

I. OVERVIEW

Oakland is one of a growing number of California cities that has adopted a comprehensive local campaign financing ordinance. The Oakland Campaign Reform Act (OCRA) exists in addition to the requirements of the California Political Reform Act (Government Code Section 81000 et seq) and its many regulations. Candidates for Oakland elective office must comply with both California and Oakland campaign laws when running for office.

OCRA essentially establishes a relationship between campaign spending and contributions. That relationship can be summarized in its simplest terms as: "Any local candidate who voluntarily agrees to limit his or her campaign spending may receive contributions in greater amounts than those who do not."

OCRA also limits contributions from persons negotiating certain contracts with the City. It regulates the process by which contributions can be received or returned, how contributions from closely related entities can be attributed, and sets forth certain disclosure requirements for the distribution of independent mass mailings.

[Note: OCRA provisions regulating contributions to committees that make independent expenditures supporting or opposing local candidates (Sections 3.12.050.C-D and 3.12.060.C-D) have been suspended in response to a legal challenge and will not be effective while a judicial decision or resolution is pending.]

The Oakland Public Ethics Commission is the administrative enforcement body for OCRA. Its staff is available to answer any questions about the ordinance. You may contact the Public Ethics Commission at:

**Oakland Public Ethics Commission
One Frank H. Ogawa Plaza, Fourth Floor
Oakland, CA 94612
Telephone: (510)238-3593 FAX: (510)238-3315
E-mail: ethicscommission@oaklandnet.com
Website: www.oaklandnet.com [scroll down to "public ethics
commission"]**

Legal advice about OCRA is also available from the Oakland Office of the City Attorney. Questions regarding the California Political Reform Act can be directed to the Fair Political Practices Commission (FPPC) at (866)275-3772.

This Guide is intended to be advisory only. To the extent the Guide conflicts with the actual ordinance, administrative regulation or interpretation by the Public Ethics Commission, those authorities will govern the implementation and enforcement of the ordinance.

All references are to the Oakland Municipal Code (O.M.C.) unless otherwise noted.

II. LOCAL OFFICES COVERED UNDER OCRA

If you are a candidate for "city office", then OCRA applies to you and your campaign.

"City offices" include Mayor, City Attorney, City Auditor, District and At-Large City Councilmembers, and elected Oakland School Board Directors. [OCRA §3.12.040]

III. VOLUNTARY EXPENDITURE CEILINGS

A. MUST AGREE IN WRITING

All candidates have a choice of whether to limit their campaign spending within pre-set expenditure "ceilings." An "expenditure" is generally defined as any payment made for the purpose of influencing a voter's support or opposition to a candidate (or ballot measure). The benefit of agreeing to limit campaign spending is that candidates who do so may receive contributions in greater amounts than those who do not.

OCRA establishes a formula that sets the expenditure ceiling for each City office. Every year, the Office of the City Clerk adjusts those ceilings based on increases due to the cost of living (as measured by the Consumer Price Index for the San Francisco Bay Area). Attachment 1 contains the expenditure ceilings for all City offices effective as of January, 2008.

Candidates must agree to the expenditure ceilings in writing before they may begin collecting contributions at the higher amounts (see discussion of contribution limits in Section IV.A, below). Candidates make this agreement on OCRA Form No. 301, which is available from the Office of the City Clerk. OCRA Form 301 must be signed and filed with the City Clerk no later than the time a candidate files papers for candidacy for City office (generally no later than 88 days before the election). [OCRA §3.12.190]

B. WHEN EXPENDITURE CEILINGS ARE "LIFTED"

There are two situations in which a candidate who has chosen to voluntarily limit his or her campaign spending may nevertheless exceed the expenditure ceiling:

The first situation occurs if a candidate who agrees to limit spending is opposed by a candidate who does not. If the candidate who does not agree to limit his or her spending either makes expenditures or receives contributions equal to fifty (50) percent of the expenditure ceiling applicable to that race, then the candidate agreeing to limit spending is no longer bound by the expenditure ceiling.

The second situation occurs if an "independent expenditure committee" spends more than \$15,000 on a City Council or School Board district election, or \$70,000 in a City Attorney, Auditor, City Council At-Large, or Mayoral election (as adjusted for inflation). (See definition and discussion of "independent expenditures" in Section IV.C. below).

