



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 – Technical Changes and Clean Up

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Act, Berkeley Municipal Code Chapter 2.12, to bring the Act into compliance with state law, make technical changes to outdated provisions, and remove obsolete sections.

FISCAL IMPACTS OF RECOMMENDATION

No fiscal impact.

CURRENT SITUATION AND ITS EFFECTS

When the electronic filing amendments were developed, a full review of the Berkeley Election Reform Act (BERA) was undertaken to ensure that the electronic filing amendments did not create any internal inconsistencies in the law. During that review, several sections (unrelated to the electronic filing amendments) were identified as potential candidates for revision or deletion.

The Fair Campaign Practices Commission (FCPC) adopted the attached ordinance to amend the BERA at its April 18, 2013 meeting, as follows:

Motion to approve proposed BERA amendments, to amend Sections 2.12.145, 2.12.250 and 2.12.297 and to repeal 2.12.285 and 2.12.290. (M/S/C: Murray/Smith. 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].)

A summary of the amendments is provided below.

Section 2.12.250A requires a committee's bank account to be at a bank in Alameda County and also references joint accounts. State law requires that a campaign account be located in California, however, staff does not find a compelling reason to limit local filers to a bank in Alameda County. With regards to joint accounts, the state requires one account per committee (GC 85201, FPPC Reg 18521) thus making this provision obsolete.

Section 2.12.250C requires the liquidation of any remaining committee funds within 90 days after the election. It also includes language enabling the payment of remaining funds directly to the candidate. The state regulations regarding the use of surplus funds (GC 89519, FPPC Reg 18951) generally prohibit this type of payment. Since state law is more specific and restrictive, BERA should defer to the state statutes. In addition, state law allows for a candidate to redesignate funds for future elections, which this section appears to prohibit. Given these allowances in state law, it seems unduly restrictive to compel a candidate or committee to disband within 90 days after the election. Additionally, this section is inconsistent with the Commission's determination (and regulation) that committees can continue to fundraise for two years after the election for the purpose of paying off outstanding debts.

Section 2.12.285 allows a filer to submit a written declaration in lieu of a campaign filing. However, once a campaign committee has qualified, state law requires certain information appear on the filings, generally on a Form 460 (GC 84211). If there is minimal activity a committee may file a short form when permitted by law. In either case, the written statement provided for under 2.12.285 is not consistent with state law and regulations.

Section 2.12.290 allows for filing joint campaign statements. As is the case with 2.12.250A, references to joint accounts and filings are no longer enforceable with the one account, one committee requirement in state law.

Section 2.12.297 regarding independent expenditures was added in 2012. While this section was added just last year, more recent changes in state law have made it outdated and potentially very confusing for filers. The new state law, AB 481, expands the time for special reporting of late contributions and late independent expenditures to include the 90 days preceding the election. State law now casts a wider net than BERA with regards to independent expenditures and staff recommends bringing BERA in line with the state law.

Due to the changes in AB 481 noted above, Section 2.12.145, late contribution, is inconsistent with state law. The proposed revision brings the reporting period for

contributions of \$1000 or more in line with state law. The reporting period for contributions of \$100 to \$999 is unchanged.

BACKGROUND

Adopted by the voters in 1974, the Berkeley Election Reform Act (BERA) has been amended from time to time. Section 2.12.051 of the BERA provides for amendment through the “double green light” process which requires a two-thirds vote of the FCPC and the City Council to amend the law.

RATIONALE FOR RECOMMENDATION

Updating these sections will make BERA easier to understand by residents and filers, thus making BERA more relevant and current. Keeping laws relevant and current helps to maintain the credibility of the law and also assists in compliance by those that it regulates.

ALTERNATIVE ACTIONS CONSIDERED

Council may decline to amend BERA and leave the conflicting and outdated provisions unchanged.

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.

AMENDING SECTIONS 2.12.145, 2.12.250 AND 2.12.297 AND REPEALING SECTIONS 2.12.285 AND 2.12.290 OF THE BERKELEY MUNICIPAL CODE TO CONFORM WITH STATE LAW REGULATING CAMPAIGN STATEMENTS

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

Section 1. That Section 2.12.145 of the Berkeley Municipal Code is amended to read as follows:

2.12.145 Late contribution.

"Late contribution" means any contribution of one hundred dollars or more, but less than one thousand dollars, received after the closing date of the last campaign statement required to be filed prior to an election and contributions of one thousand dollars or more received within the reporting period specified in California Government Code Section 82036.

