Article I. Findings and Purpose

3.12.010 Title

This ordinance shall be known as the city of Oakland Campaign Reform Act, hereinafter "the Act."

3.12.020 Findings and Declarations

The Oakland City Council finds and declares each of the following:

A. Monetary contributions to political campaigns are a legitimate form of participation in our political process, but the financial strength of certain individuals or organizations should not enable them to exercise a disproportionate or controlling influence on the election of candidates.

B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions. This perception is undermining the credibility and integrity of the governmental process.

C. Candidates are raising less money in small contributions and more money in large individual and organizational contributions. This has created the public impression that the small contributor has an insignificant role to play in political campaigns.

D. High campaign costs are forcing officeholders to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

E. Officeholders are responding to high campaign costs by raising larger amounts of money. This fundraising distracts them from important public matters, encourages contributions, which may have a corrupting influence, and gives incumbents an overwhelming and patently unfair fundraising advantage over potential challengers.

F. The integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing.

3.12.030 Purpose of this Act

The purpose of this Act is to accomplish the following:

A. To ensure that all individuals and interest groups in our city have a fair and equal opportunity to participate in elective and governmental processes.

B. To reduce the influence of large contributors with a specific financial stake in matters under consideration by the city, and to counter the perception that decisions are influenced more by the size of contributions than by the best interests of the people of Oakland.

C. To limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.

D. To reduce the advantage of incumbents and thus encourage competition for elective office.

E. To allow candidates and officeholders to spend a smaller proportion of their time on fundraising and a greater proportion of their time dealing with issues of importance to their constituents and the community.

F. To ensure that~~serious~~ candidates are able to raise enough money to communicate their views and positions adequately to the public, thereby promoting public discussion of the important issues involved in political campaigns.

G. To help restore public trust in governmental and electoral institutions.

H. To avoid corruption and the appearance of corruption that unregulated political contributions and expenditures can cause.

I. To provide the Oakland electorate with information about the sources of contributions and the uses of funds in order to aid voters in evaluating those who seek elective office.

J. To imposes recordkeeping, reporting and disclosure requirements as an essential means of gathering the data necessary to ensure compliance with campaign laws.

- ***COMMENT**: Avoidance of corruption and/or the appearance of corruption are governmental interests that the courts have recognized as sufficient to justify certain forms of regulation of political speech and activities. The language proposed in subparagraphs (I) and (J) have been recognized as interests justifying reasonable regulations pertaining to campaign disclosures.*

Article II. Definitions

3.12.040 Interpretation of This Act

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Sections

81000 et seq., ~~as they appear in 1998~~and the regulations issued pursuant thereto, shall govern the interpretation of this Act.

~~"Broad-based political committee" means 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.~~

- ***COMMENT**: OCRA's use and application of so-called "broad-based political committees" was adapted from the California Political Reform Act (CPRA) at the time OCRA was originally drafted. Broad-based political committees no longer exist as a recognized entity under the CPRA and have been replaced by comparable "small contributor committees" (see definition below).*

"City offices" for the purposes of this Act include: Mayor, City Attorney, City Auditor, City Councilmembers and School Board Directors.

"Election" means any primary or general election held in the city of Oakland for city office. Primary and general elections are separate elections for purposes of this Act. The primary election period shall extend from January 1st of the first year of an election cycle up to and including ~~March~~June 30th of the fourth year of the election cycle, and the general election period shall extend from ~~April~~July 1st of the fourth year of the election cycle up to and including December 31st of the fourth year of the election cycle.

