CITY OF OAKLAND
Public Ethics Commission

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TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: March 4, 2010

RE: **A Staff Report And Action To Be Taken Regarding 1) A Proposal From The Office Of The City Attorney To Double The Current Contribution And Voluntary Expenditure Limits Applicable To Candidates For Election To City Offices, And 2) A Request From The City Council Rules Committee To Review The Current Annual Contribution Limitations For Officeholder Expense Funds**

I. BACKGROUND

In a memorandum dated February 4, 2010, the Office of the City Attorney proposed a set of amendments to Oakland's Election Code (O.M.C. Chapter 3.08) and Campaign Reform Act (O.M.C. Chapter 3.12) to make them consistent with the pending implementation of Ranked Choice Voting (RCV) in the November 2010 election. ***Attachment 1.*** The Commission had reviewed these proposed amendments at its November 2009 meeting and voted to recommend their adoption to the City Council. Contained in the February 4 memorandum was also a proposal and recommendation to double the current limits on campaign contributions and on the voluntary expenditure ceilings contained in the Oakland Campaign Reform Act (OCRA) for reasons discussed below.

At its February 4, 2010, regular meeting, the City Council's Rules And Legislation Committee voted to refer the City Attorney's proposal regarding campaign contribution and voluntary expenditure limits to the Commission for review and recommendation. It also requested the Commission to review the current contribution limitations for officeholder expense funds.

Commission staff has received numerous comments regarding the City Attorney's proposal. They are set forth as attachments to this report. ***Attachment 2.***

II. CONTRIBUTION AND VOLUNTARY EXPENDITURE LIMITATIONS

One of OCRA's fundamental provisions is the regulation of contributions to candidates for Oakland offices (defined as the offices of Mayor, City Attorney, City Auditor, City Councilmember and School Board Director). OCRA essentially permits candidates who voluntarily agree to accept limits on their campaign expenditures to receive contributions in a greater total amount per election than for candidates who do not voluntarily agree to limit their campaign spending.[1] The current contribution limitation for candidates accepting voluntary expenditure ceilings is $700 per election from a person, and $1,300 per election from a broad-based political committee.[2] The current contribution limitation for candidates who do ***not*** accept voluntary expenditure ceilings is $100 per election from a person, and $300 per election from a broad-based political committee.

OCRA also establishes a formula by which the voluntary expenditure ceilings are calculated.[3] The attached chart demonstrates the current voluntary expenditure ceilings for candidates seeking election to City offices in 2010. ***Attachment 3.***

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[1] The relevant provisions of OCRA Sections 3.12.050 and 3.12.060 read as follows:

3.12.050 Limitations On Contributions From Persons

A. No person shall make to any candidate for city office and the controlled committee of such a candidate, and no such candidate for city office and the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than one hundred dollars ($100.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate for city office and the controlled committee of such candidate, and no such candidate for city office and the controlled committee of such candidate shall accept contributions totaling more than five hundred dollars ($500.00) [now $700 due to COLA adjustments] from any person for each election.

3.12.060 Limitations On Contributions From Broad-Based Political Committees

A. No broad-based political committee shall make to any candidate for city office and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than two hundred fifty dollars ($250.00) [now $300 due to COLA adjustments] for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no broad-based political committee shall make to any candidate for city office and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than one thousand dollars ($1,000.00) [now $1,300 due to COLA adjustments] for each election.

[2] *OCRA defines "person" as "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." OCRA defines "broad-based political committee" as "a committee of persons which has been in existence for more than six months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five or more candidates."*

[3] The relevant provisions of OCRA Section 3.12.200 read as follows:

3.12.200 Amount Of Expenditure Ceilings

A. City Attorney's Proposal

In his February 4, 2010, memorandum, the City Attorney proposed a doubling of the current limits on campaign contributions and of the voluntary expenditure ceilings. He provided the following rationale for the proposal:

> *". . .The existing campaign contribution and expenditure limits are limits for <u>each election period</u>. (OMC Sections 3.12.050, 3.12. 060, 3.12.200.) [Emphasis in original.] With RCV, the campaign season will change from two election periods to one. While formerly there was a primary season from January-June and a general election period from June-November, under RCV there will be one long election season. Candidates have already begun campaigning. However, the maximum amount a candidate can collect from each contributor and the maximum amount that each candidate can spend on his/her election to communicate to the voters would effectively be cut in half with RCV."*
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> *". . .The City Attorney's Office recommends that the City Council double the expenditure limits and the contribution limits for two reasons. First, because two election seasons are being folded into one and a doubling of the limits does not change the amounts that will be donated or spent over the course of the entire election year. Second, because RCV is a major change in voting systems which will require candidates - at least in the first few RCV cycles - to perform additional outreach to educate residents."*

