

Chapter 2.12 ELECTION REFORM ACT*

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*The City Attorney has determined that certain uncodified provisions are unconstitutional. See *Citizens for Jobs and Energy v. Fair Political Practices Comm.* (1976) 16 Cal. 3d 671.

The City Attorney has determined that Ord. 4700-NS § 602 applies only to ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See *Citizens Against Rent Control v. City of Berkeley* (1981) 454 US 290.)

The City Attorney has also determined that Ord. 4700-NS § 605 applies only to candidate campaigns and ballot measures which are recalls; it has been held unconstitutional with respect to initiatives and referenda. (See *Pacific Gas and Electric v. City of Berkeley*, (1976) 60 Cal. App. 3d 123).

The City Attorney has determined that Ord. 4700-NS § 517, as modified by Ord. 5895-N.S. § 1, is unconstitutional; see *Meyer v. Grant* (1988) 486 U.S. 414, *Buckley v. American Constitutional Law Foundation* (1999) 525 U.S. 182.

2.12.005 Title for citation.

This chapter shall be known and may be cited as the "Berkeley Election Reform Act of 1974." (Ord. 4700-NS §

100, 1974)

2.12.010 Findings.

The people find and declare as follows:

- A. Local government should serve the needs and respond to the wishes of all citizens equally, without regard to their wealth.
- 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.
- D. The influence of large campaign contributors is increased because existing laws for disclosure of campaign receipts and expenditures have proved to be inadequate.
- E. Previous laws regulating campaign practices have suffered from inadequate enforcement. (Ord. 4700-NS § 101, 1974)

2.12.015 Purpose.

The people have enacted the ordinance codified in this chapter to accomplish the following 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. (Ord. 4700-NS § 102, 1974)

2.12.020 Liberal construction.

This chapter should be liberally construed to accomplish its purposes. (Ord. 4700-NS § 103, 1974)

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. (Ord. 7309-NS § 5, 2013; Ord. 4700-NS § 104, 1974)

2.12.030 Reports and statements--Filed where.

Reports or statements filed under this chapter shall be filed with the City Clerk. (Ord. 4700-NS § 105, 1974)

2.12.032 Requirement to file statements and reports electronically.

A. The following elected officers, candidates, committees, or other persons required to file campaign reports or statements under this Chapter and Title 9, Chapter 4 of the California Government Code (commencing with Section 84100), are required to submit all reports or statements as an electronic filing:

1. A Participating Candidate, as defined in [2.12.158](#), and any Participating Candidate's campaign committee, regardless of the monetary amount of contributions received or expenditures made;
2. An elected officer, candidate, committee, or other person 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.

B. 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.

C. An elected officer, candidate, committee, or other person that must file pursuant to this Chapter, but is not a Participating Candidate or such a candidate's campaign committee as set forth in subsection A.1 and has not met the \$1,000 threshold in subsection A.2, may submit required reports or statements as an electronic filing or in paper format.

D. 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. (Ord. 7564-NS § 2, 2017; Ord. 7309-NS § 2, 2013)

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. (Ord. 7309-NS § 3, 2013)

2.12.035 Reports and statements--Filing fees prohibited.

No fee or charge shall be collected by the City Clerk for the filing of any report or statement or for the forms upon which the reports or statements are to be prepared. (Ord. 4700-NS § 106, 1974)

2.12.040 Statements--Public inspection requirements.

Campaign statements are to be available for public inspection 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. (Ord. 7309-NS § 6, 2013: Ord. 4700-NS § 107, 1974)

2.12.045 Preservation from date of filing.

All reports, statements and information filed with the City Clerk shall be preserved for at least four years from the date upon which it was required to be filed under the terms of this chapter. (Ord. 5895-NS § 1, 1988: Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 108, 1974)

2.12.050 Reports and statements--City Clerk responsibilities.

With respect to reports or statements filed with him or her pursuant to this chapter, the City Clerk shall:

- A. Supply the necessary forms and manuals prescribed by the commission;
- B. Notify in advance all candidates and known committees of the dates campaign statements are required;
- C. Report apparent violations of this chapter to the appropriate agencies; and
- D. Complete and maintain a current list of all reports and statements filed with his or her office. (Ord. 4700-NS § 109, 1974)

2.12.051 Amendment or repeal of chapter.

This chapter may be amended or repealed by the procedures set forth in this section. If any portion of subsection A is declared invalid, subsection B shall be the exclusive means of amending or repealing this chapter.

- A. This chapter, including the amendments adopted by Ordinance No. 7,524-N.S. and its successors, may be amended to further its purpose by ordinance passed by a vote of the City Council of not less than two-thirds vote of its membership, following a public hearing, if at least thirty days prior to passage the amendment has been approved by the Berkeley Fair Campaign Practices Commission by not less than two-thirds vote of its membership, and has been distributed to the news media and to every person regularly receiving

communications from the commission.

