

Before instituting an action pursuant to Section 2.12.450 2.12.510, a person must file a written request with the Commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The Commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the Commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the Commission is dismissed without prejudice. If the Commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter.

2.12.460 2.12.520 Violation—Deemed misdemeanor—Penalty.

2.12.465 2.12.525 Actions for compliance—Disposition of amounts recovered.

If a judgment is entered against the defendant or defendants in an action brought under Section 2.12.450 2.12.510, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the ~~general fund~~ Fair Elections Fund of the City. In an action brought by the Commission or the City Attorney, the entire amount recovered shall be paid to the ~~general fund~~ Fair Elections Fund of the City.

2.12.470 2.12.530 Violation—Candidate's office forfeited when.

2.12.475 2.12.535 Violation—Candidacy terminated when.

2.12.480 2.12.540 Violation—Persons ineligible for candidacy—Time limit.

2.12.485 2.12.545 Late filing penalties.

2.12.550 Fair Elections Act Penalties

In addition to other enforcement and penalty provisions of this Article:

- A. It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- B. If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- D. The Commission shall, after a hearing held pursuant to Section 2.12.230, have the authority to impose the fine created by this section upon a two-thirds vote.

2.12.555 Violation—Persons Ineligible for Public Funds—Time Limit

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section 2.12.230. The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation.

Section 9. EFFECTIVE DATE

All provisions of this act will take effect immediately.

Section 10. SEVERABILITY

In the event any court of competent jurisdiction holds any provision of this Act invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.

ATTACHMENT 2

Motion:

The FCPC previously endorsed the small donor public funding of elections proposal from the League of Women Voters and MapLight, and we also endorse the following four amendments to the proposal:

- 1) Limit the eligible offices to only Mayor and City Council, eliminating City Auditor, School Board Member, and Rent Board from the proposed measure.
- 2) Allow participating candidates to raise money from individual donors residing in any location, but restrict public matching funds to match only contributions that come from City of Berkeley residents. In all cases, contributions to participating candidates must still be \$50 or less and come from individuals (not political action committees or other entities).
- 3) After each of the first two election cycles for which the Fair Elections system is in effect, the Fair Campaign Practices Commission will review the program and make recommendations for policy changes to improve and refine the system.
- 4) Increase the maximum Fair Election funds a participating candidate for Mayor can receive, from \$100,000 to \$120,000.

ATTACHMENT 3

**ANNOTATED AGENDA
SPECIAL MEETING OF THE
BERKELEY CITY COUNCIL**

TUESDAY, NOVEMBER 10, 2015

7:00 P.M.

Longfellow Middle School Auditorium – 1500 Derby Street, Berkeley, CA 94703

TOM BATES, MAYOR

Councilmembers:

DISTRICT 1 – LINDA MAIO
DISTRICT 2 – DARRYL MOORE
DISTRICT 3 – MAX ANDERSON
DISTRICT 4 – JESSE ARREGUIN

DISTRICT 5 – LAURIE CAPITELLI
DISTRICT 6 – SUSAN WENGRAF
DISTRICT 7 – KRIS WORTHINGTON
DISTRICT 8 – LORI DROSTE

Preliminary Matters

Roll Call: 7:04 p.m.

Present: Maio, Moore, Anderson, Arreguin, Capitelli, Wengraf, Worthington, Droste, Bates.

Absent: None.

Recess 7:38 p.m. – 7:40 p.m.

Public Comment - Limited to items on this agenda only - 98 speakers.

Action Calendar

1. **a. Revisions to Minimum Wage Ordinance B.M.C 13.99** *(Continued from September 15, 2015)*
From: Commission on Labor
Recommendation: Adopt first reading of an Ordinance amending Berkeley Municipal Code Chapter 13.99 that will ensure the Berkeley Minimum Wage Ordinance is successful in promoting and protecting the rights and the individual self-reliance of working people in Berkeley by raising the minimum wage to a living wage, adding an annual cost of living adjustment, and granting adequate paid sick leave to all workers.
Financial Implications: None
Contact: Delfina Geiken, Commission Secretary, 981-5400

Action Calendar

turnover, improved worker performance, and incremental increases to prices. Operational costs and restaurant prices would increase slightly (Reich, Jacobs, Bernhardt, & Perry, 2014). Prices would also likely increase in industries that typically employ low-wage workers (Dube, 2014).

Action: M/S/C (Bates/Capitelli) to table Item 1.c. Paid Sick Leave Ordinance to January 2016.

Vote: Ayes – Moore, Capitelli, Wengraf, Droste, Bates; Noes – Arreguin, Worthington; Abstain – Anderson; Absent – Maio.

Councilmember Maio absent 10:15 p.m. – 10:22 p.m.

2. **Berkeley Fair Elections Public Campaign Financing Ballot Measure** *(Continued from September 15, 2015)*

From: Fair Campaign Practices Commission

Recommendation: Consider the public funding proposal from MapLight and the League of Women Voters (dated January 5, 2015) for possible further consideration for the November 2016 ballot.

Financial Implications: None

Contact: Savith Iyengar, Commission Secretary, 981-6950

Action: M/S/C (Bates/Maio) to suspend the rules and extend the meeting to 11:15pm

Vote: Ayes – Maio, Anderson, Arreguin, Capitelli, Worthington, Droste, Bates; Noes – None; Abstain – Wengraf; Absent – Moore.

Councilmember Moore absent 10:47 p.m. – 10:50 p.m.

Action: 17 speakers. M/S/C (Bates/Moore) to refer to the Fair Campaign Practices Commission to merge the amendments submitted by the Berkeley Fair Elections Coalition regarding limiting the offices covered, allowing contributions from outside Berkeley with certain restrictions, a built in review of the program with the original draft of the proposed measure, and an increase to the matching cap for Mayor to \$120,000 and return to Council with a new draft in February 2016.

Vote: All Ayes.

Adjournment

Action: M/S/C (Bates/Capitelli) to adjourn the meeting.

Vote: All Ayes

Adjourned at 11:12 p.m.

Communications

Item 1a: Revisions to Minimum Wage Ordinance B.M.C 13.99

Item 1b: Proposed Amendments to the Minimum Wage Ordinance; Amending Berkeley Municipal Code Chapter 13.99

ATTACHMENT 4

From: Leila Pedersen <LPedersen@commoncause.org>
Sent: Thursday, November 12, 2015 12:20 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Common Cause letter of support for Berkeley Fair Elections Act
Attachments: Berkeley Public Financing Support Letter_FCPC.pdf

Good Afternoon Savith Iyengar and the members of the Fair Campaign Practices Commission,

I am reaching out to submit a letter of support from California Common Cause in relation to the Berkeley Fair Elections Act which will be reviewed by your commission on November 19th. We are supportive of the amendments that have been suggested to City Council. These amendments include:

- 1) Limit the eligible offices to only Mayor and City Council, eliminating City Auditor, School Board Member, and Rent Board from the proposed measure.
- 2) Allow participating candidates to raise money from individual donors residing in any location, but restrict public matching funds to match only contributions that come from City of Berkeley residents. In all cases, contributions to participating candidates must still be \$50 or less and come from individuals (not political action committees or other entities).
- 3) After each of the first two election cycles for which the Fair Elections system is in effect, the Fair Campaign Practices Commission will review the program and make recommendations for policy changes to improve and refine the system.

Please include a copy of our letter in the materials provided to the commission in preparation for the meeting.

Thank you.

Leila Pedersen

State Program Manager

California Common Cause - Holding Power Accountable

(512).653-8056

lpedersen@commoncause.org

[@CommonCauseCA](#)

www.facebook.com/commoncauseca



COMMON CAUSE

Holding Power Accountable

www.commoncause.org

November 12, 2015

Fair Campaign Practices Commission
Savith Iyengar, Secretary
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

RE: Berkeley Fair Elections Act

Dear Members of the Fair Campaign Practices Commission,

On behalf of California Common Cause and our members, I am writing with a letter of support for the Fair Elections Act, which would magnify the role of average voters and allow local candidates to run viable campaigns without relying on big money.

