

REGULATIONS ADOPTED BY THE FAIR CAMPAIGN PRACTICES COMMISSION

These Regulations Supplement the Berkeley
Election Reform Act of 1974,
Ordinance 4700-N.S., as amended.

Revised to July 15, 2004

FCPC REGULATIONS

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FCPC REGULATIONS
Amended July 15, 2004

R2.12.025 Verification Requirements

- (a) 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.
- (b) A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. This does not relieve the treasurer of any controlled committee from the obligation to verify each campaign statement filed pursuant to BMC Section 2.12.025.

R2.12.045 Record Retention Requirements

- (a) All persons with filing obligations shall retain copies of all reports, statements and information filed with the City Clerk for a period of at least **four years** from the date upon which it was required to be filed under the terms of the ordinance as required by BMC Section 2.12.045.
- (b) The City Clerk shall retain the originals of all reports, statements and information filed with the City Clerk for a period of at least four years from the date upon which it was required to be filed under the terms of the ordinance. In the event that state law imposes a longer retention period, the requirements of state law must be met.
- (c) The campaign treasurer shall retain all statements of account, canceled checks, records, bills, receipts, vouchers, and other original source documentation for a period of at least **four years** from the date of the final report as required by BMC Sections 2.12.250(D) and (E).

R2.12.095 Contributions by Membership Organizations

- (a) Committee Status
A Membership Organization which receives contributions as defined in BMC Section 2.12.100, or makes an Expenditure of \$250 or more as defined in BMC Section 2.12.130, is a Committee as defined in BMC Section 2.12.095 and shall file the Campaign Statements required by BMC Section 2.12.270.
- (b) Membership Organization
As used in this Regulation, the term "Membership Organization" shall mean any club, league, trust, unincorporated association in which natural or juridical persons are members, shareholders, associates or the like.

R2.12.250 Redesignation of Campaign Funds for Future Elections**(a) Defeated Candidates, Individuals Leaving Office**

A defeated candidate or individual leaving office and planning to redesignate campaign funds for a future election shall do so before such funds become surplus. Funds will become surplus at the end of the post-election reporting period following the defeat of a candidate for elective office, or upon an individual leaving office, whichever occurs last. (Govt. Code Section 89519[a])

(b) Redesignation to the Same Elective Office

The treasurer shall certify that to his or her knowledge there remains no further outstanding indebtedness in connection with the campaign. A defeated candidate or individual leaving office shall redesignate campaign funds for a future election to the same elective office by filing an amended State Form No. 410 (Statement of Organization) to include the new election year, and an initial State Form No. 501 (Candidate Intention). The defeated candidate or individual leaving office shall also file a statement with the Commission that campaign account funds have been redesignated.

(c) Redesignation to a Different Elective Office

The treasurer shall certify that to his or her knowledge there remains no further outstanding indebtedness in connection with the campaign. A defeated candidate or individual leaving office shall redesignate campaign funds for a future election to a different elective office by closing the existing campaign bank account and opening a new campaign bank account for the new elective office, and shall file initial State Forms No. 410 and 501.

R2.12.270 Independent Expenditures: Individuals and Organizations Required to File Campaign Disclosure Statements

(a) An individual or organization that does not fall within the definitions of Government Code Section 82013(b) and (c) and that makes independent expenditures of \$250 or more in a calendar year to support or oppose a single Berkeley candidate, single Berkeley measure, or the qualification of a single Berkeley measure shall file a Supplemental Expenditure Form (State Form No. 465) with the City Clerk's Office in accordance with the prescribed campaign disclosure statement filing schedule.

(b) An individual or organization whose only filing obligation is pursuant to this regulation is no longer required to file pursuant to paragraph (a) when it has ceased to make expenditures with regard to campaigns for Berkeley elective office or for measures on the Berkeley ballot totaling \$250 or more in an ensuing calendar year. A Statement of Termination (State Form No. 410) is not required of such individuals or organizations.

R2.12.270.1 Administrative Termination of Filing Obligations

- (a) A candidate's or committee's status and filing obligations pursuant to BMC Chapter 2.12 may be administratively terminated by the Commission, either on its own initiative or upon the candidate's or committee's request.
- (b) Factors the Commission will consider in determining administrative termination include the candidate's or committee's:
- (1) aggregate annual reported financial activity
 - (2) reports disclosing minimal or no receipt of contributions and/or expenditures; and
 - (3) primary purpose for filing reports confined to disclosure of outstanding debts and obligations

Any evidence of possible violations of any provisions of BMC Chapter 2.12 at present, or if administrative termination occurs, will preclude such administrative termination.

- (c) The Commission will notify the candidate and committee treasurer of its intent to consider administrative termination and may request that any objections be submitted within a reasonable time.