"Election communication" means any written, electronic or broadcasted communication that refers to a clearly identfied candidate for the office of Mayor, City Attorney, City Auditor, City Councilmember or School Board Director that is made within 180 before a primary, general or special election for the office being sought by the candidate. "Election communication" does not include (1) communications that constitute qualified campaign expenditures by a local candidate or his or her controlled committee provided the candidate identifies himself or herself in the communication; (2) communications paid for by the City of Oakland or any other governmental agency; (3) communications made by any labor union, club, group, association, or organization, other than a political party, intended for the primary use of its membership; (4) communications made by a corporation or partnership intended for the primary use of its shareholders, partners or employees; (5) communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum; (6) news stories, editorials or commentaries made by any newspaper, radio and television station or other news medium in the regular course of doing business; (7) communications made by a candidate in the regular course of a candidate's business, profession, or occupation; and (8) communications that expressly advocate the election or defeat of a clearly identified candidate.

- ***COMMENT**: The proposed definition of "election communication" is an essential term used in proposed Sections 3.12.220 and 3.12.221. The*

above definition and exceptions are adapted from comparable federal and local definitions of this term.

"Election cycle" means a four-year period preceding a term of office as defined by the Oakland City Charter, beginning on January 1st, and ending on December 31st of the fourth year thereafter.

"Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

- ***COMMENT**: Inclusion of "limited liability company" merely conforms OCRA with existing CPRA definition.*

~~Qualified Campaign Expenditure.~~

~~1. "Qualified campaign expenditure" for candidates means and includes all of the following:~~

~~a. Any~~"Qualified Campaign Expenditure" means (1) any expenditure made by a candidate, officeholder or committee controlled by the candidate or officeholder, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for city ~~office.~~office,~~b. A~~or (2) any nonmonetary contribution provided at the request of or with the approval of the candidate, officeholder or committee controlled by the candidate or~~officeholder.2.~~officeholder. "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made in any part for ~~political purposes.~~election-related activities.

- ***COMMENT**: The above proposed amendments to "qualified campaign expenditure" conform OCRA to the prevailing definition of what constitutes a legitimate campaign expenditure as contained in the CPRA and other local campaign finance laws. (See proposed Section 3.12.160 for specific "in-kind" contributions of office space that would not be subject to the limit on contributions.)*

"Redevelopment Agency" means the Oakland Redevelopment Agency.

"Small contributor committee" means any committee that meets all of the following criteria:

1. The committee has been in existence for at least six months.

2. The committee receives contributions from 100 or more persons.

3. No one person has contributed to the committee more than two hundred dollars ($200) per calendar year.

4. The committee makes contributions to five or more candidates.

- ***COMMENT**: As stated above, the Committee proposes to substitute the CPRA's current definition of "small contributor committee" for the obsolete "broad-based political committee." Both committees are identical except that under current state law, a small contributor committee may not receive contributions from any person of more than $200 per year.*

Article III. Contribution Limitations

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~~three hundred dollars ~~($100.00)~~($300.00) 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~~six hundred dollars ~~($500.00)~~($600.00) from any person for each election.

- ***COMMENT**: The change in subsection A reflects a desire by the Committee to ensure that the maximum amount a candidate who does not agree to voluntary spending caps can receive is sufficient to fund a viable campaign and not create the appearance that candidates are coerced into accepting voluntary expenditure limits. The change in subsection (B) merely reflects previous inflationary adjustments in the contribution amount.*

C. ~~Any person who makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsections A.~~

~~D. This section is not intended to prohibit or regulate contributions to persons or broad based political committees for the purpose of influencing elections for offices other than city offices.~~

~~E. Upon the effective date of the ordinance codified in this section, persons making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a person has separately accounted for such contributions and expenditures for such elections for city office, contributors to that person may contribute more than the amount set forth in~~

~~subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.~~

~~F. Candidates for city office shall not be held responsible for violations of this provision by any person.~~

- ***COMMENT**: Subsections (C) through (F) were added to OCRA in June, 2000, to regulate the flow of contributions into committees that make independent expenditures supporting or opposing candidates for City office. These sections are currently suspended in response to a pending legal challenge. Should the court rule that these provisions are constitutional, the Committee proposes several amendments contained in Section 3.12.070, below.*