As you likely know, running for elected office in Berkeley is expensive. When candidates have to spend most of their time fundraising, it can distract them from talking to voters and working on policy solutions that prioritize the public's priorities. Seven out of eight of the last council elections have gone to the candidate who raised the most money, as did the mayor's race. The rising costs of campaigns are threatening to push elected office out of reach for local candidates without personal wealth or connections to wealth.

The Berkeley Fair Elections Act aims to remedy the problem of high costs campaigns. After meeting ballot access requirements, each candidate who wishes to participate must collect 30 contributions of at least \$10 and not more than \$50, amounting to a total of at least \$500 in small-dollar donations. If a candidate meets these qualifications, he or she would be eligible to receive payments from the Fair Elections fund matching all donations of \$50 or less at a ratio of 6:1. By assuring candidates will have enough money to get their message out, the system encourages diversity in the candidate pool.

Originally, the proposal restricted participating candidates from accepting money from outside of the City of Berkeley and/or in amounts greater than \$50. The proposed amendment before you would keep these requirements for contributions that are matched with public money while given greater flexibility to allow candidates to receive money from outside of the City. Ultimately, candidates would be allowed to raise money from individual donors residing in any locations, but would be incentivized to focus on donors within the City of Berkeley because they are the only contributions that would be eligible to be matched with public funds.



COMMON CAUSE

Holding Power Accountable

www.commoncause.org

Small donor matching fund programs like the one that is being considered in Berkeley have a track record of success in municipalities like New York City, Los Angeles and others. Hard data confirms that the multiple match (6:1) has boosted giving by New York City donors for local campaigns. According research conducted by the Brennan Center, between 1997 (the last election under the one-to-one match) and 2009 (the first election under the six-to-one match) the number of small donors¹ grew by 40%. These increases occurred notwithstanding the economic downturn in 2008. In 2009, the typical participating City Council candidate enlisted the support of almost triple the number of small donors than did her non-participating counterpart. And in the same election, the average contribution to a participating City Council candidate was \$199, less than one-third the \$690 average contribution for non-participating candidates.

Common Cause research on the Los Angeles matching funds program showed that the number of small dollar donors² as a portion of all donors increased over time. In 2001, 26% of donors gave small dollar donations. In 2013 small donors were 31% of all donors and in 2015 the proportion grew to 46%. The power of the Fair Elections system is that it simultaneously drives candidates to rely more on small donors than would have been otherwise the case while incentivizing citizens to donate.

Because this is a new program for the City of Berkeley, we encourage the author to incorporate a formal review process after the first election cycles and allow a supermajority of the City Council to adopt policy changes to improve and refine the program.

For all of these reasons, California Common Cause strongly supports the Berkeley Fair Elections Act and we look forward to working with your office. We hope that you will look to our organization if you any further assistance.

Please contact me at lpedersen@commoncause.org or (512) 653-8056 if you have any questions.

Sincerely,

Leila Pedersen
State Program Manager

¹ In New York City, small dollar donations are defined as \$175 or less

² In Los Angeles, small dollar donations are defined as \$100-\$250



COMMON CAUSE

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www.commoncause.org

From: Nasira Abdul-Aleem <nasira@gmail.com>
Sent: Tuesday, November 17, 2015 2:05 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Support fair elections

Reasons to support Fair Elections:

Civic Engagement: It will more Berkeley residents to get involved in local elections

Diversity: It will diversify the donor pool, increase the number of small contributors and diversity the candidates running for office

Accountability: It will encourage candidates to spend more time talking to voters and less time dialing for dollars

The proposed amendments include:

1) Limit the eligible offices to only Mayor and City Council, eliminating City Auditor, School Board Member, and Rent Board from the proposed measure.

2) Allow participating candidates to raise money from individual donors residing in any location, but restrict public matching funds to match only contributions that come from City of Berkeley residents. In all cases, contributions to participating candidates must still be \$50 or less and come from individuals (not political action committees or other entities).

3) After each of the first two election cycles for which the Fair Elections system is in effect, the Fair Campaign Practices Commission will review the program and make recommendations for policy changes to improve and refine the system.

Peace/Salaam, Nasira

From: admin <ewalden3@comcast.net>
Sent: Tuesday, November 17, 2015 2:05 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: support the proposed amendments

The proposed amendments include:

- 1) Limit the eligible offices to only Mayor and City Council, eliminating City Auditor, School Board Member, and Rent Board from the proposed measure.
- 2) Allow participating candidates to raise money from individual donors residing in any location, but restrict public matching funds to match only contributions that come from City of Berkeley residents. In all cases, contributions to participating candidates must still be \$50 or less and come from individuals (not political action committees or other entities).
- 3) After each of the first two election cycles for which the Fair Elections system is in effect, the Fair Campaign Practices Commission will review the program and make recommendations for policy changes to improve and refine the system.

From: Peggy Love <pegontam@comcast.net>
Sent: Tuesday, November 17, 2015 2:24 PM
To: FCPC (Fair Campaign Practices Commission)
Cc: Peggy Love
Subject: Berkeley Fair Elections Act

FCPC:

Thank you for your work and good intentions. We hope, even trust, that the amendments will be approved and returned to City Council.

Your actions are needed now to bring in more people, like me, home bound, to be active make the contributions to the city, especially

the elections. Your continuous good will and work is so necessary to improve our system for all.

Sincerely,

Peggy Love

From: krismuller jong.com <krismuller@jong.com>
Sent: Tuesday, November 17, 2015 2:31 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: support the Berkeley Fair Elections Act

I support the Berkeley Fair Elections Act because it will foster more diversity in candidates for city council and mayor, as well as wider involvement in elections because more people will see a chance for people who understand their challenges and views to run for office.

Kris Muller

From: John Vias <john@johnvias.com>
Sent: Tuesday, November 17, 2015 2:43 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Fair Elections in Berkeley!

Dear FCPC:

Americans are well aware of the corrupting influence of money in politics, and that starts with elections. We Berkeleyans need candidates who better represent the people of Berkeley and not only those with money or connections to money, and who will better see to the needs of residents and not just big donors.

I'm a Berkeley resident and voter, and I strongly support Fair Elections.

Sincerely,

John Vias
Berkeley, CA

From: Wendy Ly Chen <wendylychen6@gmail.com>
Sent: Tuesday, November 17, 2015 2:44 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Berkeley Fair Elections Act

I support the Berkeley Fair Elections Act.

--

Wendy Chen
Bryn Mawr College, Bryn Mawr | May 2014
B.A. History of Art | Minor in Economics

[REDACTED]
Kindergarten Teaching Assistant
Phone: [REDACTED]

From: Linda Franklin <godzilinda@gmail.com>
Sent: Tuesday, November 17, 2015 2:48 PM
To: FCPC (Fair Campaign Practices Commission)

I support the Fair Elections proposal

- I prefer the original proposal as I think that the Rent Board is a common way for community members to enter into the political arena.
- I support an increase in the funding max for the mayor as it seems to be half of what what spent by recent candidates. I think we need a cap that is high enough to really run an effective campaign.
- I would also support a higher allowed max per donor, as \$50 is very low. While you determined the level because of Berkeley's small size compared with LA and NY, this also means that we have fewer potential donors because of our smaller population.
- I agree that candidates should be able to raise funds from supporters who are not Berkeley residents but I agree these shouldnt qualify for matching funds
- I believe that above the cap for match, candidates should be able to go back to the regular \$250 cap per candidate for fund raising, especially as \$50 is very little for a candidate to donate to their own campaign
- I am concerned also about the potential for political bias in having violations and penalties be assessed by the Fair Campaign Practices commission and wonder which if these should be administered by staff rather than by political appointees.