B. This chapter may be amended or repealed by initiative approval of the voters of the City of Berkeley. (Ord. 7524-NS § 3.1, 2016: Ord. 5895-NS § 2, 1988)

2.12.055 Items of value--Report requirements.

Whenever in this chapter the amount of goods, services, facilities or anything of value other than money is required to be reported, the amount shall be the estimated fair market value at the time received or expended, and a description of the goods, services or facilities shall be appended to the report or statement. (Ord. 4700-NS § 110, 1974)

2.12.060 Applicability--Severability.

If any provision of this chapter, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this chapter, to the extent it can be given effect, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby, and to this end the provisions of this chapter are severable. (Ord. 4700-NS § 111, 1974)

2.12.065 Electronic posting of contributions prior to elections.

The City shall post in at least two public locations and electronically on the City website during the seven days before each municipal election a list of all persons contributing fifty dollars or more to any candidate or committee in that election and the amounts of the contributions reported through the filing deadline for the second pre-election statements. The City shall additionally publish in one or more newspapers at least once in the seven days before each municipal election a notice listing the locations of the posted information. The City shall direct publication of the notice in such newspaper or newspapers as are best suited to reach the largest number of Berkeley residents in a cost-effective manner. (Ord. 7234-NS § 1, 2012: Ord. 6513-NS § 1, 1999: Ord. 5895-NS § 1, 1988: Ord. 4946-NS, 1976: Ord. 4700-NS § 112, 1974)

2.12.070 Interpretation.

Unless the contrary is stated or clearly appears from the context, the definitions set forth in this article shall govern the interpretation of this chapter. (Ord. 4700-NS § 200, 1974)

2.12.075 Adjusting an amount for cost of living changes.

"Adjusting an amount for cost of living changes" means adjusting upward or downward by the percent change in the Consumer Price Index as last computed in accordance with State of California Government Code, Section 82001. (Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 201, 1974)

2.12.080 Campaign statement.

"Campaign statement" means an itemized report which is prepared on a form prescribed by the commission and which provides the information required by Sections [2.12.245](#) through [2.12.325](#). (Ord. 4700-NS § 202, 1974)

2.12.085 Candidate.

"Candidate," for the purposes of this chapter, means a candidate for a Berkeley municipal elective office.

"Candidate" means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution, or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any office-holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this chapter the proponents or opponents of a measure. (Ord. 4700-NS § 203, 1974)

2.12.090 Commission.

"Commission" means the Berkeley Fair Campaign Practices Commission. (Ord. 4700-NS § 204, 1974)

2.12.095 Committee.

"Committee" means any person or combination of persons that directly or indirectly receives contributions which total more than two hundred fifty dollars in a calendar year or makes expenditures exceeding more than two hundred fifty dollars in a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party. (Ord. 4945-NS § 1 (part), 1976; Ord. 4700-NS § 205, 1974)

2.12.100 Contribution.

"Contribution" means a gift, subscription, loan, advance, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; a candidate's own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term "contribution" further includes any transfer, gift, loan, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term "contribution" shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term "contribution" include a gift of the use of personal or real

property where the value of such use is not in excess of fifty dollars, nor shall it include food and beverages the value of which for any one event is no more than fifty dollars. (Ord. 4945-NS § 1 (part), 1976: Ord. 4700-NS § 206, 1974)

2.12.105 Controlled committee.

"Controlled committee" means a committee either directly or indirectly controlled by a candidate or committee, or which acts jointly with a candidate or controlled committee in the making of expenditures or the receipt or solicitation of contributions. A committee is deemed controlled if another committee or candidate exercises significant influence over its actions or decisions. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 5895-NS § 2, 1988)

2.12.110 Cumulative amount.

"Cumulative amount" in a campaign statement means the amount contributed or expended since the closing date of the most recent post-election statement which has been filed by the filer. If the filer has not previously filed a campaign statement pursuant to any of these sections, the cumulative amount is the amount contributed or expended since June 4, 1974. (Ord. 4700-NS § 208, 1974)

2.12.115 Elected officer.

"Elected officer" means any person who holds an elective officer or has been elected to an elective office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer. (Ord. 4700-NS § 209, 1974)

2.12.120 Election.

"Election" means any primary, general, special or runoff election held in the City, including an initiative, referendum or recall election. (Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 210, 1974)

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. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.125 Elective office.

"Elective office" means any elective office as defined in the Berkeley City Charter. (Ord. 4700-NS § 211, 1974)

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. (Ord. 7309-NS § 4, 2013)

2.12.130 Expenditure.

"Expenditure" means a payment, pledge or promise of payment of money or anything of value or other obligation,

whether or not legally enforceable, for goods, materials, services or facilities in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or adoption of one or more measures. The term "expenditure" includes any transfer, payment, gift, loan, advance, deposit, pledge, contract, agreement or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly by one committee to another committee. "Expenditure" also includes the forgiving of a loan or the repayment of a loan by a third party. (Ord. 4700-NS § 212, 1974)

2.12.135 Filer.

"Filer" means any person filing or required to file any statement or report under this chapter. (Ord. 4700-NS § 213, 1974)

2.12.137 Fund.

"Fund" means the Fair Elections Fund created by City Charter Article III Section 7. (Ord. 7524-NS § 3.2 (part), 2016)

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. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.140 Independent committee.