Section 2. That Section 2.12.250 of the Berkeley Municipal Code is amended to read as follows:

2.12.250 Campaign expenditure and contribution account--Establishment required-- Procedure for use.

A. A campaign treasurer for each candidate and for each and every committee shall establish and manage a campaign expenditure and contribution checking account for the candidate or committee ~~in a bank located in Alameda County~~. All monetary contributions to the candidate, to a person on behalf of the candidate or to a person on behalf of a committee shall be placed in the candidate's or committee's checking account promptly. ~~Where a candidate or a committee is permitted under Section 414 to file a joint campaign statement, a campaign treasurer may establish and maintain under the terms of this section one joint checking account for the candidate and the committee.~~

B. Amounts shall be paid by the campaign treasurer from the campaign contribution checking account only upon receipt of a bill or voucher from a person furnishing goods or services to the candidate or committee, which bill or voucher itemizes and identifies the goods or services furnished or to be furnished and lists the unit and total price therefor. All payments of fifty dollars or more shall be made by check, credit card or debit card, and payable to the person furnishing the goods or services to a candidate or committee.

C. In the event that, after payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, there remains a balance in the checking account of the candidate or committee, the campaign treasurer shall ~~certify that to his or her knowledge the candidate or committee has no further outstanding indebtedness in connection with the campaign, and shall liquidate the contribution checking account by paying the remaining balance in the checking account~~

~~to the candidate or committee for his or her or its use in any lawful manner consistent with California Government Code Section 89510 et seq., and applicable state regulations, before terminating the campaign committee within ninety days after the date of election, unless upon good cause an extension is granted by the commission.~~

D. No committee or candidate shall accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars unless the contributor provides the campaign treasurer with a receipt or voucher that itemizes and identifies the goods or services contributed and states the fair market value of such goods or services. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. The campaign treasurer shall make available to the commission, the City Attorney, the City Clerk, the District Attorney, the California Attorney General and the California Secretary of State, or their designees, on demand, the details of any account requested and the records supporting it. In addition, the campaign treasurer shall sign a waiver permitting the aforementioned authorities or their designees to inspect the campaign account records maintained by the bank in which the campaign account is opened, and shall maintain a record of every contribution received and every disbursement made from the account, which record shall include copies of cancelled checks, bank records, bills and vouchers. Such record shall be maintained for a period of four years from the date of the final report.

F. If, prior to the date of the filing of the final report, or during a reasonable period of time not to exceed six months thereafter, the commission reasonably believes a reporting or disclosure requirement has been violated by a candidate or committee, the commission shall be empowered to conduct or cause to be conducted an independent audit of the books and records of such candidate or committee. The cost of such audit shall be borne by the commission. After an audit is completed and a written report presented to the commission, the commission shall make a determination whether there is a probable cause for a violation. If cause for violation is found, the provisions of Section 2.12.230 of this chapter shall apply.

Section 3. That Section 2.12.297 of the Berkeley Municipal Code is amended to read as follows:

2.12.297 Late independent expenditures ~~in 40 days~~ preceding election.

A. Disclosure of Expenditures. Any person that makes an late independent expenditure ~~as defined in California Government Code Section 82036.5 of \$1,000 or more in support of or in opposition to any measure or candidate, or group of measures or candidates, shall file the required report in the 40 days before an election in which the measure or candidate, or group of measures or candidates, appears on the ballot, shall notify with~~ the City Clerk within 24 hours ~~of making the expenditure by personal delivery, fax, overnight mail, or other electronic means as authorized by law each time an expenditure which meets this threshold is made.~~ The City Clerk shall post a copy of the report notice to the City's website within two business days after receiving the report notice. Late independent expenditures shall be reported on subsequent campaign statements in addition to the reports filed pursuant to this section. The person shall also provide to the City Clerk three copies of the communication funded by the expenditure.

- B. Contents of Notice Report. The ~~notice report~~ shall specify:
- a. Each candidate or measure supported or opposed by the expenditure;
 - b. The amount spent to support or oppose each candidate or measure;
 - c. Whether the candidate or measure was supported or opposed;
 - d. The date and amount of each expenditure;
 - e. A description of the type of communication for which the expenditure was made;
 - f. The name and address of the person making the expenditure; and
 - g. The name and address of the payee.

C. Notification to Candidates of Expenditures. The City Clerk shall notify all candidates and committees in each affected race by first class mail within two business days of receiving a report filed pursuant to this section~~notice of the independent expenditures of \$1,000 or more.~~

D. Exemption for Regularly Published Newsletters. For purposes of the notification required by subsection (A) of this section, payments by an organization for its regularly published newsletter or periodical, if the circulation is limited to the organization's members, employees, shareholders, other affiliated individuals and those who request or purchase the publication, shall not be required to be reported.

Section 4. That Section 2.12.285 of the Berkeley Municipal Code is repealed.

Section 5. That Section 2.12.290 of the Berkeley Municipal Code is repealed.

Section 6. These amendments shall be effective on January 1, 2014.

Section 7. Copies of this Ordinance 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 and inclusion in the agenda packet.

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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