--
Linda Franklin


Berkeley

From: Sean McFarland <sean.mac.always@gmail.com>
Sent: Tuesday, November 17, 2015 2:55 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Support of the Berkeley Fair Elections Act

Hello,

I just wanted to take a moment to express my support for the Berkeley Fair Elections Act. While there are a laundry list of reasons why I think legislation like this is important, it basically can be boiled down to the fact that I believe the more public the funding for a campaign can be made, the more accountable elected officials will be to their constituents. Given that that is the foundation for representative government, it follows that just about anything possible to maximize it should make the system as a whole function better.

Thank you for your time.

Always,
Sean

From: sheila goldmacher <sheinaleah@comcast.net>
Sent: Tuesday, November 17, 2015 2:58 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: I support

the Berkeley Fair Elections Act.

From: Joshua Reichek <reichek@dslextreme.com>
Sent: Tuesday, November 17, 2015 3:06 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: fair elections NOW-- In support of Common Causes' letter to the Fair Campaign Practices Commission

Dear Members of the Fair Campaign Practices Commission, I am in support of the recommendations of Common Cause with regards to the Berkeley Fair Elections Act

Sincerely, Joshua Reichek
[REDACTED] Berkeley CA 94704

Help advance Fair Elections in Berkeley by emailing FCPC@CityofBerkeley.info and tell the commission why you want fair elections NOW.

From: Hannah Kessel <hannahkessel@gmail.com>
Sent: Tuesday, November 17, 2015 3:20 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Fair Elections Act

Hi,

I am a Berkeley resident and am writing this letter in support of the Fair Elections Act. I believe this legislation would promote civic engagement and a diversification of the people engaged in the political process. I am passionate about promoting widespread engagement and investment in the political process using amendments like those proposed in the Fair Elections Act.

Thank you for reading, and please consider the positive impact it could have on the Berkeley civil sphere.

Best,
Hannah Kessel

From: Carol Hirth <chirth@mac.com>
Sent: Tuesday, November 17, 2015 3:59 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Support for election changes

I support the proposed changes in elections to increase civic interest and involvement as well as fairness and less spending by candidates and issues.

Thank you.

Carol Hirth


Berkeley, CA 94702

From: Cecile Pineda <cecilep@sonic.net>
Sent: Tuesday, November 17, 2015 4:18 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: fair elections

I want to go on the record for supporting fair elections in order to get more people living in berkeley involved in local elections, and diversify the donor pool/

I believe it will focus candidates such that they will devote more time to talking with the electorate, and less time sucking up election dollars.

cecile leneman
[REDACTED]
berkeley ca 94704

From: Martin Friedman <martinfriedman@yahoo.com>
Sent: Tuesday, November 17, 2015 5:04 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: request

I support the Berkeley Fair Elections Act because it should increase voter turnout by involving voters who have not been able to have their voices heard in the past, when candidates felt obliged to court moneyed donors for the most part. And because it can be improved if it fails to meet its aims.

Martin B Friedman

Berkeley, CA 94705

From: Arlene Merryman <arlenetiger@sonic.net>
Sent: Tuesday, November 17, 2015 5:25 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Voting in Berkeley

Commissioners:

I support the Berkeley Fair Elections Act.

Please pass the requested actions for honest and thorough voting to give our city a place where elections are fair.

Sincerely,

Arlene Merryman

From: Elizabeth Baker <baker_eliz@yahoo.com>
Sent: Tuesday, November 17, 2015 6:01 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Subject: fair elections NOW-- In support of Common Causes' letter to the Fair Campaign Practices Commission.

November 12, 2015

Fair Campaign Practices Commission
Savith Iyengar, Secretary
2180 Milvia Street, 4th Floor
Berkeley, CA 94704

RE: Berkeley Fair Elections Act

Dear Members of the Fair Campaign Practices Commission,

I know you recently received a letter from Leila Pedersen, State Program Manager for California Common Cause. She stated far better than I ever could the many reasons for supporting the Fair Elections Act.

For all the reasons she stated and which I am 100% in agreement with, I strongly support the Berkeley Fair Elections Act. For the good of Berkeley and its citizens, I urge you to support it, also.

Sincerely,
Arlene Baker
[REDACTED] Berkeley

I don't know what the heck I'm doing, but I'm sure having a grand time doing it!

From: Patricia Malmstrom <twinservices@juno.com>
Sent: Tuesday, November 17, 2015 7:45 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Re small donor campaign funds

Dear Members of the Fair Campaign Practices Committee,

This is to urge you to support the Fair Elections system of campaign financing. It is high time that Berkeley adopts public financing of election campaigns. Public financing enlarges the pool of likely candidates, enhances the diversity of citizens who run for office, and reduces the influence of big money in elections. Los Angeles and New York are already reaping the benefits of such systems. It's time Berkeley, does, too.

Sincerely,

Patricia Malmstrom
Resident of [REDACTED]
Berkeley, CA

From: Ruth H Hand <hynds@me.com>
Sent: Wednesday, November 18, 2015 8:36 AM
To: FCPC (Fair Campaign Practices Commission)
Subject: Local involvement is the key to Democracy

We have an opportunity right now to reawaken our local electorate to be involved in Our Democratic Process. Please recognize this and vote accordingly. Support Berkeley to be a beacon of action at the local level - the foundation stone of an awake electorate.

Ruth Hand
94708 Voter
Sent from my iPhone

From: DeAnna Dalton <daldalton@gmail.com>
Sent: Wednesday, November 18, 2015 9:26 AM
To: FCPC (Fair Campaign Practices Commission)
Subject: Please support the Berkeley Fair Elections Act

Dear FCPC commissioners,

I hope that you will choose to support the Berkeley Fair Elections Act that will be before you at Thursday's meeting.

As someone who closely follows Berkeley politics, I have seen how moneyed influence plays a role in which campaigns are considered viable and who is financially able to run for elected office. This is not equality of political opportunity, or equal political voice. Across the country, we've seen a profound leveling of the playing field in places where fair elections have been implemented. Here in Berkeley, where such values lie so close to what we stand for as a city, I hope that we can take a stand in leading the way in money in politics, as we have in so many other areas.

This Thursday, please accept the proposed amendments and send the measure back to council.

Thank you,
DeAnna Dalton


Berkeley, CA 94710

From: Jonathan Reichek <jonreichek@sbcglobal.net>
Sent: Wednesday, November 18, 2015 9:57 AM
To: FCPC (Fair Campaign Practices Commission)

Dear Members of the Fair Campaign Practices Commission,

I am in support of the recommendations of Common Cause with regards to the Berkeley Fair Elections Act

Jonathan Reichek

[REDACTED]
Berkeley 94702

Cell [REDACTED]
jonreichek@sbcglobal.net

From: James Mcfadden <jpmcfadden925@yahoo.com>
Sent: Wednesday, November 18, 2015 1:01 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: I support the Berkeley Fair Elections Act

Fair Campaign Practices Commission,

As a Berkeley resident, I support the Berkeley Fair Campaign Elections Act.

I've attended meetings and heard several discussions about how the act will work.

It is well worth the small sum of money needed to open up our election process to a broader segment of the public.

Our public officials should not have to court favors with the rich or with developers to raise adequate funds to support a campaign.

Please leave the proposed act in its current state.

I do not support any of the amendments - especially the amendment that allows outside donors.

The amendment that allows outside donors will undermine the entire reason for this Act.

Regards, Dr. James McFadden

From: Terry Margerum <terry.margerum@gmail.com>
Sent: Wednesday, November 18, 2015 1:18 PM
To: FCPC (Fair Campaign Practices Commission)

Pls vote FOR this important legislation!!