"Independent committee" means a committee which is not controlled either directly or indirectly by a candidate or controlled committee, and which does not act jointly with a candidate or controlled committee in connection with the receipt or solicitation of contributions or the making of expenditures. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates. (Ord. 4700-NS § 214, 1974)

2.12.142 Independent expenditure.

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Ord. 6096-NS § 2 (part), 1991)

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. (Ord. 7296-NS § 1, 2013; Ord. 4700-NS § 215, 1974)

2.12.150 Mass mailing.

"Mass mailing" means two hundred or more identical or nearly identical pieces of mail, but does not include a form letter or other mail which is sent in response to a request, letter or other inquiry. (Ord. 4700-NS § 216, 1974)

2.12.155 Measure.

"Measure" means any City Charter amendment, ordinance or other proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot. (Ord. 4700-NS § 217, 1974)

2.12.156 Nomination period.

"Nomination period" means the period specified by state law during which candidates must submit nomination papers for City offices. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.158 Participating candidate.

"Participating candidate" means a candidate who qualifies for Fair Elections campaign funding. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.160 Period covered.

"Period covered" by a statement or report required to be filed by this chapter means, unless a different period is specified, the period beginning with the day after the closing date of the most recent statement or report in question. If the person filing the statement or report has not previously filed a report or statement of the same type, the period covered begins on June 4, 1974. Nothing herein shall exempt any person from disclosing transactions which occurred prior to June 4, 1974 according to the law then in effect. (Ord. 4700-NS § 218, 1974)

2.12.165 Persons.

"Persons" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Ord. 4700-NS § 219, 1974)

2.12.167 Qualified contribution.

"Qualified Contribution" means a monetary contribution, excluding loans, made directly in aid of the nomination or election of one or more candidates not greater than fifty dollars (\$50) made by a natural person resident of the City of Berkeley. (Ord. 7564-NS § 3, 2017; Ord. 7524-NS § 3.2 (part), 2016)

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. (Ord. 7524-NS § 3.2 (part), 2016)

2.12.170 Established--Number of members.

There is established in Berkeley municipal government the Berkeley Fair Campaign Practices Commission. The commission shall have nine members, including the chairperson. (Ord. 4700-NS § 300, 1974)

2.12.175 Term--Appointments and reappointments.

Each member of the commission shall serve for the same term as the councilmember appointing them. Members of the commission may not be reappointed by the same councilmember. All initial appointments shall be made by September 1, 1974. A member whose term has expired shall serve until his or her successor is appointed. (Ord. 4700-NS § 301, 1974)

2.12.180 Quorum.

A majority of the appointed members shall constitute a quorum. (Ord. 4700-NS § 302, 1974)

2.12.185 Election of chairperson.

The commission shall elect its own chairperson. (Ord. 4700-NS § 303, 1974)

2.12.186 Vice-chairperson.

The commission shall elect a vice-chairperson who shall serve the same term of office as the chairperson and who shall assume the powers of the chairperson in his or her absence. (Ord. 5574-NS § 2 (part), 1983)

2.12.190 Vacancy filling.

Vacancies on the commission shall be filled, within thirty days, by appointment of the same official, or his or her successor, who appointed the prior holder of the position. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to execute all of the powers of the board. (Ord. 4700-NS § 304, 1974)

2.12.195 Members--Qualifications and restrictions.

Each member of the commission shall be a resident of Berkeley and registered to vote in Berkeley elections. No member of the commission, during his or her tenure, shall hold or seek election to any other public office, serve as an officer of any political party or partisan organization or participate in or contribute to a Berkeley municipal election campaign. No member of the commission shall endorse, support, oppose or work on behalf of or against any candidate or measure in a Berkeley election. Each member of the commission shall use his or her best efforts to remain independent of candidates and measures in Berkeley elections. (Ord. 4700-NS § 305, 1974)

2.12.196 Avoidance of political conflict of interest.

In addition to the limitations imposed on members of the commission by Section [2.12.195](#), each member of the commission shall use his or her best efforts to be independent of and impartial in relation to any person during the time such person is the subject of an investigation by or proceeding before the commission. Such persons include elected officers, current and previous candidates, and committees, as well as any officers or employees

of such persons. (Ord. 5574-NS § 2 (part), 1983)

2.12.200 Staff powers and duties.

The commission shall have a staff which shall act in accordance with commission policies and regulations and with applicable law to investigate violations and bring proper court action and to assist the commission in the performance of its duties. (Ord. 4700-NS § 306, 1974)

2.12.205 Administrative responsibility.

The commission has the primary responsibility for the impartial, effective administration of this chapter. (Ord. 4700-NS § 307, 1974)

2.12.210 Rules and regulations--Authority.

The commission may adopt, amend and rescind rules and regulations to carry out the purposes of this chapter, and to govern the procedures of the commission. (Ord. 4700-NS § 308, 1974)

2.12.215 Additional duties.

The commission shall, in addition to its other duties:

- A. Prescribe forms for reports, statements, notices and other documents required by this chapter;
- B. Prepare and publish manuals and instructions setting forth methods of bookkeeping and preservation of records to facilitate compliance with and enforcement of this chapter, and explaining the duties of persons and committees under this chapter;
- C. Provide assistance to agencies and public officials in administering the provisions of this chapter;
- D. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this chapter. (Ord. 4700-NS § 309, 1974)

2.12.220 Opinions.

Any person may request the commission to issue an opinion with respect to his or her duties under this chapter. The commission shall issue the opinion within fourteen days. No person who acts in good faith of an opinion issued to him or her by the commission shall be subject to criminal or civil penalties for so acting, provided that the material facts are as stated in the opinion request. The commission's opinions shall be public records and may from time to time be published. The commission may request the City Attorney to issue an opinion, in which case the City Attorney shall issue the opinion within fourteen days. (Ord. 4700-NS § 310, 1974)