If either of the above two situations occur, the applicable expenditure ceiling is no longer binding on **any** candidate running for the same office. In addition, any candidate who previously accepted the voluntary expenditure ceiling is permitted to raise contributions at the higher amounts. [OCRA §3.12.220]

Campaign Tip: Be sure to confirm with the Office of the City Clerk or the Public Ethics Commission what the applicable expenditure ceiling is for the race in which you are involved. Also, be aware that OCRA requires the City Clerk to increase annually the expenditure ceilings no later than February 1 of each year. Thus a candidate who chooses to accept voluntary expenditure ceilings may be entitled to increase his or her campaign spending based upon the revised ceilings. The Public Ethics Commission typically notifies all registered candidates of any increase in the expenditure ceilings as soon as they are revised.

C. EXPENDITURE CEILINGS IN THE EVENT OF A RUN-OFF ELECTION

If a candidate fails to obtain a majority of the votes cast in a March nominating election, the two candidates receiving the most votes in the March election must run again in a November "run-off" election. If a run-off election occurs, OCRA treats the March and November elections as "separate elections" for purposes of the applicable expenditure ceilings. [OCRA §3.12.040]

Example: If the maximum expenditure ceiling for a June district City Council race is \$110,000, the top two candidates involved in a November run-off would each be permitted to spend an additional \$110,000 in the November election.

Campaign Tip: Candidates and their treasurers need to be very aware of how much the campaign is spending as the election draws near. A "spend whatever it takes" attitude during the heat of an election may inadvertently push a campaign over the agreed upon expenditure ceiling, potentially exposing the campaign to enforcement proceedings by the Public Ethics Commission. Close communication between an actively engaged candidate or treasurer and those authorized to incur campaign expenses is essential to ensure compliance with the expenditure ceilings.

IV. LIMITS ON CONTRIBUTIONS

As stated above, once a candidate has agreed to accept voluntary limits on campaign spending, the candidate may accept contributions in greater amounts than if he or she chose not to limit spending.

A. CONTRIBUTIONS TO CANDIDATES WHO AGREE TO LIMIT SPENDING

For candidates agreeing to limit their spending, the most a candidate may receive from any "person" (and the most any "person" may contribute) is \$600 per election (as of January, 2008). [OCRA §3.12.050(B)]

- A "person" is broadly defined as any individual, business entity, committee or "other organization or group of persons acting in concert." [OCRA §3.12.040]

For candidates agreeing to limit their spending, the most a candidate may receive from any "broad-based political committee" (and the most any "broad-based political committee" may contribute) is \$1,300 per election (as of January, 2008). [OCRA §3.12.060(B)]

- A "broad-based political committee" is any committee of persons which 1) has been in existence for more than six months, 2) receives contributions from one hundred (100) or more persons, and 3) acting in concert makes contributions to five or more candidates. [OCRA §3.12.040] The Office of the City Attorney has advised that it is not necessary that all the "five or more candidates" be running for a City office.

Comment: At the time OCRA was initially enacted, so-called "broad-based political committees" existed and had the same meaning under state law. This term is no longer used under state law but continues to have meaning and applicability under OCRA.

Campaign Tip: While political committees are no longer called or organized as "broad-based political committees," some political committees, such as the recently created "small contributor committees", may still qualify as "broad-based political committees" under OCRA. To help determine whether a political committee qualifies as a "broad-based political committee," candidates can search the filings of state registered political committees using the California Secretary of State's website at "www.ss.ca.gov".

B. CONTRIBUTIONS TO CANDIDATES WHO DO NOT AGREE TO LIMIT SPENDING

For candidates who do **not** agree to limit their spending, the most a candidate may receive from any "person" (and the most any "person" may contribute) is \$100 per election (as of January, 2008). [OCRA §3.12.050(A)] The most such candidates may receive from any broad-based political committee is \$300 per election (as of January, 2008). [OCRA §3.12.060(A)]

C. CONTRIBUTIONS TO COMMITTEES THAT MAKE INDEPENDENT EXPENDITURES

In addition to the above limitations on direct contributions to candidates, OCRA also limits the amount that persons and broad-based political committees may receive for the purpose of making "independent expenditures" in support or opposition to candidates for Oakland elective office.