~~G. Beginning January 1, 2001, the~~The City Clerk shall~~once annually, on a calendar year basis,~~ increase the contribution limitation amounts ~~upon a finding that~~in the January following every year in which a municipal election is held in the City of Oakland for city office. The increase shall be equal to the increase in the cost of living~~in the immediate San Francisco Bay Area,~~ as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics,~~has increased. The increase of the contribution limitation amounts shall not exceed the CPI increase, using 1999 as the index year. The adjustment shall be~~ rounded to the nearest one hundred ~~(100).~~dollars ($100). The City Clerk shall publish the adjusted contribution limitation amounts no later than ~~February 1st of each year.~~ January 31st of the year in which the adjustment is made.

- ***COMMENT**: The purpose of adjusting the contribution limits in the January following the year after a municipal election for City office is to avoid having the contribution amounts change during the campaign period.*

D. The provisions of this section do not apply to a candidate's contributions of his or her personal funds to his or her own campaign.

- ***COMMENT**: The U.S. Supreme Court has prohibited restrictions on a candidate's personal contributions since 1976. The above language merely memorializes this well-established rule.*

3.12.060 Limitations On Contributions From ~~Broad-Based Political~~Small Contributor Committees

A. No ~~broad-based political~~small contributor 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~~small contributor committee, a contribution or contributions totaling more than

~~two hundred fifty dollars ($250.00)~~six hundred dollars ($600.00) 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 ~~broad-based political~~small contributor 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~~small contributor committee, a contribution or contributions totaling more than one thousand ~~dollars ($1,000.00)~~two hundred dollars ($1,200.00) for each election.

C. ~~Any broad-based political committee that makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of the amounts stated in subsection A of this section.~~

~~D. This section is not intended to prohibit or regulate contributions to persons or broad-based political committees for the purpose of influencing elections for offices other than city offices.~~

~~E. Upon the effective date of the ordinance codified in this section, a broad-based political committee making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing such elections for city office. Where a broad-based political committee has separately accounted for such contributions and expenditures for such elections for city office, contributors to that broad-based political committee may contribute more than the amounts set forth in subsection A of this section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for city office.~~

~~F. Candidates for city office shall not be held responsible for violations of this provision by any broad-based political committee.~~

- ***COMMENT**: See proposed Section 3.12.070 pertaining to contributions to persons making independent expenditures.*

~~G. Beginning January 1, 2001, the~~The City Clerk shall~~once annually, on a calendar year basis,~~ increase the contribution limitation amounts ~~upon a finding that~~in the January following every year in which a primary election is held in the City of Oakland for city office. The increase shall be equal to the increase in the cost of living~~in the immediate San Francisco Bay Area,~~ as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics,~~has increased. The increase of the contribution limitation amounts shall not exceed the CPI increase, using 1999 as the index year. The adjustment shall be~~ rounded to the nearest one hundred ~~(100).~~dollars ($100). The City Clerk shall

publish the adjusted contribution limitation amounts no later than ~~February 1st of each year.~~ January 31st of the year in which the adjustment is made.

3.12.070 Limitation On Contributions To Persons Making Independent Expenditures

A. Any person who makes independent expenditures supporting or opposing a candidate for city office shall not accept any contribution for the purpose of influencing elections for city office in excess of two hundred dollars ($200) from any person per candidate supported or opposed by an independent expenditure made during an election.

B. This section is not intended to prohibit or regulate contributions to persons or political committees for the purpose of influencing elections for offices other than city offices.

C. Persons making independent expenditures supporting or opposing a candidate for city office shall separately account for contributions received and contributions or expenditures made for the purpose of influencing elections for city office. Where a person has separately accounted for such contributions and expenditures for elections for city office, contributors to that person may contribute more than two hundred dollars ($200) so long as any amount received in excess of two hundred dollars ($200) from any contributor per election is not used to make independent expenditures supporting or opposing a candidate for city office.