Terry Margerum

Terry Margerum & Associates

Berkeley, Ca 94708

Ph. [REDACTED]

Fax [REDACTED]

From: Stephen Martin <steve7890@gmail.com>
Sent: Wednesday, November 18, 2015 2:09 PM
To: FCPC (Fair Campaign Practices Commission)
Cc: lpedersen@commoncause.org
Subject: supporting the Berkeley Fair Elections Act

Hello,

I'm writing in support of the Berkeley Fair Elections Act. I think this measure would lead to greater citizen involvement in the election process, and give an incentive to candidates to focus more on the grass roots as opposed to big money interests. If there's a down side, I'm not aware of it, and I'd very much like to hear about it.

Thank you.

- Stephen Martin

From: Allen Kanner <akanner@lmi.net>
Sent: Wednesday, November 18, 2015 8:59 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Fair elections

Dear FCPC,

I am writing in support of the Berkeley Fair Elections Act. It takes several important steps toward removing our elections from sale to the highest bidders, which are usually corporations and the wealthy.

Thank you.

Allen Kanner
Berkeley resident

From: Jeff Cohen <jeffcohenmft@gmail.com>
Sent: Wednesday, November 18, 2015 9:48 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Please support Fair Elections Act

Dear Commission,

I strongly support the Berkeley Fair Elections Act. The issue of campaign finance is the "elephant in the room" in terms of being able to say we have a fair democracy, which I do not currently believe that we do, but this measure, even at a local level, is at least a step in the right direction toward redressing this problem. I sincerely hope you will support the act as well.

Thank you,

Jeff Cohen

--
Jeff Cohen
Integrative Mind/Body Psychotherapy
JeffCohenMFT.com


From: Woody Little <woody_little@berkeley.edu>
Sent: Thursday, November 19, 2015 9:36 AM
To: FCPC (Fair Campaign Practices Commission)
Subject: We need Fair Elections now!

Dear Commissioners,

I write you as a student who works to engage voters on campus at UC Berkeley. In this work, I am constantly confronted by the cynicism that many students and young people hold towards government.

By magnifying small donations, the Berkeley Fair Act proposal provides a clear pathway for participation on a small scale to make a big difference. This will help address the engagement gap we see with students and young people in our city. Not only will they be more likely to donate, once they donate they will become an active stakeholder in our political process. They will vote, and most importantly they will bring their friends into the process as well.

We cannot afford to allow delay to sink such an important proposal for our city, one that you have already considered at length and approved as a body.

I urge you to confirm your past approval of this public financing system -with the proposed revisions- and send it back to council TODAY.

Sincerely,

Woody Little
Co-President, Common Cause of Berkeley

From: hs07078@gmail.com on behalf of Hamsini <hamsini.s.sridharan@gmail.com>
Sent: Thursday, November 19, 2015 12:15 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Letter of support for Berkeley Fair Elections Act

Dear Members of the Fair Campaign Practices Commission,

I'm writing to encourage you to approve amendments to the Berkeley Fair Elections Act. I work at MapLight, a nonprofit organization in Berkeley that tracks money's influence on politics. As a result, I have a lot of firsthand knowledge about how large political donors have more voice in government—even in Berkeley, a city that I associate with progressive politics and with a politically active, (loudly) vocal citizenry.

The Berkeley Fair Elections Act would be a way to change that, to allow voters who, like me, don't have a lot of money, to support our preferred candidates' campaigns and know that our voices—and our interests—will be taken seriously by them. And, importantly, it would reduce financial barriers to running for office that many potential candidates face, which would result in a more diverse local government that truly reflects the diversity of this city.

Small donor matching has already proven successful in state and local pilots across the country; I urge you to bring this system to Berkeley so that more people's voices are heard in our City Hall.

Sincerely,

Hamsini Sridharan


Berkeley, CA 94704
hamsini.s.sridharan@gmail.com

From: Allen Kanner <akanner@lmi.net>
Sent: Monday, November 23, 2015 9:10 PM
To: FCPC (Fair Campaign Practices Commission)
Subject: Fair elections

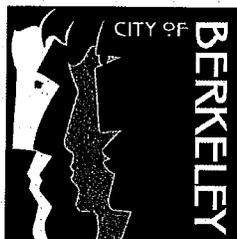
Dear FCPC,

I am writing in support of the Berkeley Fair Elections Act. With outside money pouring in, and the cost of running spiraling, elections across the country have been corrupted by the rich and corporate.

Best,

Allen Kanner
Berkeley

ATTACHMENT 5



Fair Campaign Practices Commission

DATE: January 14, 2016
TO: Fair Campaign Practices Commission
FROM: Brad Smith, Chair
SUBJECT: Considerations Regarding the Proposed Fair Elections Public Financing Charter Amendment and Ordinance Amendment

Over the last year, I've expressed concerns about the Berkeley Fair Elections Public Financing Charter Amendment and Ordinance Amendment. I've tried to make clear during our discussions that the public financing of elections makes sense to me at the state and federal levels. My concerns are specific to the City of Berkeley with a population of a little over 100,000. Here are my reservations about the proposal:

A Charter amendment imposes a financial restriction into the City Charter and thus reduces the Council's discretion to respond to current and changing City needs. As you can see from the copy of their webpage, "How to Evaluate Ballot Propositions," (attached) these are also concerns of the League of Women Voters. They suggest asking about a proposed ballot proposition:

Does the measure create its own revenue source? Does it earmark, restrict or obligate government revenues? Is so, weigh the benefits of securing funding for the measure's program against the cost of reducing overall flexibility in the budget.

If the measure amends the Constitution [City Charter], consider whether it really belongs in the Constitution [City Charter]. Would a statute accomplish the same purpose? Remember that all constitutional amendments require voter approval: what we put into the Constitution [City Charter] would have to come back to the ballot to be changed.

A provision of the proposal provides for the suspension of the money set aside for the public financing of election for a period of one year with a declaration of "fiscal emergency" by not less than two-thirds vote of the Council. Many interests in the City would appreciate this level of protection against the growing demands on increasingly scarce resources. "Fiscal emergency" locked into the City

Charter sets the bar too high for Council to consider the reallocation of these funds to other needs of the City.

Publically financed elections in Berkeley (an estimated \$400,000 per year) is not worth the cost when measured against competing demands for resources. Imagine being required to earmark \$400,000 per year for low income housing, homeless services, public health, police and fire services, repairing the City's sewers, parks, etc. These are all needs that I would chose to earmark funds for before the public financing of campaigns. I'm not for earmarking funds for any of these needs through a Charter amendment; I'm only saying that if I were required to do this, the public financing of campaigns wouldn't be my first choice.

There is little or no corruption in Berkeley. Among the reasons given to support publically financed elections in Berkeley (and states where publically financed elections have been implemented) is to combat corruption. The coordination of contributions by interest groups is seen by some as corruption, but this proposal would have no affect on such coordination. I see little, if any, evidence of prosecutable corruption in Berkeley.

The Berkeley Election Reform Act (BERA) passed in 1974 set the maximum contribution to candidates at \$250 per person (equivalent to over \$1,200 per person today in inflation adjusted dollars), which has served as a good check on campaign contributions in Berkeley. (It's probably time for the FCPC to consider raising the maximum contribution to candidates and possibly indexing it to the Consumer Price Index.) BERA further prohibits business entities and other organizations (including non-profits) from making contributions to candidates.

Administering publically financed elections in Berkeley will require considerable additional staff time and effort. BERA today takes a great deal of staff time to administer. It's difficult to estimate how much more of an additional burden this proposal will put on staff, but reading through the draft proposal suggests it will be considerable.

Some candidates may opt out of participating in the public financing of their campaign. The Supreme Court has imposed limits on the public financing of campaigns: (1) public financing of campaigns must be voluntary and (2) candidates cannot be penalized for not participating in public financing. Being able to raise more money through fundraising unconstrained by the rules of public campaign financing and "outside money" may prompt some candidates to opt out of the public financing of their campaign. Candidates anticipating contributions from "independent" committees, both in support of their own or their opponent's candidacy, is an increasing challenge to meaningful use of public financing of campaigns. Despite earlier pledges to the contrary, President Obama opted out of public financing in 2008 and 2012.