R2.12.295 Late Contributions

- (a) A late contribution means any contribution as defined in BMC Section 2.12.145 and received before the election at which the candidate or measure for which the contribution is intended is to be voted on.
- (b) For the purposes of this section, if the deadline to file the late contribution report falls on a Saturday, Sunday or holiday, a report received by the City Clerk no later than the next business day shall be deemed timely filed.

R2.12.325.1 Mass Mailings; Filing

- (a) A mass mailing means any mailing as defined in BMC Section 2.12.150 that has been sent within a calendar month.
- (b) Any committee, candidate, officeholder, individual or organization who
- (1) Has local filing requirements pursuant to the BERA, as it may be amended from time to time, and
 - (2) Makes expenditures supporting or opposing one or more candidates or ballot measures,

shall file three copies of each mass mailing paid for by expenditures reported therein.

R2.12.325.2 Filing of Mass Mailings - Method of Filing

Three copies of all mailings as defined in BMC Section 2.12.150 shall be filed with the City Clerk’s Office no later than one day of the date the mass mailing was first placed in the U.S. mail. Filing shall be made by hand-delivery to the City Clerk’s Office no later than one day after the mailing or by depositing three originals addressed to the City Clerk’s Office in the U.S. mail on the same day as the first pieces are deposited in the U.S. mail. Mass mailings may be filed with the City Clerk prior to the date of the actual mailing.

Each mass mailing required to be filed with the City Clerk pursuant to BMC Section 2.12.325 shall be accompanied by a certification of the date the mass mailing was (or will be) deposited in the U.S. mail. The certification shall include the following information:

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

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

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

Signed: _____ Date: _____

Filing I.D. Number: _____

Dated: _____

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

R2.12.415 Allocation of Contributions to Multi-Candidate and Measure Committees(a) Independent Committees

All contributions received by independent committees formed for the purpose of supporting or opposing one or more candidates or measures shall be allocated equally among all such candidates and measures unless otherwise indicated by the donor in writing.

(b) Controlled Committees

All contributions received by controlled committees formed for the purpose of supporting a candidate for Berkeley elective office and one or more ballot measures shall be allocated equally among the candidate and the ballot measures unless otherwise indicated by the donor in writing.

(c) When Donor Must Specify Allocation

If equal allocation of a contribution would result in exceeding Berkeley's \$250 per candidate contribution limit, the treasurer of the recipient committee shall promptly require the contributor to indicate in writing a preferred allocation so as to comply with the requirements of BMC Section 2.12.415.

R2.12.415.1 Separate Accounting of Candidate Contributions

(a) A committee which receives or makes contributions or makes expenditures in support of or opposition to both any candidate for Berkeley elective office and any non-Berkeley candidate or any measure shall maintain sufficient separate accounting so as to insure that expenditures made on behalf of or against each Berkeley candidate do not exceed contributions made in relation to that candidate. Either a separate candidate campaign account must be established or Commission staff must approve a written explanation of the committee's method of separate accounting.

(b) If a committee establishes a separate candidate campaign account, all contributions received by the committee in support of or opposition to any candidate for Berkeley elective office, and only such contributions, shall be deposited in this account. All disbursements made by the committee in support of or opposition to any candidate for Berkeley elective office shall be made from this account. No contribution received directly or indirectly from a corporation or labor union shall be deposited in a candidate campaign account.

R2.12.415.2 Cumulation of Candidate Contributions(a) Cumulative Period

Separate four-year cumulative periods for elective offices of staggered four-year terms shall apply for each election for the purpose of administering the \$250 per candidate contribution limitations of BMC Section 2.12.415. The cumulative period will commence on January 1 of the year immediately following the election.

(b) Contributions to Prior Cumulative Period to Help Retire a Campaign Debt

A candidate for Berkeley elective office who has not received the maximum contribution from a particular contributor permitted by BMC Section 2.12.415 for an election may receive a contribution from that contributor intended for other than the current cumulative period only as necessary to retire debt from a previous election, provided, however, that such additional contributions may not be accepted after the end of the second semi-annual filing period (i.e., December 31st) in the next even-numbered year following such election. Unless otherwise stated in writing by the contributor, contributions from that contributor will be deemed received for the current period.

(c) Applicability to Run-Off Elections

For purposes of this regulation, the provisions of subparagraph (b) above, are applicable to the retirement of debt from a run-off election.

R2.12.415.3 Joint Account Contributions

Except as provided in BMC Section 2.12.440 and R2.12.440 with respect to business organizations, a contribution may be made on a joint account. A contribution drawn on a joint account is presumed to come from the person or persons who signed the check or other instrument. When more than one party to the joint account intends to make a contribution using a single check or other instrument, each party to the joint account intending to make the contribution must sign the check or other instrument, or sign a written statement accompanying the check or other instrument indicating that all of the signatories intend to make the contribution. The amount of the contribution shall be allocated equally between or among the signers, unless otherwise indicated by the contributors.