D. For purposes of this section, a person separately accounts for contributions received and contributions or expenditures made for the purpose of influencing elections for city office by timely filing an accurate and properly completed campaign statement with the appropriate filing officer. An independent expenditure will be deemed to have been made from contributions of two hundred dollars ($200) or less if the person making the independent expenditure has received, before or during the reporting period in which the independent expenditure is disclosed, an aggregate amount of contributions each totaling two hundred dollars ($200) or less in an amount at least equal to or exceeding the cost of the independent expenditure(s) that support or oppose each candidate.

E. Candidates for city office shall not be held responsible for violations of this provision by any person.

- *COMMENT: The above section re-states and consolidates the original language of current Sections 3.12.050(C)-(F) and 3.12.060(C)-(F). It addresses long-standing questions arising from the current language by 1) specifying that a person making independent expenditures to influence an election for local office may satisfy the "separate accounting" provisions by timely filing a properly completed campaign statement with the appropriate filing officer; and, 2) providing that an independent expenditure will be considered to have been made from "qualifying contributions" (i.e.,*

contributions of $200 or less) if the person making the independent expenditure has received an amount of qualifying contributions at least equal to the amount of the independent expenditure before or during the reporting period in which the independent expenditure is disclosed.

3.12.075 Regulation Of Local Fundraising Activity

A. No elected City officeholder, candidate for elected City office, or any person acting as an agent or on behalf of such officeholder or candidate, shall solicit campaign contributions from any City officer or employee to support or oppose the candidacy of any person for elective City office, for any officeholder or legal expense fund, or for any local ballot measure. Nothing in this section shall prohibit an elected City officeholder, candidate for elected City office, or any person acting as an agent or on behalf of such officeholder or candidate, from soliciting campaign contributions in mass mailings or in mass media directed to a significant segment of the public that may include a City officer or employee of the City.

B. No member of an Oakland board or commission who must file an annual Statement of Economic Interests may perform any of the following activities on behalf or for the benefit of an elected City officer, candidate for elected City office, or for any of his or her controlled committees or officeholder or legal expense funds:

1. Request either orally or in writing that another person make a campaign contribution;

2. Invite a person to a fundraising event;

3. Supply names to be used for invitations to a fundraising event;

4. Allow his or her name, City title or signature to appear on a solicitation for contributions or to a fundraising event;

5. Provide the use of his or her home or business to hold a fundraising event;

6. Act as an agent or intermediary in connection with the making of a contribution.

C. The provisions of subsection B shall not apply to a member of a City board or commission who is engaging in fundraising activity on his or her own behalf.

- *COMMENT: The Committee sought to add this section to 1) promote public confidence in the impartiality of government decisions; and 2) protect government employees and appointed officials against the perception that contributions are being coerced or made as a reward or payment for hiring or appointment.*

3.12.076 Payments Made At The Behest Of Oakland Elected Officials

A. Oakland elected officials shall report all payments made at their behest for any legislative, governmental or charitable purpose within 30 days following the date on which the payment or payments equal or exceed $1,000 in the aggregate from the same source in the same calendar year in which the payment or payments are made.

B. The report identified in Subsection A shall be filed by the Oakland elected official with the Office of the City Clerk on a form prescribed by the Public Ethics Commission. The report shall contain the following information: (1) The name of the payer, (2) address of the payer, (3) amount of the payment, (4) date or dates the payment or payments were made, (5) the name and address of the payee, (6) a brief description of the goods or services provided or purchased, if any, and (7) a description of the specific purpose or event for which the payment or payments were made.

