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TO: Lobbyist Registration And Campaign Finance Committee
FROM: Daniel Purnell
DATE: December 4, 2008

RE: Proposed Amendments To The Oakland Campaign Reform Act

Attached is a revised "redline" demonstrating the Committee's proposed changes to the Oakland Campaign Reform Act ("OCRA"). The redline incorporates those modifications made by the Committee during the past year in its review of the ordinance. ***Attachment 1.***

Commission staff would like to call the Committee's attention to three provisions contained in the redline:

1) Proposed Section 3.12.070 ("Limitation On Contributions To Persons Making Independent Expenditures"

Proposed Section 3.12.070 revises and consolidates existing provisions in Sections 3.12.505(C)-(F) and 3.12.060(C)-(F). Those existing sections regulate contributions to committees that make independent expenditures supporting or opposing local candidates. The Committee has discussed revising those existing sections to assist in their future interpretation and administration.

Currently, Sections 3.12.050(C)-(F) and 3.12.060(C)-(F) are subject to a stipulated stay order issued by a federal district court that precludes their application and enforcement pending the outcome of litigation in the matter of OAKPAC et al v. City of Oakland, Public Ethics Commission. The lawsuit is challenging the constitutionality of these subsections. Since it is possible that the lawsuit may still be pending when and if the Commission requests the City Council to consider adoption of proposed Section 3.12.070, Commission staff recommends that the Committee consider adding a new subparagraph 3.12.070(F) to read as follows:

(F) Section 3.12.070 shall not become effective until 1) a final decision, resolution or settlement is reached in the case of OAKPAC, Oakland Metropolitan Chamber Of Commerce et al v. City Of Oakland, The City Of Oakland Public Ethics Commission; U.S. District Court, Northern District Of California; Case. No. C06-6366 and 2) the City Council specifies by resolution a date on which Section 3.12.070 shall become effective.

2) Proposed Section 3.12.180 ("Legal Expense Fund")

Proposed Section 3.12.180(E) would impose restrictions on what can be done with any balance remaining in a so-called "legal expense fund" after the conclusion of legal proceedings. Current OCRA provisions permit local officeholders and candidates to establish a legal expense fund to defray costs associated with defending actions challenging their conduct in a campaign, election or in the performance of officeholder duties.

Proposed Section 3.12.180(E) currently provides:

E. No legal expense fund balance remaining after any court case or proceeding in connection with which the funds were raised may be transferred to any other person, fund or committee. Within six months after final conclusion of the lawsuit or proceeding and the payment of all debts incurred in connection with that lawsuit or proceeding, any surplus in the legal expense fund ***must be returned to the donors on a pro rata basis or given to the City of Oakland general fund.*** *(Emphasis added.)*

Since the amount remaining in a legal defense fund might be relatively small, and a candidate or officeholder may not wish to remit the money to the City, the Committee may wish to provide the candidate or officeholder with an additional option: Rather than refunding everyone who contributed to the legal expense fund a small amount on a "pro rata basis", the candidate or officeholder could also refund the money on a "last in, first out" or "first in, first out" basis, similar to the Committee's proposal in Section 3.12.145 ("Transfer Of Contributions"), up to the amount contributed. A modified proposed Section 3.12.180(E) could read as follows:

E. No legal expense fund balance remaining after any court case or proceeding in connection with which the funds were raised may be transferred to any other person, fund or committee. Within six months after final conclusion of the lawsuit or proceeding and the payment of all debts incurred in connection with that lawsuit or proceeding, any surplus in the legal expense fund ***must be returned to the donors using a "last-in, first-out" or "first-in, first-out" accounting method up to the amount contributed, or returned to all donors on a pro rata basis, or given entirely to the City of Oakland general fund.***

3) Proposed Section 3.12.230 ("Expenditure Ceilings Lifted")

The Committee is proposing slight modifications to existing law that lifts the voluntary expenditure ceiling in situations where a committee making independent expenditures expends more than specified amounts in a given campaign. The Committee's current proposal reads as follows:

3.12.230 Expenditure Ceilings Lifted

A. If a candidate declines to accept expenditure ceilings and receives contributions or makes qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if a committee makes independent expenditures of more than twenty thousand dollars ($20,000.00) in a District City Council or School Board election or ninety thousand dollars ($90,000.00) in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office, and any candidate running for the same office who accepted expenditure ceilings shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050(B) and 3.12.060(B) of this Act. The amounts of twenty thousand dollars ($20,000.00) and ninety thousand dollars ($90,000.00) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.2<u>1</u>0 of this chapter.

One of the potential "loopholes" in the existing and proposed version of Section 3.12.230 is a situation in which two or more committees support or oppose a candidate but no one committee reaches the $20,000/$90,000 independent expenditure threshold necessary to lift the expenditure ceiling. While admittedly a weak remedy to the perplexing problem of independent expenditures, the expenditure ceilings should arguably be lifted when independent expenditures ***in the aggregate*** (as well as by an individual committee) reach the threshold level in a particular campaign. A modified proposed Section 3.12.230 could read as follows:

3.12.230 Expenditure Ceilings Lifted

*A. If a candidate declines to accept expenditure ceilings and receives contributions or makes qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if **one or more** committee**<u>s</u>** make independent expenditures **<u>in the aggregate</u>** of more than twenty thousand dollars ($20,000.00) in a District City Council or School Board election or ninety thousand dollars ($90,000.00) in a City Attorney, Auditor, Councilmember-at-Large or Mayoral election, the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office, and any candidate running for the same office who accepted expenditure ceilings shall be permitted to continue receiving contributions at the amounts set for such candidates in Sections 3.12.050(B) and*

3.12.060(B) of this Act. The amounts of twenty thousand dollars ($20,000.00) and ninety thousand dollars ($90,000.00) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI as provided by Section 3.12.210 of this chapter.

Assuming these proposals are acceptable to the Committee, Commission staff recommends that the Committee decide how it wishes to convey the entire redline of changes to OCRA to the full Commission for consideration.

Commission staff would like to publicly thank Commissioners Ashburn, Stanley and Love for their diligent work on this project over the past year.

Respectfully submitted,

Daniel D. Purnell
Executive Director