2.12.225 Investigation authority and procedures.

Upon the sworn complaint of any person or on its own initiative, the commission shall investigate possible violations of this chapter. Within seven days after the receipt of a complaint under this section, the commission shall notify in writing the person who made the complaint of the action, if any, which the commission has taken

or plans to take on the complaint, together with the reasons for such action or nonaction. (Ord. 4700-NS § 311, 1974)

2.12.227 Subpoena--Testimony under oath.

After the commission has made a finding of probable cause of a violation of the Berkeley Election Reform Act (BERA) or this chapter, in any investigation or hearing conducted by the commission, the commission may:

- A. Subpoena witnesses, take testimony under oath and require the production of records by subpoena; and
- B. Issue orders requiring any person believed to have information relevant to matters under examination to submit written answers under penalty of perjury to written questions, and specify a reasonable date by which such answers must be submitted. (Ord. 5574-NS § 2 (part), 1983)

2.12.230 Notice and hearing on violations.

After the commission determines there is probable cause for believing that a provision of this chapter has been violated and makes a good faith effort to give reasonable notice to the person or persons involved in the allegation, it may hold a hearing to determine if a violation has occurred, and may determine an appropriate remedy if a violation is found. The hearing pursuant to this section shall be conducted in an impartial manner, consistent with the requirements of due process. A record shall be maintained of the proceedings, and a report summarizing the facts, issues, and any remedial actions shall be issued by the commission following the conclusion of the hearing.

The commission shall conduct such hearings and proceedings with respect to determinations of probable cause pursuant to adopted procedures. All interested persons may participate in the hearing. (Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 312, 1974)

2.12.231 Violation--Penalties.

When determining an appropriate remedy for a violation of this Chapter as specified in Section [2.12.230](#), the Commission may order any of the following:

- A. Cease and desist violation of this Chapter.
- B. File any reports, statements, or other documents or information required by this Chapter.
- C. Pay a monetary penalty of up to \$1,000.00 per violation, or up to the amount or value of the unlawful or undisclosed contribution or expenditure, whichever is greater, to the Fair Elections Fund of the City. (Ord. 7564-NS § 4, 2017: Ord. 7234-NS § 2, 2012)

2.12.235 Judicial review of actions.

Any person may seek judicial review of any action of the commission. (Ord. 4700-NS § 313, 1974)

2.12.240 Meetings to be open to the public.

All meetings of the commission shall be open to the public. (Ord. 4700-NS § 314, 1974)

2.12.245 Campaign treasurer--Appointment required--Powers and duties.

- A. Each candidate and each committee shall appoint a campaign treasurer. A candidate may appoint himself or herself as his or her campaign treasurer. No contribution and no expenditures shall be accepted or made by or on behalf of a candidate or committee at a time when there is a vacancy in the office of treasurer.
- B. No expenditure shall be made by or on behalf of a candidate or committee without the authorization of the treasurer or that of his or her designated agent.
- C. All contributions received by a person acting as an agent of a candidate shall be reported promptly by such person to the candidate or any of his or her designated agents. All contributions received by a person acting as an agent of a committee shall be reported promptly by the recipient to the committee's treasurer or any of his or her designated agents. "Promptly," as used in this section, means not later than five days before the closing date of any campaign statement required to be filed by the treasurer, and immediately if the contribution was received less than five days before the closing date. All contributions shall be separated from and may not be commingled with any personal funds of the recipient or any other person. (Ord. 4700-NS § 400, 1974)

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. 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.
- 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 liquidate the contribution checking account consistent with California Government Code Section 89510 et seq., and applicable state regulations, before terminating the campaign committee.
- 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. Participating candidates or their controlled committees shall not accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars (\$50) and must retain an itemized receipt or voucher for all non-monetary contributions. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

E. Participating Candidates or their controlled committees shall not accept or receive a non-monetary contribution with a fair market value in excess of fifty dollars (\$50) and must retain an itemized receipt or voucher for all non-monetary contributions. The campaign treasurer shall maintain all receipts and vouchers for a period of four years from the date of the final report.

F. 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.

G. 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.

H. All requests from Participating Candidates for Fair Elections funds must be submitted within thirty (30) days after the date of the election in order to be eligible for distribution of Fair Elections funds in that election cycle. Any request for matching Fair Elections funds received more than thirty (30) days after the election will not be eligible for disbursement for Fair Elections funds. (Ord. 7564-NS § 5, 2017: Ord. 7296-NS § 2, 2013: Ord. 6859-NS § 1, 2005: Ord. 5895-NS § 1, 1988: Ord. 4947-NS §§ 1, 2, 1976: Ord. 4733-NS § 1, 1974: Ord. 4700-NS, § 401, 1974)

2.12.255 Statement of organization--Committee required to file.

A. Subject to the exception in Section [2.12.255](#)(B), every committee under Section [2.12.095](#) of this chapter shall file with the City Clerk a statement of organization within ten days after it is formed as a committee.

B. Every committee that forms during the period between the closing date of the last pre-election statement and the election shall file with the City Clerk, by hand delivery or by such means as the commission may prescribe, a statement of organization no later than the close of the next business day.