C. Once the $1,000 aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later.

- *COMMENT: The above-proposed Subsections A through C require Oakland elected officials to report whenever persons make payments at their suggestion or behest. The above-proposed Subsections closely mirror state law (Government Code Section 82015) in terms of the information required, although the proposed reporting threshold of $1,000 is less than the $5,000 reporting threshold contained in state law. The Committee believes that a lower payment threshold will provide Oakland residents with more infornmation about the fundraising activities of elected officials.*

~~3.12.070~~3.12.080 Return of Contributions

A. A contribution shall not be considered received if it is not ~~negotiated, deposited, or utilized, and in addition it~~cashed, negotiated or deposited and is returned to the donor before the closing date of the campaign statement on which the contribution would otherwise be ~~reported. In the case of a late contribution as defined in~~ reported.
~~Government Code Section 82036, it shall not be deemed received if it is returned to the contributor within forty-eight (48) hours of receipt.~~

B. If a candidate for city office or the controlled committee for such a candidate receives a contribution prohibited under this chapter, neither the candidate nor the controlled committee shall be subject to any enforcement proceedings pursuant to this chapter if the candidate or controlled committee 1) does not deposit the contribution into his or her campaign account and returns the contribution to the donor within thirty days from the day the contribution was received; or 2) deposits the contribution but

reimburses the total amount of the contribution to the donor within fourteen (14) days after the date of deposit.

- ***COMMENT**: The Committee noted several problems with the current OCRA language, most significantly its conflict with state law regarding the time permitted to return a late contribution and what actions may be taken with regard to a contribution before it is returned. The proposed language in Subsection (A) conforms OCRA to the CPRA. The proposed language in Subsection (B) reflects a desire by the Committee to permit a candidate to correct the receipt of a locally prohibited contribution (e.g., a contribution exceeding the contribution limit) without being subject to enforcement proceedings before the Ethics Commission.*

~~3.12.080~~3.12.090 Aggregation of Payments

For purposes of the contribution limitations enumerated in this Act,~~the following shall apply:~~

~~A. All payments made by a person, committee or broad-based political committee whose~~ contributions~~or expenditure activity is financed, maintained or controlled by any corporation, labor organization, association, political party or any other person, committee or broad based political committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be~~from two or more persons will be aggregated and considered to be made by a single~~person, committee or broad based politicalcommittee.~~

~~B. Two or more entities shall be treated as one~~ person ~~when~~in any of the following ~~circumstances apply:~~applicable circumstances:

~~1. The entities share the majority of members of their boards of directors.~~

~~2. The entities share two or more officers.~~A. Contributions made by a person that are directed, controlled or financed by any other person or group of persons.

B. Contributions made by an entity shall be aggregated with another entity if the entities:

1. have the same individuals constituting a majority of the members of each entity's board of directors;

2. share two or more officers;

3. ~~The entities~~ are owned or controlled by the same majority shareholder or ~~shareholders.~~shareholders; or

4. ~~The entities are in a parent-subsidiary relationship.~~are a parent or subsidiary of the other.

C. ~~An individual and any general or limited partnership in which the individual has more than a fifty (50) percent share, or an individual and any corporation~~Contributions made by an individual shall be aggregated and treated as being made by or with any corporation, firm, partnership, joint venture or trust in which the individual owns ~~a controlling interest (more than fifty (50) percent), shall be treated as one person.~~an investment of fifty percent or more or holds a majority of voting rights.

- ***COMMENT:** The proposed amendments to subsections (A) through (C) are intended to clarify the current circumstances in which contributions from one person will also be treated as coming from another person.*

D. ~~No committee and no broad-based political committee which supports or opposes a candidate for office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee or broad-based political committee shall act in concert with, or solicit or make contributions on behalf of, any other committee or broad-based political committee. This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on which a candidate or candidates receive contributions.~~Contributions by a limited liability company (LLC) or by the person managing the LLC shall be aggregated and treated as being made by or with all the members of the LLC which hold an interest of greater than twenty-five percent.

- ***COMMENT:** The Committee noted that a number of local contributions are made by LLCs whose individual members also make campaign contributions. The Committee wanted the aggregation provisions only to apply, however, to members whose interests in the LLC are substantial.*

E. Contributions made by an individual shall be aggregated and treated as being made by or with any sole proprietorship the individual owns.