Commission staff has several comments regarding the above contentions. First, the assertion that RCV would effectively "cut in half" the maximum amount a candidate can collect and spend only has merit when applied to a candidate who fails to achieve a majority of votes in the June primary and is compelled to campaign again in a separate November run-off election. The assertion that "a doubling of the limits does not change the amounts that will be donated or spent over the course of the entire election year" again has merit only when compared to the relatively infrequent situation when a candidate is forced into a November run-off election. The large majority of Oakland elections has historically been decided in the June primary and thus a "doubling" of the contribution and expenditure limits could, in fact, significantly increase the amounts that are ordinarily donated or spent to elect a candidate.

Finally, the City Attorney asserts that the contribution and expenditure limits should be doubled so that candidates can "perform additional outreach to educate residents" about the new RCV process. There is no question that RCV represents a new and significantly different way to elect City officers. Candidates will undoubtedly have an interest that voters understand how the system works. One of the Secretary of State's conditions for approving the RCV system in Oakland is for Alameda County to perform a "Voter Education and Outreach Program" that

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A candidate for office of Mayor who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding seventy cents ($.70) per resident for each election in which the candidate is seeking elective office. A candidate for other citywide offices who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding fifty cents ($.50) per resident for each election in which the candidate is seeking office. A candidate for District City Councilmember who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding one dollar and fifty cents ($1.50) per resident in the electoral district for each election in which the candidate is seeking elective office. A candidate for School Board Director who voluntarily agrees to expenditure ceilings shall not make qualified campaign expenditures exceeding one dollar ($1.00) per resident for each election in the electoral district for each election for which the candidate is seeking office. Residency of each electoral district shall be determined by the latest decennial census population figures available for that district.

details the various ways in which voters will be educated about the new voting system. It is therefore unclear whether and to what extent the candidates themselves will bear the burden of voter outreach and education, and how much additional money will be necessary to achieve this purpose should they decide to undertake it at all.

B. Campaign Finance Reviews

To assist the Commission in evaluating the proposal, Commission staff performed a review of campaign statements currently on file in the City Clerk's office for each of the past two elections seasons (June-November 2006 and June-November 2008) for City of Oakland offices (school district excluded). ***Attachment 4.*** The survey periods consisted of the last semi-annual statement filed before the election, the two pre-election statements, and the first semi-annual statement filed after the election. The survey results demonstrate:

- Of the 37 candidates surveyed, there have been only four campaigns in which a candidate has reported "payments made" totaling at least 90 percent of the voluntary expenditure ceiling applicable to the election. For all candidates reporting payments made in excess of $10,000, "payments made" comprised approximately 42 percent of the voluntary expenditure ceiling, on average.

- Of the 37 candidates surveyed, six candidates reported total contributions from which at least 50 percent of the total amount was derived from contributions made at the maximum $600 level. For all candidates reporting total contributions of more than $5,000, approximately 36 percent of the reported total contributions was derived from contributions at the maximum $600 level, on average.

While these data are certainly subject to reporting discrepancies and interpretation, they indicate relatively little pressure on the existing voluntary expenditure ceilings for most candidates. Similarly, candidates received on average a relatively modest amount of their total campaign contributions at the maximum $600 contribution limit. The campaign data suggest that on average the current limits do not significantly inhibit candidates from raising or spending the money they need to run a single campaign for office.

Commission staff also reviewed the campaign contribution limits in the 20 most populated cities in California. ***Attachment 5.*** The results demonstrated a range from "no limit" on contributions to $100 per candidate.

One of the additional consequences of doubling the contribution limits would be an increase in the difference or "spread" between what a candidate who accepts voluntary expenditure limits can receive, and what a candidate who does not agree to limit spending can receive. At present, there is a $600 difference ($700 vs. $100) in the spread for contributions from persons, and a $1,000 difference ($1,300 vs. $300) in the spread for contributions from broad-based political committees. If all contributions were doubled across-the-board as proposed, the spread would also double to $1,200 ($1,400 vs. $200) and $2,000 ($2,600 vs. $600), respectively. Commission staff has concerns that increasing the difference between what

a candidate who agrees to limit spending can receive and a candidate who does not agree to limit spending can receive may raise fundamental questions whether all candidates are treated fairly under the law.