R2.12.440 Candidate Contributions from Certain Organizations and Business Entities Including Corporations and Labor Unions

(a) The campaign treasurer must make all reasonable inquiries concerning, and is responsible for insuring the propriety of, the source of all campaign contributions in support of or opposition to any candidate for Berkeley elective office, especially those obviously not from individuals. If the treasurer knows or should reasonably know that the contribution is from a prohibited source, it must be refunded to the donor promptly.

(b) No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporation or labor union may contribute to any candidate or committee supporting or opposing any candidate. A contributor who has received contributions from this type of organization is not precluded from making contributions to candidates for Berkeley elective office or their campaigns provided either:

- (1) the contributor establishes a separate bank account into which monies not contributed by this type of organization are deposited and from which contributions to Berkeley elective office campaigns are made, or

- (2) the contributor maintains reasonable accounting methods so as to demonstrate that any contributions made to Berkeley elective office campaigns originate from sufficient funds not contributed by this type of organization.
- (c) The campaign treasurer who receives contributions from a contributor receiving contributions from this type of organization must receive a written statement which indicates that the contributor complies with either (b)(1) or (b)(2), above, before depositing such contributions.
- (d) Adequate records and other information shall be maintained and made available for inspection by the Commission, the City Clerk, and the City Attorney upon request. Nothing in this regulation limits the right of any person to make contributions in aid of a ballot measure from any source of funds.

HISTORY OF FCPC REGULATIONS¹

- R2.12.025 Adopted May 21,1998, to become effective immediately. Amended February 14, 2002 to become effective immediately.
- R2.12.045 Adopted January 16, 1997, to become effective immediately. Amended May 21, 1998, to become effective immediately. Amended July 15, 2004 to become effective immediately.
- R2.12.095 Adopted February 18, 1993, to become effective immediately. Amended May 21, 1998, to become effective immediately.
- IR2.2.12.070.1 Adopted June 19, 1990 to become effective immediately. Repealed March 19, 1992. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6096-N.S.
- R2.12.150 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Amended former Reg. 83-1, adopted December 15, 1983.] Amended June 20, 1996 and February 20, 1997. Repealed May 21, 1998.
- R2.12.250 Adopted February 14, 2002 to become effective immediately.
- IR2.12.270 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Replaced former Reg. 81-1, adopted Feb. 26, 1981 and amended Dec. 15, 1983.] Repealed April 17, 1997. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6329-N.S.
- R2.12.270 Adopted September 15, 1988 to become effective Jan. 1, 1989, and amended April 19, 1990. Amended February 14, 2002 to become effective immediately.
- R2.12.270.1 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Replaced former Reg. 84-2, adopted May 17, 1984.]
- R2.12.270.2 Adopted April 19, 1990 to become effective immediately. Repealed May 21, 1998.
- IR2.12.270.3 Adopted April 19, 1990 to become effective immediately. Repealed March 19, 1992. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6096-N.S.
- R2.12.295 Adopted March 21, 1991 to become effective April 20, 1991. Amended February 14, 2002 to become effective immediately. Amended July 15, 2004 to become effective immediately.

¹ Regulations designated "IR" are interim regulations.

- IR2.12.325.1 Adopted June 19, 1990 to become effective immediately. Repealed March 19, 1992. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6096-N.S.
- R2.12.325.1 Adopted May 21, 1998, to become effective immediately. Amended February 14, 2002 to become effective immediately. Amended July 15, 2004 to become effective immediately.
- R2.12.325.2 Adopted May 21, 1998, to become effective immediately.
- R2.12.415 Adopted September 15, 1988 to become effective Jan. 1, 1989, and amended November 30, 1989. [Amended former Reg. 81-6, adopted March 5, 1981 and amended January 19, 1984.]
- R2.12.415.1 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Replaced former Reg. 82-1, adopted August 5, 1982.] Amended July 15, 2004 to become effective immediately.
- R2.12.415.2 Adopted September 15, 1988 to become effective Jan. 1, 1989 and amended November 30, 1989. [Replaced former Reg. 81-7, adopted March 5, 1981 and amended May 17, 1984.] Amended April 20, 1995 to become effective immediately. Amended February 17, 2000, to become effective immediately. Amended February 14, 2002 to become effective immediately.
- R2.12.415.3 Adopted September 15, 1988 to become effective Jan.1, 1989. [Replaced former Reg. 84-3, adopted August 9, 1984.] Amended May 21, 1998, to become effective immediately.
- R2.12.440 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Replaced former Reg. 82-3, adopted August 5, 1982.] Amended April 20, 1995 to become effective immediately.
- IR2.12.440.1 Adopted September 15, 1988 to become effective Jan. 1, 1989. [Amended former Reg. 81-2, adopted Feb. 26, 1981.] Repealed March 19, 1992. Added to Berkeley Election Reform Act pursuant to Ordinance No. 6096-N.S.