New York City and the City of Los Angeles are not good examples for the municipal adoption of public campaign financing. New York City and the City of Los Angeles are often given as examples of local jurisdictions that have adopted the public financing of elections. (The proposal before us is based on New York City's Campaign Finance Act.) As can be seen on the attached chart, the size of the population of New York City lies between the states with the 11th (New Jersey) and 12th (Virginia) largest populations in the nation. The City of Los Angeles lies between the 27th (Oregon) and 28th (Oklahoma) states in terms of population size. The public financing of campaigns makes sense in New York City, the City of Los Angeles, and other cities with large populations and histories of alleged corruption and campaign irregularities. The population of the City of Berkeley (118,853) is one-fifth the size of the state with the smallest population (Wyoming) in the nation.

The public financing of elections proposal does not apply to ballot measures. While it's difficult to imagine how public financing of ballot measures could be implemented, it's worth pointing out that there are increasing concerns about how ballot measures are financed and that this proposal is silent on this issue.

An Alternative Proposal

The considerations above suggest an alternative proposal: providing public funds for candidates, **and proponents and opponents of ballot measures**, to make their case to the public via television and the Internet. This proposal, spelled out in greater detail in the attached markup of the proposed Fair Elections Public Financing Charter Amendment and Ordinance Amendment, recommends the public financing of in-depth interviews with candidates, and the proponents and opponents of ballot measures, moderated by an independent organization such as Berkeley-based SEEDS Community Resolution Center (see attached letter of interest from the Executive Director of SEEDS) and made available on public television and the Internet. The production costs for producing and distributing the interviews on public television and the Internet would be publically financed from the General Fund, but not through a Charter amendment, at approximately a tenth the cost of providing funds to candidates directly. Framing interviews and debates with specific questions will provide more information for voters than traditional campaign literature or commercials, which are of limited educational value. Free public access to the airwaves is endorsed by The Campaign Legal Center (campaignlegalcenter.org). The CLC "champions candidates' free access to public airwaves as the best way to revitalize democracy and create an open and vibrant political debate." (The CLC was founded in 2002 as a nonpartisan, nonprofit organization that defends democracy in the areas of campaign finance, voting rights, political communication and government ethics.)

Options

There is a range of possible recommendations that can be made to City Council:

1. Instead of recommending the MapLight and League of Women Voters public financing of elections proposal be submitted to the voters for a Charter amendment, recommend funding the attached proposal to fund on a test basis (without a Charter amendment) the public financing of in-depth candidate and ballot measure interviews and debates.
2. Review the amendments submitted by MapLight and the League of Women Voters the City Council asked the FCPC to review; accept or suggest alternative language for the four amendments; and further recommend against submitting their proposal to the voters for a Charter amendment and instead recommend funding the attached proposal to fund on a test basis (without a Charter amendment) the public financing of in-depth candidate and ballot measure interviews and debates.
3. Review the amendments submitted by MapLight and the League of Women Voters the City Council asked the FCPC to review; accept or suggest alternative language for the four amendments; and further recommend against submitting their proposal to the voters for a Charter amendment.
4. Recommend against submitting the MapLight and League of Women Voters public financing of elections proposal to the voters for a Charter amendment.
5. Review the amendments submitted by MapLight and the League of Women Voters the City Council asked the FCPC to review; accept or suggest alternative language for the four amendments; and submit as a minority report this memorandum and its attachments.
6. Other options.

Attachments:

- A. "How to Evaluate Ballot Proposition," League of Woman Voters of California
- B. State (and selected local) population estimates for July 1, 2014
- C. Ordinance Amendment of Chapter 2.12 of BERA for the Public Financing of Candidate and Ballot Measure Debates and Forums
- D. Letter from SEEDS Community Resolution Center

ATTACHMENT A



Search this site:



HOW TO EVALUATE
Click here for a list of helpful tactics for evaluating ballot measures »

- MORE RESOURCES**
- Resource for State and Local Finances - The State and Local Relationship in California: A Changing Balance of Power
 - Resource for State and Local Finances - Untangling the State and Local Fiscal Relationship
 - Resource for - National Conference of State Legislatures' Voter Identification Requirements Map
 - Resource for - The New Organizer Institute's Guide to Election Administration
 - Resource for - Secretary of State Answers Questions about CA Voter ID Requirements
 - Resource for - Military & Overseas Voters - Form Request

How To Evaluate Ballot Propositions



- ★ Examine what the measure seeks to accomplish. Do you agree with those goals? Is the measure seeking changes that are consistent with your ideas about government? Do you think the proposed changes will make things better?
- ★ Who are the real sponsors and opponents of the measure? Check where the money is coming from with Maplight's [VotersEdge](#) campaign finance website.
- ★ Is the measure written well? Will it create conflicts in law that may require court resolution or interpretation? Is it "good government," or will it cause more problems than it will resolve?
- ★ Does the measure create its own revenue source? Does it earmark, restrict or obligate government revenues? If so, weigh the benefit of securing funding for the measure's program against the cost of reducing overall flexibility in the budget.
- ★ Does the measure mandate a government program or service without addressing how it will be funded?
- ★ Does the measure deal with one issue that can be easily decided by a YES or NO vote? Or, is it a complex issue that should be thoroughly examined in the legislative arena?
- ★ If the measure amends the Constitution, consider whether it really belongs in the Constitution. Would a statute accomplish the same purpose? Remember that all constitutional amendments require voter approval: what we put into the Constitution would have to come back to the ballot to be changed.
- ★ Be wary of distortion tactics and commercials that rely on image but tell nothing of substance about the measure. Beware of half truths.

THANK YOU
to our
generous donors:

- Antonia Schuman
- Gloria Chun Hoo
- Helen Carr
- Hillary Andrews

VOTER INFORMATION

- HOW TO VOTE
- ABOUT ELECTIONS
 - Types of Elections
 - Evaluating Ballot Propositions
- UPCOMING ELECTIONS
- BALLOT MEASURES
- CANDIDATES
- GUIDE TO CA GOVERNMENT
- PRINT THE PROS & CONS PDF



ATTACHMENT B

List of States With Select Cities by Population

Rank	State or Select Cities	Population*	Rank	State or Select Cities	Population*
1	California	38,802,500	31	Mississippi	2,994,079
2	Texas	26,956,958	32	Arkansas	2,966,369
3	Florida	19,893,297	33	Utah	2,942,902
4	New York	19,746,227	34	Kansas	2,904,021
5	Illinois	12,880,580	35	Nevada	2,839,098
6	Pennsylvania	12,787,209	36	New Mexico	2,085,572
7	Ohio	11,594,163	37	Nebraska	1,881,503
8	Georgia	10,097,343	38	West Virginia	1,850,326
9	North Carolina	9,943,964	39	Idaho	1,634,464
10	Michigan	9,909,877	40	Hawaii	1,419,561
11	New Jersey	8,938,175	41	Maine	1,330,089
	New York City	8,491,079	42	New Hampshire	1,326,813
12	Virginia	8,326,289	43	Rhode Island	1,055,173
13	Washington	7,061,530	44	Montana	1,023,579
14	Massachusetts	6,745,408	45	Delaware	935,614
15	Arizona	6,731,484	46	South Dakota	853,175
16	Indiana	6,596,855	47	North Dakota	739,482
17	Tennessee	6,549,352	48	Alaska	736,732
18	Missouri	6,063,589	49	Vermont	626,562
19	Maryland	5,976,407	50	Wyoming	584,153
20	Wisconsin	5,757,564		City of Berkeley	118,853
21	Minnesota	5,457,173	* Population estimate for July 1, 2014		
22	Colorado	5,355,866	Brad Smith - January 14, 2016		
23	Alabama	4,849,377			
24	South Carolina	4,832,482			
25	Louisiana	4,649,676			
26	Kentucky	4,413,457			
27	Oregon	3,970,239			
	City of Los Angeles	3,928,864			
28	Oklahoma	3,878,051			
29	Connecticut	3,596,677			
30	Iowa	3,107,126			