~~3.12.090~~3.12.100 Loans

A. A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this Act.

B. Every loan to a candidate or the candidate's controlled committee from another person shall be by written agreement and shall be filed with the candidate's~~or committee~~ campaign statement on which the loan is first reported.

C. The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of

the public and ~~which is secured or guaranteed~~for which the candidate is personally liable shall not be subject to the contribution limitations of this Act.

- ***COMMENT**: The Committee did not see the significance of requiring commercial loans to be "secured or guaranteed" so long as the candidate was personally liable for its repayment.*

D. A candidate shall not charge interest on any loan he or she made to his or her campaign.

- ***COMMENT**: Subsection (D) reflects existing state law.*

3.12.105 Extensions Of Vendor Credit

A. Vendors may extend credit to candidates and their controlled committees in the ordinary course of business in the same manner they extend it to other persons.

~~D. Other than loans pursuant to subsection C of this section, extensions of credit in excess of one thousand five hundred dollars ($1,500.00) for a period of more than ninety (90) days are~~ B. Goods and services received from a vendor by a candidate or his or her controlled committee on credit shall not be subject to the contribution ~~limitations of this Act, unless the candidate can demonstrate good faith evidence of~~limits set forth in Section 3.12.050(B) so long as the candidate or committee pays for those goods and services in full no later than one year after ~~an intent to repay through a set payment schedule which is being adhered to through repayment of the extension of credit on a regular basis.~~the goods were delivered or the services rendered.

C. Vendors, candidates and their controlled committees shall not be liable for violating the contribution limits of Section 3.12.050(B) if the failure to pay a claimed balance within one year is reasonably based on a good faith dispute with the vendor and the candidate or his or her representative protested payment of the bill within 30 calendar days of notice that payment was due. Vendors shall not be liable for violating the contribution limits of Section 3.12.050(B) if the candidate terminates his or her controlled committee before any unprotested balance has been paid in full.

D. Any reduction or forgiveness of the amount owed to the vendor, other than pursuant to a resolution of a good faith dispute over the amount owed for goods or services described in subsection (C), shall constitute a contribution from the vendor to the candidate subject to the contribution limits of Section 3.12.050(B).

E. The provisions of this section shall not apply to debt owed to a financial institution for an outstanding credit card balance.

- ***COMMENT**: The Committee sought to clarify and address a number of issues arising from the current language pertaining to so-called "vendor*

credit". The Committee proposes that a campaign may receive goods and services from a vender "on credit" without regard to the current contribution limit if 1) the vender makes the same credit available to other customers; and 2) the candidate pays the balance off within one year. To protect against abuses, vendor credit will be subject to the contribution limit if 1) the candidate terminates his or her committee before the debt is paid, or 2) the candidate receives a gratuitous reduction or forgiveness of the debt. The Committee determined the above restrictions were not necessary for debt incurred by use of a credit card since the vendors have already been paid for their goods or services and credit card companies are not likely to reduce or forgive debt.

~~3.12.100~~3.12.110 Family Contributions

A. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.

B. Contributions by children under eighteen (18) years of age shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).

~~3.12.110~~3.12.120 One Campaign Committee And One Checking Account Per Candidate For City Office

A candidate for city office shall have no more than one campaign committee and one ~~checking~~campaign bank account per election for the city office being sought, out of which all expenditures for that office shall be made. This section ~~should not prohibit~~does not limit the establishment of savings accounts to the extent ~~accounts,~~permitted by law, but no qualified campaign expenditures shall be made out of these savings accounts.

~~3.12.120~~3.12.130 Money Received By City Officials And Candidates Treated As Contributions, Income Or Gifts

Any funds received by any elected city official or candidate running in the jurisdiction or any committee controlled by such an official or candidate shall be considered either a campaign contribution, income or a gift. ~~All campaign contributions received by such persons shall be subject to theprovisions of this Act unless such campaign contributions are used exclusively for elections held outside the jurisdiction.~~ All income and gifts shall be subject to the disqualification provisions of the Political Reform Act, Government Code Sections 87100 et seq.