- An "independent expenditure" is an expenditure made in connection with a communication which expressly advocates the election or defeat of a candidate or measure but which is **not** made: 1) to or at the behest of the candidate, or 2) in cooperation, coordination or consultation with the candidate or his or her agent. [See Gov. Code §85500; 2 Cal. Regs. §§18225.7, 18550.1]

OCRA section 3.12.050(C) states that any person who makes independent expenditures supporting or opposing a candidate for City office shall not accept any contribution in excess of \$100. OCRA section 3.12.060(C) states that any broad-based political committee that makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution in excess of \$300.

If persons or broad-based political committees make independent expenditures supporting or opposing a local candidate, they are required to "separately account" for contributions received, and for contributions and expenditures made, to influence an election for city office. When a person or a broad-based political committee has separately accounted for such contributions and expenditures, contributors to that committee may contribute more than \$100 or \$300 "so long as no portion of the contribution. . .[in excess of \$100 or \$300] is used to influence elections for city office." [OCRA §3.12.050(E); §3.12.060(E)]

IMPORTANT NOTE FOR THE 2008 MUNICIPAL ELECTION: *The above OCRA provisions regulating contributions to committees that make independent expenditures supporting or opposing local candidates have been suspended in response to a legal challenge and will not be effective while a judicial decision or resolution is pending.]*

D. NO LIMIT ON PERSONAL CONTRIBUTIONS

Regardless of whether a candidate accepts or rejects voluntary limits on campaign spending, any candidate is free to contribute to or loan his or her campaign **any** amount of money from his or her own personal funds. The U.S. Supreme Court has ruled that the First Amendment prohibits any restriction on a candidate's ability to contribute or loan personal funds to his or her campaign.

Comment: Oakland offers a program of limited public financing to candidates for local office. Candidates who choose to participate in the program voluntarily agree not to contribute or loan more than a specified amount of their personal funds as a condition of eligibility. For more information about Oakland's limited public financing program, contact the Public Ethics Commission.

E. AGGREGATION OF CONTRIBUTIONS

OCRA sets forth a number of circumstances in which the contributions by two or more entities are treated as coming from one person. This "aggregation" of contributions can have important consequences when determining whether contribution limits have been met.

Contributions are treated as coming from the same person when one or more of the following conditions are met:

- The contribution of one person is "financed, maintained or controlled" by another [OCRA §3.12.080(A)];
- Two or more entities share a majority of members on their respective boards of directors, share two or more officers, are owned or controlled by the same majority shareholder, or are in a parent-subsidiary relationship [OCRA §3.12.080(B)];
- An individual owns more than a fifty percent share in a partnership or corporation [OCRA §3.12.080(C)].

OCRA also prohibits any committee that supports or opposes any candidate from having as officers, individuals who serve as officers on any other committee that supports or opposes the same candidate. This restriction does not apply to campaign treasurers so long as the treasurers "do not participate in or control in any way" decisions on which candidates receive a contribution. [OCRA §3.12.080(D)]

Finally, contributions by a husband and wife are treated as separate contributions and are not aggregated. However, contributions by a minor child are treated as a contribution from the parent and are attributed proportionately to each one. [OCRA §3.12.100]

Examples:

- **The law firm of Howard, Fine & Howard wants to contribute money to Candidate Doe. Candidate Doe has agreed to expenditure ceilings and is therefore entitled to receive up to \$600 in contributions from any person. Knowing that the law firm, as an entity, is restricted from giving Candidate Doe more than \$600, the firm directs each of its ten attorneys to contribute \$600 each, and then reimburses the attorneys from the law firm's operating account. Is there a problem here?**

Howard, Fine & Howard is in trouble. The \$6,000 in contributions from its ten members will be attributed to the law firm since the members' contributions were "financed" and "controlled" by the firm. Thus the firm has violated OCRA's \$600 contribution limit. In addition, the firm and its members may also be guilty of the serious crime of "money laundering" under California's Political Reform Act if the true source of the contributions is not disclosed. In addition, Candidate Doe may be required to pay or "disgorge" the \$6,000 contribution to the state under a new amendment to the Political Reform Act!

- **MiniCorp USA makes gadgets within the City of Oakland. MicroCorp America is a nationwide finance company with branch offices in Oakland. Neither MiniCorp nor MicroCorp have anything to do with the other except that they are both majority owned by the same holding company, MegaCorp International. Both MiniCorp and MaxiCorp have received separate invitations to a \$600 a plate fundraiser from Candidate Doe. Can both companies contribute the full amount?**

No. Since both companies are majority owned by MegaCorp their contributions will be treated as coming from one person and thus the most both companies can contribute to Candidate Doe is \$600 total, regardless of their separate and independent business operations.