ATTACHMENT C

Berkeley, CA
Fair Elections Public Financing of Candidate and
Ballot Measure Debates and Forums
Charter Amendment and Ordinance Amendment
Draft, January 14, 2016

**AMENDMENT TO CITY OF BERKELEY CHARTER ARTICLE III (ELECTIONS)
AND MUNICIPAL CODE CHAPTER 2.12 (ELECTION REFORM ACT) TO
CREATE A FAIR ELECTIONS PUBLIC CAMPAIGN FINANCING SYSTEM OF
PUBLICALLY FINANCED CANDIDATE AND BALLOT MEASURE DEBATES
AND FORUMS**

Section 1. FINDINGS

The People of the City of Berkeley find:

- A. Moderated debate and forums facilitate the informed participation of citizens in elections.
- B. Moderated debate treats candidates and proponents and opponents of ballot measures equally in a face-to-face interaction.
- C. The capacity (Berkeley Community Media) is available to record, broadcast, and make available for Internet distribution candidate and ballot measure debates and forums.
- D. The capacity (e.g., SEEDS Community Resolution Center) exists to provide a neutral forum to facilitate informative and in-depth candidate interviews and professionally moderated debates among candidates and between proponents and opponents of ballot measures.
- E. The League of Women Voters has long endorsed and conducted candidate and ballot measure debates and forums.
- F. The cost of moderated candidate and ballot measure debates and forums would be much less than the cost of providing public funds directly to candidates.
- G. The administrative burden on City staff would be much less than the burden for overseeing the distribution, monitoring and enforcement of providing funds to candidates.

Section 2. — That Section 7 is added to Article III (“ELECTIONS”) of the City of Berkeley Charter to read as follows:

Section 7. Fair Elections Fund

(1) — Establishment of Fair Elections Fund.

A special, dedicated, non-lapsing Fair Elections Fund shall be established by the Mayor and Council for the purpose of:

- (a) — Providing public financing for the election campaigns of certified participating candidates; and
- (b) — Paying for the administrative and enforcement costs of the Berkeley Fair Campaign Practices Commission and City staff related to the Fair Elections Fund public campaign financing program. The administrative and enforcement costs shall not exceed \$250,000 in any four year election cycle.

(2) Appropriations to the Fair Elections Fund.

- (a) — The Mayor and City Council shall annually appropriate \$4 per Berkeley Resident per year, as determined by the most recent official United States Census Bureau Population Estimate for the City of Berkeley, from the City General Fund to the Fair Elections Fund. The Council's duty to appropriate funds for the public financing program shall cease upon the termination of the public financing program.
- (b) — Other sources of revenue to be deposited in the Fund shall include:
 - 1) Unspent funds distributed to any participating candidate who does not remain a candidate until the election for which they were distributed, or such funds that remain unspent by a participating candidate following the date of the election for which they were distributed;
 - 2) Fines levied by the Commission against candidates for violation of election laws;
 - 3) Voluntary donations made directly to the Fair Elections Fund;
 - 4) — Other funds appropriated by the Mayor and City Council;
 - 5) — Any interest generated by the Fund; and
 - 6) — Any other sources of revenue determined as necessary by the Mayor and City Council.
- (c) — The amount in the Fair Elections Fund shall not exceed \$2 million. In order to comply with this limitation, revenue that would otherwise be deposited in the Fair Elections Fund pursuant to subsections (a) and (b) shall instead be deposited in the City General Fund.
- (d) — The City Council may, by adoption of an ordinance by not less than two-thirds vote of its membership, make an official declaration of fiscal emergency and suspend or reduce the amount of the annual appropriation specified in subsection (a). Any such ordinance suspending or reducing the annual appropriation shall be effective for no more than one year.

(3) Cost of Living Adjustments.

~~The Commission shall adjust the dollar amounts specified in subsections (1)(b), (2)(a) and (2)(c) of this Section upward or downward, for changes in the cost of living, by the percent change in the Consumer Price Index.~~

Section 3. Be it Ordained by the People of the City of Berkeley that Berkeley Municipal Code, Title 2, Chapter 2.12, Election Reform Act, is hereby amended as follows:

That Article 2 (“Definitions”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.123 Election Cycle.

“Election cycle” means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending on the date of the next general election for that office or seat.

137. 137. **2.12.137 Fund.**

“Fund” means the Fair Elections Fund created by City Charter Article III Section 7 this ordinance.

137. 137. **2.12.138 General Election.**

“General election” means an election held on the first Tuesday following the first Monday of November pursuant to City Charter Article III Section 4.

2.12.156 Nomination Period

“Nomination period” means the period specified by state law during which candidates must submit nomination papers for City offices.

2.12.158 Participating Candidate.

“Participating candidate” means a candidate who qualifies for Fair Elections campaign funding.

166. 166. **2.12.166 Qualified Elector**

“Qualified elector” means a person who is properly registered to vote pursuant to state law.

166. 166. **2.12.167 Qualified Contribution.**

“Qualified contribution” means a contribution not greater than fifty dollars (\$50)

made by a natural person resident of the City of Berkeley;

166. 166. **2.12.168 Qualifying Period.**

“Qualifying period” means the period beginning on the day after the date of the most recent general election for the specific office or seat that a candidate is seeking and ending at the close of the nomination period.

166. 166. **2.12.169 Special Election.**

“Special election” means an election other than a general municipal election held pursuant to City Charter Article III Section 4.

Section 4. That Section 2.12.205 of Berkeley Municipal Code is amended to read as follows:

2.12.205 Administrative responsibility.

The Commission has the primary responsibility for the impartial, effective administration of this chapter. The Commission may delegate its responsibility for administration of this chapter to City staff.

Section 5. That Article 4 (“Disclosure Requirements and Procedures”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

2.12.283 Campaign statement—Additional Information Required From Participating Candidates.

Each participating candidate An organization such as the SEEDS Community Resolution Center selected by the Commission to conduct interviews and debates shall file reports of receipts and expenditures of Fair Elections funds at such times and in such manners as the Commission may by regulation prescribe, including, but not limited to, reports containing information necessary to verify that qualified contributions received by participating candidates and Fair Elections funds spent by participating candidates to comply with the restrictions and requirements of this chapter.

Section 6. That Section 2.12.435 of Berkeley Municipal Code is amended to read as follows:

2.12.435 Excess amounts—Payment to City required.

If any person an organization such as SEEDS Community Resolution Center is found guilty of violating the terms of this chapter, each campaign treasurer who received part or all of the contribution or contributions which constitute the violation the organization shall pay promptly, from available campaign funds, if any, the amount received from such persons in excess of the amount permitted by this chapter to the

City for deposit in the ~~general fund~~ Fair Elections Fund of the City.

Section 7. That Berkeley Municipal Code Chapter 2.12 Article 7 is amended to read as follows:

Article 7. Berkeley Fair Elections Act of 2016

2.12.445 Title and Purpose.

This Article shall be known as the Berkeley Fair Elections Act of 2016. Its purpose is to facilitate the informed participation of citizens in elections with the public financing of debates and forums among candidates and the proponents and opponents of ballot measures.

2.12.450 Offices Covered.

Candidates for the offices of Mayor, City Council, City Auditor, School Board Director, and Rent Board Commissioner shall be eligible to participate in the public campaign financing program established by this chapter.