III. OFFICEHOLDER EXPENSE FUNDS

OCRA authorizes Oakland's elected officeholders to establish so-called "officeholder expense funds." These funds can be expended for any "political, governmental or other lawful purpose" except as limited by OCRA.[4] OCRA limits the total amount officeholders can receive

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[4] ***3.12.150 Officeholder Fund***

A. Every elected city officeholder shall be permitted to establish one officeholder expense fund. All contributions deposited into the officeholder expense fund shall be deemed to be held in trust for expenses associated with holding the office currently held by the elected city officer. 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. For District Councilmembers, City Auditor and School Board Directors total contributions to an officeholder fund shall not exceed twenty-five thousand dollars ($25,000.00) per year in office. For Councilmember-At-Large and City Attorney, total contributions to an officeholder fund shall not exceed thirty thousand dollars ($30,000.00) per year in office. For the office of the Mayor, total contributions to an officeholder fund shall not exceed fifty thousand dollars ($50,000.00) per year in office.

B. Expenditures from an officeholder fund may be made for any political, governmental or other lawful purpose, but may not be used for any of the purposes prohibited in subsection (C)(1) through (5) of this section. Such allowable expenditures shall include, but are not limited to the following categories:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder expense fund;

2. Expenditures for office equipment, furnishings and office supplies;

3. Expenditures for office rent;

4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;

5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;

6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;

7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) such other person designated by the officeholder who is authorized to perform such government duties, or a member of such person's household accompanying the person on such travel;

8. Expenditures for meals and entertainment directly preceding, during or following a governmental or legislative activity;

9. Expenditures for donations to tax-exempt educational institutions or tax exempt charitable, civic or service organizations, including the purchase of tickets to charitable or civic events, where no substantial part of the proceeds will have a material financial effect on the elected officer, any member of his or her immediate family, or his or her committee treasurer;

10. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

11. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

12. Expenditures for advertisements in programs, books, testimonials, souvenir books, or other publications if the advertisement does not support or oppose the nominations or election of a candidate for city, county, regional, state or federal elective office;

into their officeholder accounts on an annual basis. The annual amounts depend on the office held (see chart below).

One reason officeholder funds tend to exist in jurisdictions that limit campaign contributions is that once a successful candidate has received from his or her group of contributors the maximum contribution limit (which is frequently spent during the course of the election), they cannot receive, in the absence of an officeholder fund, any more money from those contributors to fund officeholder expenses during their remaining term.

Commission staff did not have time to complete a review of contributions to and expenditures from officeholder accounts in time for this report. An assessment of whether and to what extent the current limitations are adequate should arguably await such a review to provide an empirical basis for any adjustment. However, Commission staff notes that the current limitation on the total amount that can be contributed to an officeholder account is the only monetary limitation in OCRA that does not provide for an annual inflationary adjustment.

As an interim measure, the Commission may wish to recommend that the annual cap on the amount that may be contributed to an officeholder expense fund be adjusted based on the change in the consumer price index (CPI) from the time the current amount was established in July 1999, to the last published CPI index in December 2009. The CPI percentage increase for

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13. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, school district-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council, Mayor, or School Board;

14. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

15. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions;

16. Expenditures for accounting, professional and administrative services provided to the officeholder fund;

17. Expenditures for ballot measures.

C. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office;

2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;

3. Membership in any athletic, social, fraternal, veteran or religious organization;

4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;

5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519.

D. No funds may be transferred from the officeholder fund of an elected city officeholder to any other candidate committee.

E. Annual contributions received by or made to the officeholder fund shall be subject to the contribution limitations of Article III of this Act.

F. Expenditures made from the officeholder fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act.

that period totals approximately 29 percent, which would result in the following adjustments to the stated contribution amounts:

CITY OFFICE	CURRENT ANNUAL CONTRIBUTION LIMIT	CURRENT ANNUAL CONTRIBUTION LIMIT AS ADJUSTED BY CPI
District Councilmembers	$25,000	$32,250
School Board Directors	$25,000	$32,250
City Auditor	$25,000	$32,250
Councilmember At-Large	$30,000	$38,700
City Attorney	$30,000	$38,700
Mayor	$50,000	$64,500

IV. STAFF RECOMMENDATION

Commission staff recommends that the Commission consider the public comment received before and during the meeting in developing any recommendations to the City Council regarding 1) the proposal to adjust OCRA's contribution limits and/or voluntary expenditure ceilings, and 2) any modification to adjust the total amount of annual contributions to an officeholder expense fund by changes in the CPI.

Respectfully submitted,

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