C. The date on which a committee formed, and not the date on which the committee filed its statement of organization, shall determine the committee's obligation to file the campaign statements and late contribution reports required by this chapter. All committees, whether formed before or after the date of the final pre-election statement, but before the date of an election, are subject to late contribution reporting requirements. (Ord. 5895 § 1, 1988; Ord. 4700-NS § 402, 1974)

2.12.260 Statement of organization--Information required.

The statement of organization required by Section [2.12.255](#) shall include:

- A. The name, street address and telephone number, if any, of the committee;
- B. The name, street address and telephone number of each candidate, if any, with which the committee is affiliated or connected;
- C. The full name, street address and telephone number, if any, of the treasurer and other principal officer;
- D. The full name and office sought by each candidate and the title and ballot number if any, of each measure, which the committee supports or opposes;
- E. A statement of whether the committee is independent or controlled, and if it is controlled, the name of each candidate or committee by which it is controlled or with which it acts jointly;
- F. The disposition of surplus funds which will be made in the event of dissolution;
- G. The account number and name of the bank at which the campaign checking account, required by Section [2.12.250\(A\)](#), is maintained; if the information required by this section is unavailable at the time of filing, the statement of organization, the filer shall promptly submit an amended statement after such information becomes available;
- H. The cash on hand at the time of filing the statement of organization;
- I. Such other information as shall be required by the rules or regulations of the commission consistent with the purposes and provisions of this chapter. (Ord. 5895-NS § 1, 1988; Ord. 4700-NS § 403, 1974)

2.12.265 Statement of organization--Change of information--Amendment required.

Whenever there is a change in any of the information contained in the statement of organization, an amendment shall be filed within ten days to reflect the change. (Ord. 4700-NS § 404, 1974)

2.12.270 Campaign statement--Filing requirements.

- A. Each candidate and each committee shall file no fewer than two campaign statements prior to an election, excluding run-off elections, and one campaign statement following the election, excluding run-off elections. Campaign statements shall be filed in accordance with the filing dates prescribed by state law. The semi-annual

campaign statement that is filed pursuant to state law following an election shall serve as the post-campaign statement required by this section. If state law does not establish the filing dates for campaign statements, the commission shall set the necessary filing dates.

B. Each candidate and committee involved in a run-off election, and each committee supporting or opposing a candidate participating in a run-off election, shall file one campaign statement prior to the run-off election in addition to any other campaign statements required by this section and one campaign statement following the run-off election. The semi-annual statement that is filed pursuant to state law following a run-off election shall serve as the post-campaign statement required by this section. The campaign statements shall be filed in accordance with the filing dates prescribed by state law. If state law does not establish the filing dates for campaign statements in run-off elections, the commission shall set the necessary filing dates.

C. 1. Notwithstanding subsections A and B of this section, a candidate or officeholder who plans to receive contributions of less than two hundred fifty dollars and who plans to make expenditures of less than two hundred fifty dollars in a calendar year may file a short form campaign statement for that calendar year as prescribed by state laws and regulations. The period covered by the short form is the calendar year. No other campaign statements must be filed by a candidate or officeholder who has filed a short form campaign statement for activity in the calendar year unless the candidate receives two hundred fifty dollars or more in expenditures.

2. During the six months prior to an election in which the candidate or officeholder is being voted upon, a candidate or officeholder who files a short form campaign statement and subsequently receives contributions totaling two hundred fifty dollars or more or makes expenditures totaling two hundred fifty dollars or more during the calendar year shall send written notification to the City Clerk, and each candidate or officeholder contending for the same office, as follows:

- a. The notification shall be sent within forty-eight hours of receiving contributions totaling two hundred fifty dollars or more or making expenditures of two hundred fifty dollars or more;
- b. The notification shall include the name and address of the candidate or officeholder, the elective office for which the short form campaign statement was filed, the date of the election, and the date contributions totaling two hundred fifty dollars or more were received or expenditures totaling two hundred fifty dollars or more were made;
- c. The notification shall be sent by telegram, guaranteed overnight delivery, personal delivery, or facsimile transmission. (Ord. 6329-NS § 2, 1996; Ord. 4700-NS § 410, 1974)

2.12.271 Campaign statements--Additional filing requirements.

A. Each committee that makes expenditures in excess of \$250 in support of or in opposition to a measure must, in addition to campaign statements required by Section [2.12.270](#) of this Chapter, file campaign statements on the following dates: (1) no later than April 30 for the period January 1 through March 31; and (2) no later than October 31 for the period July 1 through September 30. If the committee has earlier pre-election statement filing

deadlines, the earlier deadlines apply.

B. Any additional filing requirement under this section shall cease upon the occurrence of any of the following dates, whichever occurs first: (1) the election day on which the measure is voted upon, (2) six months after the measure fails to qualify for the ballot, (3) six months after an ordinance subject to referendum is repealed by the City Council, or (4) six months after an elected official subject to recall resigns or otherwise leaves office. (Ord. 7234-NS § 3, 2012)

2.12.272 Slate mailer organizations' reporting requirements.

A. Slate mailer means a mass mailing which supports or opposes a total of four or more candidates or ballot measures.

B. For the purposes of this chapter, a slate mailer organization shall be defined as an organization which meets the definition of California Government Code Section 82048.4.