- **Castaway Enterprises is a small company in Oakland equally owned by five members. Two of its owners, MaryAnn and Ginger, want to attend Candidate Doe's \$600 a plate fundraiser. Unknown to them, the other three owners have already authorized a \$600 contribution on behalf of the company. Can MaryAnn and Ginger contribute to the fundraiser?**

Yes. Since MaryAnn and Ginger do not individually or collectively represent a majority interest in Castaway Enterprises, they may contribute their own personal funds and not have their contributions aggregated with any contribution by their company.

F. WHEN LOANS AND UNPAID BILLS BECOME CONTRIBUTIONS

Except for secured or guaranteed loans from a commercial lending institution made in the ordinary course of business and on terms available to everyone else, all loans to Oakland candidates are treated as **contributions** from the maker and guarantor (if any), and may not exceed the applicable contribution limits. [OCRA §3.12.090(A)(C)]

All loans must be made in writing and filed with the campaign statement on which the loan is first reported. [OCRA §3.12.090(B)]

Other than commercial loans, any "extension of credit" in excess of \$1,500 for a period of more than 90 days is also treated as a contribution subject to the applicable contribution limits **unless** the candidate can demonstrate "good faith evidence of an intent to repay through a set payment schedule that is being adhered to through repayment of the extension of credit on a regular basis." [OCRA §3.12.090(D)]

Comment: OCRA §3.12.090(D) is a potential "trap" for unwary candidates. It is not unusual for candidates to spend more money than they raise before the election. Candidates often hold fundraisers after the election to pay consultants, printers, caterers and others who provided them with campaign services. What OCRA §3.12.090(D) says is that if a candidate owes a vendor more than \$1,500 for more than 90 days, then that "extension of credit" will be treated as a "contribution" under OCRA. And since the permissible contribution limit is \$600 from any person, that extension of credit (read: "unpaid bill") of more than \$1,500 will automatically constitute a violation of OCRA's contribution limits unless the candidate has established a set payment schedule with the vendor!

Campaign Tip: OCRA creates a strong incentive to pay all outstanding bills within 90 days. If this is not possible, try to arrange some form of a payment schedule in which all vendors are paid something on a regular basis. The amount and frequency of payments will obviously depend on the amount of the bill(s) and financial solvency of the campaign. The payments should also be great enough to dispel any reasonable allegation that the payments are merely a "sham" to avoid compliance with the law.

G. VOLUNTEER SERVICES AND TRAVEL EXPENSES

Volunteer personal services are not considered to be contributions or expenditures under OCRA and thus not subject to its contribution limits or expenditure ceilings. Neither are travel expenses which the individual incurs without reimbursement from the campaign. [OCRA §3.12.180]

Example: Candidate Doe's roommate is an accountant who charges \$150 per hour in her tax preparation business. She recently volunteered ten hours of time preparing Ms. Doe's campaign statements. Candidate Doe has not received a contribution exceeding OCRA's contribution limit, nor has the campaign incurred a \$1,500 expense that would be counted against her expenditure ceiling.

V. SOLICITING, RECEIVING, AND RETURNING CAMPAIGN CONTRIBUTIONS

A. REQUIRED NOTICE ON ALL FUNDRAISING MATERIAL

All candidates for local office must include on all campaign fundraising material a notice that consists of the following language:

"The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District (OMC §3.12.140 paragraphs A, B and C.)"

The above notice must be made in the equivalent of eight point roman boldface type. The notice must also be in a color or print that contrasts with the background so as to be easily legible and contained in a printed or drawn box that is set apart from any other printed matter. [OCRA §3.12.140(P)]

Comment: As a general principle, the notice should appear on any printed or electronic medium that solicits or instructs people how to make a campaign contribution. The notice would not be required on other campaign material that engages solely in election advocacy or the presentation or discussion of issues.