2.12.455 Eligibility for Fair Elections Campaign Funding.

- a. ~~a.~~ ~~A.~~ To be eligible to be certified as a participating candidate, a candidate ~~must:~~
 2. ~~2.~~ 1) ~~During the qualifying period for the election involved, choose to participate in the Fair Elections program by filing with the Commission a written application for certification as a participating candidate in such form as may be prescribed by the Commission, containing the identity of the candidate, the office that the candidate seeks, and the candidate's signature, under penalty of perjury, certifying that:~~
 - a.a. ~~1) a)~~ ~~The candidate has complied with the restrictions of this chapter during the election cycle to date;~~
 - b.b. ~~b)~~ ~~The candidate's campaign committee has filed all campaign finance reports required by law during the election cycle to date and that they are complete and accurate; and~~
 - e.e. ~~e)~~ ~~The candidate will comply with the requirements of this Act during the remainder of the election cycle and, specifically, if certified an eligible participating candidate, will comply with the requirements applicable to participating candidates.~~
 3. ~~3.~~ 2) ~~Meet all requirements of applicable law to be listed on the ballot;~~
 4. ~~4.~~ 3) ~~Before the close of the qualifying period, collect at least 30 qualified contributions of at least ten~~

dollars (\$10), for a total dollar amount of at least five-hundred dollars (\$500).

a.a. a) Each qualified contribution shall be acknowledged by a receipt to the contributor, with a copy retained by the candidate. The receipt shall include the contributor's signature, printed name, home address, and telephone number, if any, and the name of the candidate on whose behalf the contribution is made. In addition, the receipt shall indicate by the contributor's signature that the contributor understands that the purpose of the qualified contribution is to help the candidate qualify for Fair Elections campaign funding and that the contribution is made without coercion or reimbursement.

b.b. b) A contribution for which a candidate has not obtained a signed and fully completed receipt shall not be counted as a qualified contribution.

5. 4) Maintain such records of receipts and expenditures as required by the Commission;

6. 5) Obtain and furnish to the Commission any information it may request relating to his or her campaign expenditures or contributions and furnish such documentation and other proof of compliance with this chapter as may be requested by such Commission;

7. 6) Not make Make expenditures from or use his or her personal funds or property or the personal funds or property jointly held with his or her spouse, domestic partner, or unemancipated children in connection with his or her election except as a qualified contribution to his or her controlled committee;

8. 1) 7) Not accept contributions other than qualified contributions in connection with the election for which Fair Elections funds are sought;

9. 8) Not solicit or direct contributions in connection with any election during the election cycle in which Fair Elections funds are sought other than qualified contributions to such candidate's controlled committee.

10. B. At the earliest practicable time after a candidate files with the Commission a written application for certification as a participating candidate, the Commission shall certify that the candidate is or is not eligible. Eligibility can be revoked if the candidate commits a substantial violation of the requirements of this Act, in which case all Fair Elections funds shall be repaid. Such a determination shall be made by the

Commission upon a two-thirds vote following a hearing held pursuant to Section 2.12.230.

- ~~11. 11. C. The Commission's determination is final except that it is subject to a prompt judicial review pursuant to Section 2.12.235.~~
- ~~12. 12. D. If the Commission determines that a candidate is not eligible, the candidate is not required to comply with provisions of this Act applicable only to participating candidates.~~

2.12.460 Fair Elections Fund Payments.

1. 1. A. Eight months prior to an election, the Commission will determine the amount of money to be paid from the Fair Election Fund to an organization such as the SEEDS Community Resolution Center to conduct candidate and ballot measure interviews and debates. The Commission will make the amount of money in the Fair Elections Fund known to the public. Using estimates of the number of candidates and ballot measures, an organization such as the SEEDS Community Resolution Center will return to the Commission within a month to provide a budget for how the monies will be spent. Payment will be made to an organization such as the SEEDS Community Resolution Center within four business days of its acceptance of the organization's budget. The selected organization will provide monthly budget summaries to the Commission.
- ~~2. 2. B. A candidate who is certified as an eligible participating candidate shall receive payment of Fair Elections funds equal to six hundred percent (600 percent) of the amount of qualified contributions received by the candidate during the election cycle with respect to a single election subject to the aggregate limit on the total amount of Fair Elections funds payments to a candidate specified in Section 2.12.460(B).~~
- ~~3. 3. C. The aggregate amount of Fair Elections funds payments that may be made to a participating candidate during an election cycle may not exceed:~~
- ~~4. 4. 1) \$100,000 for a candidate running for the office of Mayor;~~
- ~~5. 5. 2) \$40,000 for a candidate running for the office of City Council;~~
- ~~6. 6. 3) \$15,000 for a candidate running for the office of City Auditor;~~
- ~~7. 7. 4) \$15,000 for a candidate running for the office of School Board Director;~~
- ~~8. 8. 5) \$5,000 for a candidate running for the office of Rent Board Commissioner.~~
- ~~9. 9. D. A participating candidate's application for Fair Elections~~

~~funds, including an initial request submitted with an application for certification as a participating candidate; shall be made using a form prescribed by the Commission and shall be accompanied by qualified contribution receipts~~

~~A. — and any other information the Commission deems necessary. This application shall be accompanied by a signed statement from the candidate indicating that all information on the qualified contribution receipts is complete and accurate to the best of the candidate's knowledge. The Commission shall verify that a candidate's qualified contributions meet all of the requirements and restrictions of this Act prior to the disbursement of Fair Elections funds to the candidate. A participating candidate who receives a qualified contribution that is not from the person listed on the qualified contribution receipt shall be liable to pay the Fair Elections Fund the entire amount of the inaccurately identified contribution, in addition to any penalties.~~

~~1. — 1. — E. — The Commission shall make an initial payment of Fair Elections funds within four business days of the Commission's certification of a participating candidate's eligibility, or as soon thereafter as is practicable.~~

~~2. — 2. — F. — The Commission shall establish a schedule for the submission of Fair Elections funds payment requests, permitting a candidate to submit a Fair Elections funds payment request at least once per month. However, the Commission shall schedule a minimum of three payment request submission dates within the thirty days prior to an election.~~

~~3. — 3. — G. — The Commission shall provide each participating candidate with a written determination specifying the basis for any non payment of Fair Elections funds. The Commission shall provide participating candidates with a process by which they may immediately upon receipt of such determination petition the Commission for reconsideration of any such non payment and such reconsideration shall occur within five business days of the filing of such petition. In the event that the Commission denies such petition then it shall immediately notify the candidate of his or her right to seek judicial review of the Commission's denial pursuant to Section 2.12.235.~~

2.12.465 Candidate Statement Notice.

~~A candidate certified as a Fair Elections program participant shall be identified as such by a notice printed on the same page as the candidate's statement of qualifications distributed to voters pursuant to City Charter Article III Section 6 ½.~~

2.12.470 Transition Rule for Current Election Cycle.

During the first election cycle that occurs after Council implementation of this Act, a candidate may be certified as a participating candidate, notwithstanding the acceptance of contributions other than qualified contributions before the date of enactment that would, absent this Section, disqualify the candidate as a participating candidate, provided that any funds other than qualified contributions accepted but not expended before the effective date of this Act shall be:

- ~~Y~~ A. ~~Returned to the contributor;~~
- ~~Y~~ B. ~~Held in a special campaign account and used only for retiring a debt from a previous campaign; or~~
- ~~Y~~ C. ~~Submitted to the City for deposit in the Fair Elections Fund.~~

2.12.475 Special Elections.

The provisions of this chapter apply to special elections. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special election.