C. A slate mailer organization which produces one or more slate mailers supporting or opposing inter alia any candidate for Berkeley elective office or any Berkeley measure shall file one copy of its campaign reports with the City Clerk. Campaign reports are those reports slate mailer organizations are required to file pursuant to California Government Code Sections 84218, 84219, 84220 and 84221. (Ord. 6096-NS § 2 (part), 1991)

2.12.275 Campaign statement--Verification.

A candidate shall verify his or her campaign statement and the campaign statement of each committee subject to his or her control. The verification shall be in accordance with the provisions of Section [2.12.025](#) except that it shall state that he or she has made reasonable inquiry into the truthfulness and completeness of such campaign statements and that to the best of his or her knowledge the treasurer of each controlled committee used all reasonable diligence in the preparation of the committee's statement. This section does not relieve the treasurer of any committee from the obligation to verify each campaign statement filed pursuant to Section [2.12.025](#). (Ord. 4700-NS § 411, 1974)

2.12.280 Campaign statement--Information required.

Each campaign statement required by this article shall contain the following information:

A. Under the heading "receipts," the total amount of contributions received, and under the heading "expenditures," the total amount of expenditures made during the period covered by the campaign statement and cumulative amount of such totals;

B. The total amount of contributions received during the period covered by the campaign statement from persons who have given fifty dollars or more;

C. The total amount of contributions received during the period covered by the campaign statement from persons who have given less than fifty dollars;

- D. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received fifty dollars or more;
- E. The total amount of expenditures disbursed during the period covered by the campaign statement to persons who have received less than fifty dollars;
- F. The balance of cash and cash equivalents on hand at the beginning and the end of the period covered by the campaign statement;
- G. The full name of each person from whom a contribution or contributions totalling fifty dollars or more has been received together with his or her street address, occupation, and the name of his or her employer, if any, or the principal place of business if he or she is self-employed, the amount which he or she contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he or she contributed. In the case of committees which are listed as contributors, the campaign statement shall also contain the full name and street address of the treasurer of the committee. Loans received shall be set forth in a separate schedule and the foregoing information shall be stated in regard to the lender, together with the date and amount of the loan, and if the loan has been repaid, the date of payment and by whom paid;
- H. The full name and street address of each person to whom an expenditure or expenditures totalling fifty dollars or more has been made, together with the amount of each separate expenditure to each person during the period covered by the campaign statement; a brief description of the consideration for which the expenditure was made; the full name and street address of the person providing the consideration for which an expenditure was made if different from the payee; and in the case of committees which are listed, the full name and street address of the treasurer of the committee;
- I. In a campaign statement filed by a committee supporting or opposing more than one candidate or measure, the amount of expenditures for or against each candidate or measure during the period covered by the campaign statement and the cumulative amount of expenditures for or against each such candidate or measure;
- J. The full name, residential and business address and telephone number of the filer or, in the case of a campaign statement filed by a committee, the name and telephone number of the committee and the committee's street address;
- K. In a campaign statement filed by a candidate, the full name and street address of any committee, of which he or she has knowledge, which has received contributions or made expenditures on behalf of his or her candidacy, along with the full name, street address and telephone number of the treasurer of such committee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 412, 1974)

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. (Ord. 7524-NS § 3.3, 2016)

2.12.285 Campaign statement--Candidate statement in lieu permitted when.

Repealed by Ord. 7296-NS. (Ord. 4945-NS § 1 (part), 1976: Ord. 4700-NS § 413, 1974)

2.12.290 Campaign statement--Consolidation permitted when.

Repealed by Ord. 7296-NS. (Ord. 4700-NS § 414, 1974)

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 do not require an original signature. Late contributions shall be reported on subsequent campaign statements in addition to reports filed pursuant to this section. (Ord. 7309-NS § 7, 2013: Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 415, 1974)

2.12.297 Late independent expenditures preceding election.

A. Disclosure of Expenditures. Any person that makes a late independent expenditure as defined in California Government Code Section 82036.5 shall file the required report with the City Clerk within 24 hours of making the expenditure. The City Clerk shall post a copy of the report to the City's website within two business days after receiving the report. 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 Report. The 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.

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. (Ord. 7296-NS § 3, 2013: Ord. 7234-NS § 4, 2012)

2.12.300 Contributions--Written instrument required when.

All monetary contributions of fifty dollars or more shall be made by written instrument containing the name of the donor and the name of the payee. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 420, 1974)

2.12.305 Contributions--From persons using other than legal name prohibited.

No contribution shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes. (Ord. 4700-NS § 421, 1974)

2.12.310 Contributions--By persons on behalf of other persons prohibited.

No contribution shall be made, directly or indirectly, of anything belonging to another person or received from another person on the condition that it or part of it be used as a contribution. No contribution shall be made, directly or indirectly, by any person on behalf of another person. (Ord. 4700-NS § 422, 1974)

2.12.315 Expenditures--Report requirements--Scope.

No expenditure shall be made, other than overhead or normal operating expenses, by an agent or independent contractor, including but not limited to an advertising agency, on behalf of or for the benefit of any candidate or committee unless it is reported by the candidate or committee as if the expenditure were made directly by the candidate or committee. The agent or independent contractor shall make known to the candidate or committee all information required to be reported by this section. This section is intended as a limitation and does not authorize any expenditures which are otherwise prohibited by this chapter. (Ord. 4700-NS § 423, 1974)