- *COMMENT: The Committee decided to strike the second sentence because it is unnecessary and creates confusion whether OCRA applies to contributions received by an elected City official or candidate running for*

elective office that includes the City of Oakland but is not a local office, e.g., county supervisor or state assemblyperson.

~~3.12.130~~3.12.140 Identification Of Contributor Required

~~No~~A. A candidate or his or her controlled committee shall return not later than 60 days of receipt by the candidate or his or her controlled committee any contribution of one hundred dollars ($100.00) or more for which the candidate or controlled committee does not have on file in the records of ~~shall be deposited into a campaign checking account of a candidate for city office unless~~the candidate or committee the name, address, occupation, and employer of the contributor.

~~contributor is~~ B. The failure of a candidate or his or her controlled committee to disclose the name, address, occupation and employer of any contribution of one hundred dollars ($100) or more on a campaign statement shall create a rebuttable presumption that the information was not on file in the records of the recipient ~~of the contribution.~~ at the time the contribution was received.

- *COMMENT: The proposed language in Subsection (A) merely conforms existing language to state law, which requires candidates to return contributions of $100 or more for which the candidates do not possess the contributor's address, occupation and employer. The proposed language in Subsection (B) creates a rebuttable presumption that the candidate does not possess the required information if he or she does not report it on a campaign statement.*

3.12.145 Transfer Of Contributions

A. A candidate for City office may transfer campaign funds from one controlled committee to a controlled committee for elective City office of the same candidate. Contributions transferred shall be attributed to specific contributors using a "last-in, first-out" or "first-in, first-out" accounting method, and these attributed contributions when aggregated with all other contributions from the same contributor shall not exceed the limits set forth in Section 3.12.050 or Section 3.12.060, as applicable.

B. It is the intent of this section that transfers of a candidate's campaign funds be consistent with the applicable provisions of Title 2, Section 18536 of the California Code of Regulations.

- *COMMENT: Local officeholders and candidates occasionally transfer funds between one controlled committee to another. A federal court has ruled that local jurisdictions may not prohibit the transfer of funds between a candidate's controlled committees, but may ensure that local restrictions on contributions are preserved. The above language is similar to state*

and other local laws designed to ensure that contributions limits are respected in the event of a transfer of campaign funds.

~~3.12.140 Contractors Doing~~3.12.150 Persons Negotiating Business With The City Of ~~Oakland,~~Oakland Or The Oakland Redevelopment Agency~~Or The Oakland Unified School District~~ Prohibited From Making Contributions

~~A. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the city for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the city or for selling any land or building to the city or for purchasing any land or building from the city whenever the value of such transaction would require approval by the City Council shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.~~

~~B. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the Redevelopment Agency for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the Redevelopment Agency or for selling any land or building to the Redevelopment Agency or for purchasing any land or building from the Redevelopment Agency, whenever the value of such transaction would require approval by the Redevelopment Agency, shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after~~

A. No **prospective contractor** shall make to any elected city official, candidate for city office, or to any of his or her controlled committees, and no elected city official or candidate for city office shall receive from a **prospective contractor**, a contribution at any time between the ~~the completion of, or the termination of, negotiations for such~~**commencement of negotiations** on a **regulated contract** and one hundred eighty (180) days after the **completion of negotiations** or **termination of negotiations** for such a regulated contract.

- *COMMENT: The proposed re-write of Section 3.12.150 reflects the Committee's desire to: 1) simplify and clarify the current contractor-contribution language and 2) create an on-line database that officeholders and candidates can use to determine from which contractors they can and cannot receive campaign contributions.*

The proposed language in subsection (A) retains the current prohibition pertaining to contractor contributions: No prospective contractor may make (and no candidate may receive) contributions during the time certain contracts are being negotiated, as defined below.