2.12.480 Campaign Accounts for Participating Candidates.

- ~~Y~~ A. ~~During an election cycle, each participating candidate shall conduct all campaign financial activities through a single campaign expenditure and contribution account required by Section 2.12.250.~~
- ~~Y~~ B. ~~A participating candidate may maintain a campaign account other than the campaign account described in subdivision (A) if the other campaign account is for the purpose of retiring a campaign debt that was incurred during a previous election campaign in which the candidate was not a participating candidate.~~
- ~~Y~~ C. ~~Contributions for the purposes of a retiring a previous campaign debt that are deposited in the kind of "other campaign account" described in subdivision B shall not be considered "contributions" to the candidate's current campaign.~~
- ~~Y~~ D. ~~Participating candidates shall file reports of financial activity related to the current election cycle separately from reports of financial activity related to previous election cycles.~~

2.12.485 Use of Fair Elections Funds.

1. ~~1.~~ A. ~~A participating candidate shall use Fair Elections funds only for direct campaign purposes.~~
2. ~~2.~~ B. ~~A participating candidate shall not use Fair Elections funds for:~~

- ~~3. 3. 1) Costs of legal defense in any campaign law enforcement proceeding under this Act;~~
- ~~4. 4. 2) Indirect campaign purposes, including but not limited to:

 - ~~a. a. a) The candidate's personal support or compensation to the candidate or the candidate's family;~~
 - ~~b. b. b) Clothing and other items related to the candidate's personal appearance;~~
 - ~~c. c. a) c) Capital assets having a value in excess of five hundred dollars (\$500) and useful life extending beyond the end of the current election period determined in accordance with generally accepted accounting principles;~~
 - ~~d. d. d) A contribution or loan to the campaign committee of another candidate or to a party committee or other political committee;~~
 - ~~e. e. e) An independent expenditure;~~
 - ~~f. f. f) Any payment or transfer for which compensating value is not received.~~~~

2.12.490 Administrative Modification of Timelines

Notwithstanding any provision in this chapter to the contrary, the Commission may alter any of the time periods or deadlines listed herein if it finds that they are impracticable, so long as the readjusted period or deadline meets the objectives of this chapter.

2.12.495 Insufficient Funds in the Program.

If the Commission determines that there are insufficient funds in the Fair Elections Fund to fund adequately all participating candidates, the Commission shall notify participating candidates that the Commission will not likely be capable of distributing to all participating candidates the maximum aggregate amount of Fair Elections funds payments permissible under Section 2.12.460(B). Under such circumstances, at such time as the Commission is unable to fulfill a valid application for Fair Elections funds submitted by a participating candidate pursuant to Section 2.12.460(C), the participating candidate may solicit for such candidate's controlled committee and accept any contributions permissible under City law and shall no longer be subject to the restriction on use of personal funds established by Section 2.12.455(A)(6).

2.12.500 Cost of Living Adjustments.

The Commission shall adjust the dollar amounts specified in Sections 2.12.167,

2.12.455(A)(3), 2.12.460(B) and 2.12.485(B)(2)(c) 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 and 2.12.485(B)(2)(c) and one thousand dollars (\$1,000) with respect to Sections 2.12.455(A)(3) and 2.12.460(B).

Section 8. That Article 7 (“Enforcement—Penalties for Violation”) of Berkeley Municipal Code Chapter 2.12 is amended to read as follows:

~~Article 7.~~ Article 8. Enforcement—Penalties For Violation

~~2.12.445~~ 2.12.505 Complaints—Filing, investigation and Commission action.

~~2.12.450~~ 2.12.510 Actions for compliance—Who is authorized to institute.

~~2.12.455~~ 2.12.515 Actions for compliance—Procedure required and Commission authority.

Before instituting an action pursuant to Section ~~2.12.450~~ 2.12.510, a person must file a written request with the Commission asking it to commence the action. The request shall include a clear statement of the facts indicating that a cause of action exists. The Commission shall respond within seven days after receipt of the request stating whether or not it intends to file the action. If the Commission states that it intends to file the action and files the action within ten days thereafter, no other action may be brought by any person unless the action brought by the Commission is dismissed without prejudice. If the Commission states that it does not intend to file the requested action or fails to do so, then the resident requesting that the action be brought may file and prosecute the action to enforce or compel compliance with this chapter.

~~2.12.460~~ 2.12.520 Violation—Deemed misdemeanor—Penalty.

~~2.12.465~~ 2.12.525 Actions for compliance—Disposition of amounts recovered.

If a judgment is entered against the defendant or defendants in an action brought under Section ~~2.12.450~~ 2.12.510, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the ~~general fund~~ Fair Elections Fund of the City. In an action brought by the Commission or the City Attorney, the entire amount recovered shall be paid to the ~~general fund~~ Fair Elections Fund of the City.

~~2.12.470~~ 2.12.530 Violation—Candidate's office forfeited when.

~~2.12.475~~ 2.12.535 Violation—Candidacy terminated when.

~~2.12.480~~ 2.12.540 Violation—Persons ineligible for candidacy—Time limit.

~~2.12.485~~ 2.12.545 Late filing penalties.

2.12.550 Fair Elections Act Penalties

In addition to other enforcement and penalty provisions of this Article:

- ~~•~~ ~~Y~~ A. — It is a violation of the law for candidates to accept more Fair Elections Act benefits than those to which they are entitled or misuse such benefits or Fair Elections funding.
- ~~•~~ ~~Y~~ B. — If a participating candidate knowingly or willfully accepts or spends Fair Elections funding in violation of this Act, then the candidate shall repay to the Fair Elections Fund an amount equal to twice the value of Fair Elections funding unlawfully accepted or spent.
- D. — The Commission shall, after a hearing held pursuant to Section 2.12.230, have the authority to impose the fine created by this section upon a two-thirds vote.

2.12.555 Violation—Persons Ineligible for Public Funds—Time Limit

No person who commits a substantial violation of this chapter shall be eligible to receive public funds for a period of four years from and after the date that the Commission determines, upon a two-thirds vote, that such a violation has occurred, following a hearing held pursuant to Section 2.12.230. The Commission shall by regulation state the criteria to be satisfied in order to make a finding of a substantial violation.

Section 9. EFFECTIVE DATE

All provisions of this act will take effect immediately.

Section 10. SEVERABILITY

In the event any court of competent jurisdiction holds any provision of this Act invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provisions hereof.

ATTACHMENT D



SEEDS

Community Resolution Center

1968 San Pablo Avenue Berkeley, CA 94702 * 510-548-2377 * www.seedsrc.org

May 21, 2015

Fair Campaign Practices Commission
2180 Milvia Street 4th Floor
Berkeley, CA 94704

Dear Committee Members,

As many of you know, SEEDS Community Resolution Center has over 30 years of experience in collaborative processes for resolving differences through mediation, promoting innovation in integrative conflict resolution, and advancing the use of restorative practices rather than punitive discipline in our schools. We have also provided neutral facilitation services to dozens of businesses, public agencies, and schools opening effective dialogue on some very sensitive subjects and issues. Through these processes, we have fostered collaboration, partnerships, cooperation and relationship cultivation in families, neighborhoods, businesses and schools all across the Bay Area.

SEEDS is honored to be considered in section 1 of the Fair Elections Public Financing of In-Depth Candidate and Ballot Measure Interview and Debates Charter Amendment and Ordinance Amendment. It would be a tremendous privilege to assist the City of Berkeley and your committee in organizing and providing a neutral forum to facilitate informative and in-depth candidate interviews as well as professionally moderated debates between candidates and on proposed ballot measures.

Please feel free to contact me directly should you have any questions.

Sincerely,



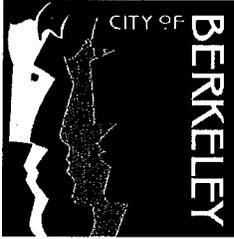
Jeffrey T. Sloan
Executive Director

MEDIATION

FACILITATION

TRAINING

RESTORATIVE JUSTICE



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*

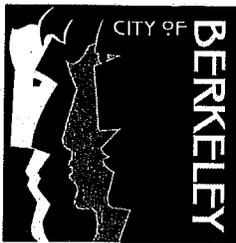
SUBJECT: REPORT REGARDING RECOMMENDATION MADE BY SLATE MAILER SUBCOMMITTEE

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.