2.12.320 Anonymous contributions--Restrictions--Payment to City required when.

No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totaling more than fifty dollars in a calendar year. An anonymous contribution of more than fifty dollars shall not be kept by the intended recipient but instead shall be promptly paid to the City Auditor for deposit in the Fair Elections - Fund of the City. (Ord. 7564-NS § 6, 2017: Ord. 4948-NS (part), 1976: Ord. 4700-NS § 424, 1974)

2.12.325 Mass mailings--Copies to commission.

A copy of every mass mailing in support of or in opposition to a candidate or measure shall be sent to the commission. Such copies sent to the commission shall be public record. (Ord. 4977-NS § 1 (part), 1977: Ord. 4700-NS § 425, 1974)

2.12.330 Mass mailings by independent expenditure.

When a mass mailing which supports or opposes any candidate for Berkeley elective office or the qualification, passage or defeat of a ballot measure is paid for by independent expenditures a completed statement in the following form must appear on the envelope and on each page or fold of the mass mailing in no less than 10-point type, not subject to the half-tone or screening process, and in a printed or drawn box set apart from any other printed matter in the mailing:

NOTICE TO VOTERS

(Required by City of Berkeley)

This mailing is not authorized or approved by any City of Berkeley election official, candidate for elective office or campaign committee.

It is paid for by

(Name)

(Address, City, State)

(Ord. 6096-NS § 2 (part), 1991)

2.12.335 Disclosure on campaign communications of certain contributions and loans.

A. Campaign communications supporting or opposing any candidate or measure shall include the name of the committee and the phrase "Major Funding Provided By" immediately followed by the name of the contributor, the city of domicile, and the total cumulative sum of contributions by each of the top four contributors over \$250 to the committee funding the expenditure made within six months of the expenditure. For purposes of this section, the term "contributor" shall include lender, and committees shall aggregate contributions and any loan balances from the same person when determining the total cumulative sum of contributions from a contributor.

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.

C. For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard or street signs, billboards, supergraphic signs, skywriting, and similar items; television, cable, satellite, and radio broadcasts or advertisements; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members.

D. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection A, campaign communications must be updated on the following schedule:

1. For printed campaign communications under subsection B.1 or subsection B.2, disclosures must be updated within seven calendar days to include current disclosure information every time an order to reproduce the campaign communication is placed, or any time the campaign communication is reprinted;

2. For e-mails or pre-recorded telephone calls under subsection B.3, disclosures must be updated to include current disclosure information within seven calendar days. (Ord. 7253-NS § 1, 2012)

2.12.405 Measures--Compensation for petition circulation--Disclosure.

If compensation is received by any person for obtaining signatures or for the circulation of petitions to place a measure on the ballot, the terms of such compensation shall be clear and visible on the signature sheet of the petition. (Ord. 5895-NS § 1, 1988: Ord. 4700-NS § 517, 1974)

2.12.415 Persons other than candidate--Maximum permitted amount.

No person other than a candidate shall make and no campaign treasurer shall solicit or accept any contribution which will cause the total amount contributed by such person with respect to a single election in support of or in opposition to such candidate to exceed two hundred fifty dollars. For purposes of this section single election is a primary, general, special, runoff or recall election. (Ord. 5895 § 1, 1988: Ord. 4700-NS § 600, 1974)

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 Fair Elections Fund of the City. (Ord. 7524-NS § 3.4, 2016: Ord. 4700-NS § 604, 1974)

2.12.440 Contributions from certain organizations and business entities prohibited.

No proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, including non-profit corporations, or labor union shall make a contribution to any candidate or committee (supporting or opposing any candidate) directly or indirectly, and no campaign treasurer (of any such committee) shall solicit or accept such contribution. (Ord. 6096-NS § 1, 1991: Ord. 4701-NS § 1 (part), 1974: Ord. 4700-NS § 605, 1974)

2.12.445 Complaints--Filing, investigation and commission action.

Any person who believes that a violation of any portion of this chapter has occurred may file a complaint with the commission. If the commission determines that there is reason to believe a violation of this chapter has occurred, it shall make an investigation. If the commission has reason to believe that a violation of this chapter has occurred or is about to occur, it may institute action at law or equity to enforce and compel compliance with the provisions of this chapter. (Ord. 4700-NS § 710, 1974)

2.12.450 Actions for compliance--Who is authorized to institute.

Any resident of the City who believes that a violation of this chapter has occurred or is about to occur, may institute such action at law or equity for injunctive relief and to compel compliance with the provisions of this chapter. (Ord. 4700-NS § 711, 1974)

2.12.455 Actions for compliance--Procedure required and commission authority.

Before instituting an action pursuant to Section [2.12.450](#), 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. (Ord. 4700-NS § 712, 1974)

2.12.460 Violation--Deemed misdemeanor--Penalty.

Any person who knowingly or wilfully violates any provision of this chapter is guilty of a misdemeanor punishable by a fine for each violation of three times the amount the person failed to report properly, or unlawfully contributed, expended, gave or received. (Ord. 4700-NS § 700, 1974)

2.12.465 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](#), the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited in the 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 Fair Elections Fund of the City. (Ord. 7524-NS § 3.5, 2016: Ord. 4700-NS § 701, 1974)

2.12.470 Violation--Candidate's office forfeited when.

If after his or her election a candidate receives a final judgment of conviction of a violation of any provision of this chapter, the office of such candidate shall be forfeited and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office. (Ord. 4700-NS § 702, 1974)