B. THE "ONE COMMITTEE/ONE CHECKING ACCOUNT" RULE

A candidate may only maintain one campaign committee and one campaign checking account for the City office being sought. Both OCRA and state law require that all expenditures for that office be paid from that account. [OCRA §3.12.110]

Example: Candidate Doe has formed and registered her campaign committee and opened a campaign checking account at a local bank. During the course of the campaign, she occasionally receives small cash contributions that she keeps in an envelope at campaign headquarters. When small expenses are incurred, such as ordering pizza for her precinct volunteers, she uses the money in the envelope. Is this practice okay?

No. While this example does not seem like an unreasonable practice, state and local law require that all contributions be first deposited into the campaign account before its use for any expenditure. State law does permit expenditures of less than \$100 to be made in cash, but the cash must be obtained from the campaign account and not taken directly from cash contributions. State law also requires that no more than \$100 be deposited in a petty cash fund at any one time.

Campaign Tip: It is absolutely essential to establish sound record-keeping procedures for your campaign! For example, state law requires candidates to keep a record of all contributions and expenditures of more than \$25 -- even if those contributions and expenditures are not required for disclosure on FPPC campaign statements!

Attachment 2 is Chapter One of the FPPC's information manual, "Finances/Recordkeeping." This chapter describes state recordkeeping requirements and offers a practical method for managing campaign financial records. Even if you have hired a professional campaign consultant, READ THE FPPC MANUAL before raising or spending contributions!

C. IDENTIFICATION OF CONTRIBUTOR

No contribution of \$100 or more can be deposited into a campaign checking account unless the name, address, occupation and employer of the contributor is "on file" in the records of the candidate. [OCRA §3.12.130]

Comment: State law requires candidates to itemize single or cumulative contributions of more than \$100 per election on their campaign statements. For individuals who contribute more than \$100 in total, the contributor's name, street address, occupation and employer must be given. If the contributor is self-employed, the campaign must provide the name of the contributor's business.

State law also requires candidates to return within 60 days any contribution of \$100 or more for which the campaign does not have on file the name, address, occupation and employer of the contributor. OCRA, therefore, imposes a much more stringent requirement than the state law provides -- local candidates may not even deposit a contribution unless they already have obtained the contributor information!

Campaign Tip: It is a good idea for each campaign to create a form for all contributions of more than \$25 that includes the above information and which is filled out at the time the contribution is received!

VI. PROHIBITION ON CONTRACTOR CONTRIBUTIONS

OCRA contains an extensive prohibition on contributions coming from persons negotiating certain contracts with the City, School Board or Redevelopment Agency. In essence, OCRA prohibits these so-called "contractors" from making **any** contribution to candidates for local office between the time negotiations on the affected contracts begin and 180-days after the contracts are executed.

A. APPLICABLE CONTRACTS

Not all contracts are covered by the prohibition. Only those contracts requiring City Council, Redevelopment Agency or School Board approval are covered. OCRA lists those contracts requiring **City Council** or **Redevelopment Agency** approval as follows:

- 1) Contracts for the procurement of services that are professional or consulting services exceeding \$15,000;
- 2) Contracts for the procurement of services exceeding \$50,000, other than contracts for professional or consulting services;
- 3) Contracts for the furnishing of any materials, supplies, commodities or equipment exceeding \$50,000;
- 4) Contracts for the sale of any building or land to or from the City or Redevelopment Agency; and
- 5) Amendments to any of the above contracts. [OCRA §3.12.140(E)]

Persons negotiating any of the above contracts requiring City Council or Redevelopment Agency approval may not contribute to members of, or candidates for, those respective bodies.

OCRA lists those contracts requiring **School Board** approval as follows:

- 1) Professional services and consulting contracts exceeding \$25,000, including personal service agreements;
- 2) Contracts requiring School Board approval under Public Contract Code Section 20111;

3) Construction contracts exceeding \$25,000 whether or not they are subject to the provisions of the Public Contract Code;

4) Contracts for the sale or any building or land to or from the School District; and

5) Amendments to any of the above contracts. [OCRA §3.12.140(F)]

Persons negotiating any of the above contracts requiring School Board approval may not contribute to members of, or candidates for, that body.

