



Fair Campaign Practices Commission

PUBLIC HEARING
June 11, 2013

To: Honorable Mayor and Members of the City Council
From: Fair Campaign Practices Commission
Submitted by: Patrick O'Donnell, Chairperson, Fair Campaign Practices Commission
Subject: Amendments to the Berkeley Election Reform Act – Electronic Filing

RECOMMENDATION

Conduct a public hearing and upon conclusion, adopt first reading of an Ordinance amending the Berkeley Election Reform Act, Berkeley Municipal Code Chapter 2.12, to provide for the electronic filing of campaign statements and reports and to designate the electronic filing as the filing of record.

FISCAL IMPACTS OF RECOMMENDATION

Savings of staff resources related to the manual processing of campaign statements and reports.

CURRENT SITUATION AND ITS EFFECTS

Assembly Bill 2452, signed into law last year, allows a local jurisdiction to require the electronic filing of campaign statements and provides for the electronic filing to serve as the filing of record, thus eliminating the need for hard copy statements to be filed.

On June 26, 2012 the City Council adopted the recommendation of the Fair Campaign Practices Commission (FCPC) to send a letter to the legislature in support of the bill. The bill was signed into law in July 2012.

The FCPC adopted the attached ordinance to enable electronic filing in Berkeley at its April 18, 2013 meeting, as follows:

Move that the amendments to the BERA to provide for electronic filing of campaign statements are approved (Proposed amendment to add 2.12.032, 2.12.033 and 2.12.127, and amend 2.12.025, 2.12.040 and 2.12.295 of the Berkeley Municipal Code). (M/S/C: Smith/Costa. Ayes: Costa, Lombardi, Murray, O'Donnell, Ritchie, and Smith; Noes: None; Abstain: None; Absent: Pritchard.)

The FCPC approved submission of this report at its May 16, 2012 meeting:

Motion to approve staff reports for BERA amendments. (M/S/C: Murray/Pritchard. Ayes: Costa, Lombardi, Murray, O'Donnell, Pritchard, and Smith; Noes: None; Abstain: de Leon; Absent: None [Ritchie on approved leave of absence].)

The ordinance makes the findings required by state law and adds three new sections to the BERA to provide for the procedures and parameters for electronic filing. The ordinance also amends three existing sections of BERA –(1) providing for a secure electronic signature on electronic filings, (2) clarifying the information available for public review online and through the City Clerk Department, and (3) removing a reference to paper filings for late contribution reports.

If the ordinance is approved by a two-thirds vote of the City Council, the new ordinance would be effective on January 1, 2014. As mandated by state law, the electronic filing requirement will only apply to committees that raise or spend \$1,000 or more.

Staff has informed the Commission that electronic filing could be implemented in Berkeley using the current vendor (NetFile). This vendor has the necessary expertise and state approvals to provide a seamless transition to all electronic filing under the new legislation. In recent elections, approximately 60% – 65% of Berkeley campaign committees have filed their statements using the NetFile online system.

NetFile uses the same type of data encryption for online filings that is used for online banking. In addition, the filing data that is collected in the NetFile system is backed up nightly in three secure locations. The data will be backed-up and retained for at least 10 years as is required by state law. NetFile counts many statewide campaigns among its customers and is fully approved by the Secretary of State.

In addition, NetFile will be adding functionality to the system so that campaigns will have greater access to the data they have entered. This will allow campaigns to use the data for other purposes and eliminate the need to “double enter” the data in two locations.

BACKGROUND

The voters enacted the Berkeley Election Reform Act (BERA) in 1974 with the following stated purposes:

- A. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- B. The amounts that may be expended in municipal elections should be listed in order that the importance of money in such elections may be reduced.
- C. Adequate enforcement mechanisms should be provided to public officials and private citizens in order that this chapter will be vigorously enforced. (BMC § 2.12.015)

BERA may be amended to further these purposes through a “double-green light” procedure. First, the FCPC must approve any amending ordinance by not less than a two-thirds vote of its membership. Second, following a period of at least thirty days, the City Council must hold a public hearing and also approve the amendment by not less than a two-thirds’ vote of its membership. (BMC § 2.12.051.A.)

RATIONALE FOR RECOMMENDATION

Bringing these amendments forward is consistent with the purposes of the BERA by providing greater public access to campaign contribution and expenditure data. The amendment would also save significant staff resources by streamlining the processing of campaign statements.

ALTERNATIVE ACTIONS CONSIDERED

Council may decide to maintain the current system and forego any staff resource savings and increased public access that the amendments would provide.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Kristy van Herick, Commission Secretary, City Attorney's Office, 981-6998
Patrick O'Donnell, Commission Chair, 486-0236

Attachments:

- 1: Ordinance
2. Notice of Public Hearing

ORDINANCE NO. - N.S.

ADDING SECTIONS 2.12.032, 2.12.033, AND 2.12.127 TO PROVIDE FOR THE ELECTRONIC FILING OF CAMPAIGN STATEMENTS AND AMENDING SECTIONS 2.12.025, 2.12.040, AND 2.12.295 OF THE BERKELEY MUNICIPAL CODE TO MAKE TECHNICAL CHANGES RELATED TO ELECTRONIC FILING

BE IT ORDAINED by the Council of the City of Berkeley as follows:

Section 1. That the Council of the City of Berkeley hereby makes the following findings:

A. The electronic filing system will operate securely, ensure the integrity of the data transmitted, and shall include safeguards against efforts to tamper with, manipulate, alter, or subvert the data.