2.12.475 Violation--Candidacy terminated when.

If a candidate receives a final judgment of conviction of this chapter at any time prior to his or her election, his or her candidacy shall be terminated immediately and he or she shall be no longer eligible for election. (Ord. 4700-NS § 703, 1974)

2.12.480 Violation--Persons ineligible for candidacy--Time limit.

No person convicted of a violation of this chapter shall be a candidate for City elective office for a period of four years from and after the date of his or her conviction. A plea of nolo contendere shall be deemed a conviction for purposes of this section. (Ord. 4948-NS (part), 1976: Ord. 4700-NS § 704, 1974)

2.12.485 Late filing penalties.

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

2.12.490 Title and purpose.

This Article shall be known as the Berkeley Fair Elections Act of 2016. 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. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.495 Offices covered.

Candidates for the offices of Mayor and City Council shall be eligible to participate in the public campaign financing program established by this chapter. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.500 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 to be eligible to hold the office of Mayor or Councilmember as set forth in Sections 9 and 10 of Article V of the Charter of the City of Berkeley;
- 3) Before the close of the qualifying period, collect at least 30 qualified contributions, from at least 30 unique contributors, 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 funds 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. A Participating Candidate may make non-monetary contributions to his or her controlled committee. However, the aggregate amount of a Participating Candidate's monetary and non-monetary contributions to his or her controlled committee must not be greater than fifty dollars (\$50);
- 7) Not accept contributions in connection with the election for which Fair Elections funds are sought other than qualified contributions, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with a fair market value not greater than fifty dollars (\$50). The aggregate value of all contributions from any individual must not be greater than fifty dollars (\$50);
- 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, contributions not greater than fifty dollars (\$50) made by a natural person non-resident of Berkeley, or non-monetary contributions with fair market value not greater than fifty dollars (\$50) to such candidate's controlled committee. (Ord. 7564-NS § 7, 2017; Ord. 7524-NS § 3.6 (part), 2016)

2.12.505 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 2.12.505.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) \$120,000 for a candidate running for the office of Mayor;
 - 2) \$40,000 for a candidate running for the office of City Council.
- 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.

- 1) All Qualified Contributions, of any dollar amount, eligible for matching Fair Elections funds must be publically disclosed with the contributor information required under Sections [2.12.280](#) and [2.12.283](#).
- 2) All campaign filings must be current in order for a Participating Candidate to receive a disbursement of Fair Elections funds and the Participating Candidate and a Participating Candidate's controlled committee must not have any outstanding fines related to campaign filings or violations of municipal, state or federal election law. All applications for Fair Elections funds shall include a certification by the Participating Candidate that the Participating Candidate or his or her controlled committee does not have any outstanding fines or penalties related to campaign filings. Upon submission of outstanding campaign filings and payment of any outstanding fines, withheld Fair Elections funds will be disbursed at the next regularly scheduled distribution for that election cycle.

D. 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.

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

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.

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 seven 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](#).

H. Unspent funds of 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 shall be deposited into the Fair Elections Fund. A Participating Candidate shall deposit all unspent funds into the Fair Elections Fund, up to the total amount of funds that the Participating Candidate received as Fair Elections Fund distributions in that election cycle, within sixty (60) days after the

date of the election. (Ord. 7564-NS § 8, 2017; Ord. 7524-NS § 3.6 (part), 2016)

2.12.510 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 6.1. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.515 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. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.520 Special municipal elections.

The provisions of this chapter apply to special municipal elections as defined in City Charter Article III Section 4. The Commission shall adjust the deadlines in this Act to account for the circumstances of the special municipal election. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.525 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 as required by Section [2.12.250](#).
- B. A participating candidate may maintain a campaign account other than the campaign account described in subsection 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 subsection 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. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.530 Use of Fair Elections funds.

- A. A participating candidate shall use Fair Elections funds and contributions only for direct campaign

purposes.

B. A participating candidate shall not use Fair Elections funds or contributions 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.

C. The term "Contribution" is defined in [2.12.100](#) and includes "Qualified Contributions" as defined in [2.12.167](#) and contributions from non-residents of Berkeley as described in [2.12.500.A.7](#). (Ord. 7564-NS § 9, 2017; Ord. 7524-NS § 3.6 (part), 2016)

2.12.535 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. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.540 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 [2.12.505.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 [2.12.505.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 [2.12.500.A.6](#). (Ord. 7524-NS § 3.6 (part), 2016)

2.12.545 Cost of living adjustments.

The Commission shall adjust the dollar amounts specified in Sections [2.12.167](#), [2.12.500.A.3](#), [2.12.505.B](#) and [2.12.530.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](#), [2.12.500.A.3](#) and [2.12.530.B.2.c](#) and one thousand dollars (\$1,000) with respect to Section [2.12.505.B](#). (Ord. 7564-NS § 10, 2017; Ord. 7524-NS § 3.6 (part), 2016)

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.
- C. 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. (Ord. 7524-NS § 3.6 (part), 2016)

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. (Ord. 7524-NS § 3.6 (part), 2016)

2.12.560 Review by Commission.

After each of the first two election cycles that occur after Council implementation of this Act, the Commission shall review the Fair Elections program and make recommendations to Council for policy changes to improve and refine the program. (Ord. 7524-NS § 3.6 (part), 2016)