B. WHEN THE PROHIBITION APPLIES

No person who proposes any of the above contracts may make any contribution to a candidate for local office or current officeholder beginning from the "commencement of negotiations" until 180 days after the "completion" or "termination" of negotiations. [OCRA §3.12.140(A)(B) & (C)] Each of these quoted terms has a specific meaning under OCRA as follows:

- The "**commencement of negotiations**" occurs when a contractor or representative "formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed...officer or employee or when any elected or appointed...officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment." [OCRA §3.12.140(G)(H) & (I)]

The "**commencement of negotiations**" expressly does **not** include the "unsolicited receipt of proposal or contract information;" requests to be placed on mailing lists; routine requests for information about a particular contract, request for proposals, or any information or documents about them; or the attendance at an informational meeting. [OCRA §3.12.140(J)]

- The "**completion of negotiations**" occurs when the City, Redevelopment Agency or School District executes the contract or amendment. [OCRA §3.12.140(K)]
- The "**termination of negotiations**" occurs when 1) the contract or amendment is **not** awarded to the contractor or 2) the contractor files a written withdrawal from the negotiations which is accepted by an appointed or elected officer or employee of the respective public agency. [OCRA §3.12.140(L)]

C. CONTRACTOR ACKNOWLEDGMENT

All potential and current contractors must execute a declaration acknowledging the prohibition on contractor contributions at the time they submit a bid, proposal, qualifications or contract amendment. ***Contracts may not be awarded to any contractors who have not signed this declaration!*** The declaration is typically provided by the contracting City department or agency. The Office of the City Clerk (or the School District) is required to receive and file copies of all contractor declarations and make a "list" of current contractors available for public inspection. [OCRA §3.12.140(M)(N)]

Comment: OCRA's restrictions on contractor contributions apply to contractors and not to candidates or their campaigns. That is, OCRA prohibits contractors from making a contribution during a time of contract negotiation but does not prohibit a candidate from receiving it. Nevertheless, few candidates will knowingly want to receive contributions that are prohibited, even if they do not technically violate the law by receiving them.

Currently, no definitive "list" exists to ascertain what contractors are covered by the ordinance. Some contractors may not even be aware that the restrictions apply to them at the time the contribution is made. This can present problems for candidates who would like to ensure that they receive only permitted contributions.

Campaign Tip: In addition to the required notice on all fundraising material (see Section V.A. above), candidates should carefully review all contributions to determine whether the party making it is bidding or negotiating for a City, Redevelopment Agency or School Board contract. This may require a call to the contributor or to the appropriate City or School Board staff members.

VII. SPECIAL NOTICE REQUIREMENTS FOR PERSONS MAKING INDEPENDENT EXPENDITURES

Any person who makes independent expenditures for a mass mailing, slate mailing or "other campaign materials" that support or oppose any candidate for city office must place the following statement on the mailing in no smaller than 14 point type:

**Notice to Voters
(Required By The City of Oakland)**

This mailing is not authorized or approved by any city candidate or election official.

It is paid for by [name, address, city state.]

Total cost of this mailing is [amount].

Comment: The above notice requirement only applies to persons who make independent expenditures for a "mass mailing, slate mailing or other campaign material..." State law defines a "mass mailing" as more than two hundred "substantially similar" pieces of mail. A "slate mailing" is any mass mailing that supports or opposes a total of four or more candidates or ballot measures. While the term "other campaign material" is undefined, it may include other forms of campaign communication that do not total 200 pieces.

Based on the language of this section, it appears that the notice requirement applies only to those communications that are "mailed" as opposed to those which are hand-delivered or electronically distributed. Pre-recorded telephone messages would not appear to require a verbal version of the stated notice.

VIII. OFFICEHOLDER AND LEGAL DEFENSE FUNDS

OCRA authorizes two additional "funds" in addition to a campaign account. The first is an "officeholder fund" that every elected city officeholder is permitted to establish for those expenses associated with holding public office. [OCRA §3.12.150(A)] The second is a "legal defense fund" which any candidate or elected city officeholder may establish to defray attorney fees and other legal costs incurred in the defense of any civil, criminal or administrative action "arising directly" out of a campaign, election process or the performance of governmental activities. [OCRA §3.12.170(A)]

The primary significance of these funds is that expenditures can be paid from them without counting against the campaign expenditure ceilings applicable to the office being sought or held. [OCRA §§3.12.150(F); 3.12.170(C)]

A. OFFICEHOLDER FUND

All contributions to the officeholder fund must be made by a "separate check or other separate written instrument." Single contributions may not be divided between the officeholder fund and any other candidate committee. [OCRA §3.12.150(A)]