B. The electronic filing system will operate effectively and will not unduly burden filers.

C. The requirement for electronic filing of campaign statements furthers the purposes of the Berkeley Election Reform Act by providing greater public access to campaign finance data.

Section 2. That Section 2.12.032 is added to the Berkeley Municipal Code to read as follows:

2.12.032 Requirement to file statements and reports electronically.

A. An elected officer, candidate, committee, or other person required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section 84100), who receives contributions totaling one thousand dollars (\$1,000) or more, or makes expenditures totaling one thousand dollars (\$1,000) or more, in a calendar year must submit all reports or statements as an electronic filing. Once an elected officer, candidate, committee, or other person is required to submit reports or statements as an electronic filing, that elected officer, candidate, committee, or other person shall continue to use electronic filing until the committee has officially terminated or the elected officer, candidate or other person has no further filing obligations.

1. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but has not met the \$1,000 threshold in subsection A, may submit required reports or statements as an electronic filing or in paper format.

2. In any instance in which the original report, statement, or other document is required to be filed with the Secretary of State and a copy of that report, statement, or other document is required to be filed with the City of Berkeley, the copy may be submitted as an electronic filing.

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Section 3. That Section 2.12.033 is added to the Berkeley Municipal Code to read as follows:

2.12.033 Filing procedures.

A. Electronic filing procedures shall be administered in accordance with California Government Code Section 84615.

B. Notwithstanding any other provision of law, any statement, report or other document submitted as an electronic filing pursuant to Section 2.12.032.A shall serve as the filing of record and shall not be required to be filed with the City Clerk in paper format.

Section 4. That Section 2.12.127 is added to the Berkeley Municipal Code to read as follows:

2.12.127 Electronic Filing.

“Electronic filing” means the submission of required reports and statements in an electronic format approved by the Secretary of State and the City Clerk.

Section 5. That Section 2.12.025 of the Berkeley Municipal Code is amended to read as follows:

2.12.025 Reports and statements—Signature and verification requirements.

Reports and statements filed under this chapter shall be signed under penalty of perjury and verified by the filer. The verification shall state that the filer has used all reasonable diligence in its preparation, and that to the best of his or her knowledge it is true and complete. A report or statement filed by a committee shall be signed and verified by the treasurer, and a report or statement filed by any other organization shall be signed and verified by a responsible officer of the organization or by an attorney or a certified public accountant. Every person who signs or verifies any report or statement required to be filed under this chapter which contains material which he or she knows to be false is guilty of perjury. For a report or statement submitted as an electronic filing pursuant to Section 2.12.032, a secure electronic signature shall meet the requirements of this section.

Section 6. That Section 2.12.040 of the Berkeley Municipal Code is amended to read as follows:

2.12.040 Statements--Public inspection requirements.

Campaign statements are to be open—available for public inspection—and reproduction during regular City business hours, at the office of the City Clerk and at the Berkeley Public Library during the normal hours it is open to the public. Copies of the statements or parts of statements shall be provided by the City Clerk at a price of not more than ten cents per page copied. The data contained in any campaign report or statement submitted as an electronic filing shall be available free of charge on the Internet in an easily understood format that is searchable and downloadable. The data made available on the Internet shall not contain the street name and building number of

any person or entity representative listed on the report or statement or any bank account number required to be disclosed pursuant to this Chapter or state law.

Section 7. That Section 2.12.295 of the Berkeley Municipal Code is amended to read as follows:

2.12.295 Report of late contributions.

All candidates and committees, including committees qualified under Section 2.12.095 but prior to filing required statements under Section 2.12.255 of this chapter, shall report all late contributions received by identifying the full name, street address, occupation, and the name of the employer, if any, or principal place of business if self-employed, of the contributor. Late contributions of one hundred dollars or more, but less than one thousand dollars, shall be reported to the City Clerk within forty-eight hours of receipt; late contributions of one thousand dollars or more shall be reported to the City Clerk within twenty-four hours of receipt. Such reports ~~may be by any written means of communication, and~~ do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section.

Section 8. These amendments shall be effective on January 1, 2014.

Section 9. Copies of this Bill shall be posted for two days prior to adoption in the display case located near the walkway in front of Old City Hall, 2134 Martin Luther King Jr. Way. Within fifteen days of adoption, copies of this Ordinance shall be filed at each branch of the Berkeley Public Library and the title shall be published in a newspaper of general circulation.

**NOTICE OF PUBLIC HEARING
BERKELEY CITY COUNCIL**

AMENDMENTS TO BERKELEY ELECTION REFORM ACT (BERA)

Notice is hereby given by the City Council of the City of Berkeley that on **June 11, 2013 at 7:00 p.m.** the City of Berkeley is proposing the following amendments to the BERA:

- (1) add sections 2.12.032, 2.12.033, and 2.12.127 to provide for electronic filing of campaign statements;
- (2) amend sections 2.12.025, 2.12.040, and 2.12.295 to make technical changes to the BERA related to electronic filing;
- (3) amend sections 2.12.145, 2.12.250, and 2.12.297 to conform the BERA with the state Government Code; and
- (4) repeal sections 2.12.285 and 2.12.290 to conform the BERA with the state Government Code.

The hearing will be held in the City Council chambers, 2134 Martin Luther King, Jr. Way. A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **May 30, 2013**.

For further information, please contact Kristy van Herick at (510) 981-6998.

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

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6908 or clerk@cityofberkeley.info for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

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I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on or before May 30, 2013.

Mark Numainville, City Clerk