OCRA limits both the individual and aggregate amount of contributions to an officeholder fund. For district City Councilmembers, City Auditor and School Board Directors, total contributions may not exceed \$25,000 per year in office. For City Attorney and At-large City Councilmember, the limit is \$30,000 annually. For the Mayor, total contributions shall not exceed \$50,000 per year in office. [OCRA §3.12.150(A)]

"Annual" contributions received by or made to the officeholder fund are subject to the same contribution limits that apply to candidate committees -- presumably this means that an officeholder may receive an annual contribution from

any person or broad-based political committee of up to \$100/300 if the candidate does **not** accept voluntary expenditure ceilings, or up to \$600/1,200 if he or she does. [OCRA §3.12.150(E)]

Comment: Establishing and using an officeholder account can be a bit cumbersome. The reason is that state law permits an officeholder to receive contributions into only one campaign account. Therefore, the FPPC has advised that all contributions to an OCRA officeholder fund must be first deposited into the appropriate campaign bank account and THEN transferred to a certificate of deposit, interest bearing savings account, money market or other similar account.

In order to pay expenditures with officeholder funds, the FPPC advises that money must first be transferred from the officeholder fund back into the campaign account, and a check written from the campaign checking account to pay the officeholder expense.

Contributions to an officeholder fund must be made by check or "other separate written instrument." Cash contributions to an officeholder account are not expressly authorized. The contribution must be earmarked or designated in some way as a contribution to the officeholder account, such as a note on the "memo" line of a check or with an accompanying note or letter from the contributor.

The limits on aggregate contributions "cap" the total amount of contributions an officeholder may receive into the fund for every year in office. There is no requirement that this money be spent annually and presumably may be allowed to accrue for as long as the officeholder holds elective office.

It also appears that persons and broad-based political committees may contribute, up to their permissible maximum levels, only once per election to a candidate's campaign committee, but may make "annual" contributions to an officeholder fund.

Campaign Tip: Do not receive or deposit contributions to the officeholder fund unless you have something in writing from the contributor that expressly designates that the money is to be deposited into the officeholder fund.

As stated above, officeholder funds may be used for any "political, governmental or lawful purpose" for those expenses "associated with holding the office currently held by the elected city officer." OCRA sets forth a long list of permissible expenditures from the officeholder fund, such as for office furniture, office rent, fundraising for the officeholder fund, donations to tax-exempt organizations, and other expenses incurred in connection with government-related activities. [OCRA §3.12.150(B)]

OCRA also expressly **prohibits** officeholder funds being used for the following activities or purposes:

- Expenditures in connection with a future election for any city, county, regional, state or federal elective office;
- Expenditures for campaign consulting, research, polling, photographic or similar services for election to other elective office;
- Membership in any athletic, social, fraternal, veteran or religious organization;
- Supplemental compensation for city employees for performing an act that would be required or expected of them in the regular course of their city duties;
- Any expenditure that would violate the California Political Reform Act. [OCRA §3.12.150(C)]

Finally, OCRA prohibits officeholder funds being transferred to any other candidate committee. [OCRA §3.12.150(D)]

Comment: Basically, officeholder funds may NOT be used for an officeholder's own campaign-related expenses, nor may they be transferred to another candidate committee (including one's own).

B. LEGAL EXPENSE FUND

An elected city officeholder or candidate for city office may receive contributions for a separate legal expense fund for attorney fees and legal costs incurred to defend against actions arising directly out of the "conduct of the campaign or election process, or the performance of the candidate's or officeholder's governmental activities and duties." [OCRA §3.12.170]

All contributions to a legal expense fund must be "earmarked" by the contributor at the time the contribution is made. The contributions must be first deposited into the officeholder's "appropriate bank account" before being deposited into the legal expense fund. The legal expense fund may be in the form of certificates of deposit, interest-bearing savings accounts, money market or similar accounts, which "shall be established only for the legal expense fund." [OCRA §3.12.170(A)]

Unlike officeholder or campaign accounts, there is **no limit** to the amount a person or broad-based political committee may contribute to a legal expense fund. [OCRA §3.12.170(B)] There is also no limit on the total amount that a legal expense fund can receive in any given year. Expenditures made from the legal

expense fund are not subject to the voluntary campaign expenditure ceilings. [OCRA §3.12.170(C)]

C. DONATION OF OFFICE SPACE

A related provision to officeholder and legal expense funds is the provision that permits a person or broad-based political committee to donate office space to "city officeholders...in furtherance of their duties and responsibilities..." A donation of this kind will not be considered an expenditure by, or non-monetary contribution to, an officeholder provided that:

- 1) The donation is made to the City and formally accepted by the City Council as a gift or trust for use by elected City officeholders (or to the School District for use by the School District board of directors) and
- 2) The name, address, employer and occupation of the donor, and the current market value of the donated office space, are provided to the City Clerk.

IX. ENFORCEMENT

Violations of OCRA may be prosecuted criminally and civilly.

A. CRIMINAL PROSECUTION

Any persons who "knowingly or willfully" 1) violates the operative provisions of OCRA, 2) causes any other person to violate OCRA, or 3) aids and abets any other person to violate OCRA, is guilty of a misdemeanor. Misdemeanor prosecution must commence within four years after the date the violation occurs. [OCRA §3.12.270]

B. CIVIL PROSECUTION

The Public Ethics commission is the sole body for civil enforcement of the ordinance. [OCRA §3.12.260]

Any person who "intentionally or negligently" violates the operative provisions of OCRA is subject to civil enforcement by the Public Ethics Commission pursuant to its General Rules of Procedure. [OCRA §3.12.280(A)] If two or more persons are responsible for any violation, they may be held jointly and severally liable. [OCRA §3.12.280(B)]

Any person may file a written complaint with the Public Ethics Commission alleging a violation of OCRA. The complaint must state the grounds for believing a violation occurred. The Public Ethics Commission must respond within 90

days after receipt of the complaint indicating whether there is probable cause to conduct a hearing and whether mediation will be undertaken. [OCRA §3.12.280(C)]

In the event mediation is not undertaken or is unsuccessful, the Public Ethics Commission may thereafter convene a hearing on the merits of the complaint. The Public Ethics Commission may settle any complaint in the interests of justice. [OCRA §3.12.280(D)]

No complaint alleging a civil violation may be filed with the Public Ethics Commission more than two years after the date the violation occurred. [OCRA §3.12.280(F)]

Comment: A copy of the Public Ethics Commission's General Rules of Procedure and Complaint Forms are available from the Commission and its website.

C. REMEDIATION, PENALTIES, AND OTHER RELIEF

1. Remediation

The Public Ethics Commission's General Rules of Procedure permit a person who is alleged to have violated OCRA (as well as other laws under the Commission's jurisdiction) to cure or "remediate" the alleged violation.

For any complaint in which the amount at issue totals \$1,500 or less per violation or \$5,000 in the aggregate, the Chairperson of the Commission may determine what actions are necessary to correct or remediate the alleged violation. The respondent then has thirty (30) days from the date the complaint is filed to undertake and complete any remedial action necessary to resolve the dispute.

Additional time not to exceed thirty (30) days may be granted by the Chair if the required remedial action cannot be reasonably accomplished in the time originally provided. No further extensions shall be permitted except upon approval by the Commission as a whole.

Upon proof of the corrective or remedial action made and subject to the satisfaction and discretion of the Chair or his or her designee, the complaint shall be dismissed. The Chair or his or her designee may withhold approval of any proposed corrective or remedial action if there is evidence of repeated or continuing violation, or if the public interest would be better served by administering the complaint under the General Rules of Procedures. [GRP Rule IV]

2. Penalties

If, after an administrative hearing pursuant to its General Rules of Procedure, the Public Ethics Commission determines that a violation under OCRA has occurred, the Commission may administer penalties and fines not to exceed

three times the amount of the unlawful contribution or expenditure. [OCRA §3.12.280(E)]

3. Injunctive Relief

The Public Ethics Commission may seek a court order to stop violations or to compel compliance with OCRA. [OCRA §3.12.290] The court may award to a complainant or respondent who prevails in any action for injunctive relief his or her costs of litigation or attorney fees. [OCRA §3.12.300]

D. DISQUALIFICATION

In addition to any other penalty, if an official receives a contribution in excess of the stated contribution limits the official shall not be permitted "to make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which the **contributor** has a financial interest." (emphasis added) [OCRA §3.12.310]

Comment: The above language is borrowed from the California Political Reform Act's provisions on financial conflict of interest. The significant difference is that OCRA prohibits an official from participating in any decision affecting the contributor's financial interests, while state law restricts participation only if the official's financial interests are at stake.