B. No **prospective contractor** that was awarded a **regulated contract** shall make to any elected city official, candidate for city office, or to any of his or her controlled committees, and no elected city official or candidate for city office shall receive from a **prospective contractor** that was awarded a **regulated contract**, a contribution within one hundred eighty (180) days after the **completion of negotiations** or **termination of negotiations** for such a **regulated contract**.

- *COMMENT: The Committee decided that the 180-day "blackout period" for contributions made after negotiations are completed should only apply to the successful prospective contractor and not those who failed to obtain the desired contract.*

~~C. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the Oakland School District, for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the School District or for selling any land or building to the School District or for purchasing any land or building from the School District whenever the value of such transaction would require approval the School Board, shall make any contribution to a School Board member, candidate for School Board Directors or committee controlled by such officeholder or candidate at any time between commencement of negotiations and either one hundred eighty (180) days after the completion of, or the termination of, negotiations for such contract.~~

~~D. "Services" means and includes labor, professional services, consulting services, or a combination of services and materials, supplies, commodities and equipment which shall include public works projects.~~

~~E. For contributions to city officers other than School Board Directors, transactions that require approval by the City Council or Redevelopment Agency include but are not limited to:~~

~~1. Contracts for the procurement of services that are professional or consulting services exceeding fifteen thousand dollars ($15,000.00).~~

~~2. Contracts for the procurement of services exceeding fifty thousand dollars ($50,000.00), other than contracts for professional or consulting services.~~

~~3. Contracts for the furnishing of any materials, supplies, commodities or equipment exceeding fifty thousand dollars ($50,000.00).~~

~~4. Contracts for the sale of any building or land to or from the city or the Redevelopment Agency.~~

~~5. Amendments to contracts described in subsections (E)(1), (2), (3), and (4) of this section.~~

~~F. For contributions to School Board Directors, transactions that require approval by the School Board include but are not limited to:~~

~~1. Professional services and consulting contracts exceeding twenty-five thousand dollars ($25,000.00), including personal service agreements.~~

~~2. Contracts requiring School Board approval under Public Contract Code Section 20111.~~

~~3. Construction contracts exceeding twenty-five thousand dollars ($25,000.00) whether or not they are subject to the provisions of the Public Contract Code.~~

~~4. Contracts for the sale of any building or land to or from the School District.~~

C. For purposes of this section, the following definitions shall apply:

1. "Regulated contract" means any agreement or an amendment to an agreement for the rendition of **services**, materials, supplies commodities or equipment, or for the transfer of any interest in real property or the fixtures thereon to or from the City of Oakland or the Oakland Redevelopment Agency**,** whenever the value or nature of such agreement or amendment requires or receives the approval of the City Council or Redevelopment Agency, respectively. A regulated contract does not include any contract or agreement awarded pursuant to a competitive bid.

- ***COMMENT**: The proposed definition of a "regulated contract" contains the same elements currently contained in existing OCRA language except that contracts awarded pursuant to a competitive bids would not be subject to the contractor restriction.*

2. "Prospective contractor" means any person that submits a written bid, proposal, or statement of qualifications for the purpose of entering into a regulated contract For purposes of the contribution restriction in subsection A, prospective contractor also means, where applicable, all corporate officers, managing person if the prospective contractor is a limited liability company, and any person(s) having a majority ownership interest in the prospective contractor.

- ***COMMENT**: OCRA currently applies to the persons negotiating regulated contracts. If that "person" is a corporate entity, for example, then only contributions from that corporate entity are restricted unless aggregation rules apply. The above proposed definition would expand the restriction*

on contractor contributions to the corporate officers, the managers of an LLC, and any person having a majority ownership interest in the prospective contractor.

3. "Services" means and includes labor and any services including, without limitation, professional, technical and scientific services, or a combination of services and materials, supplies, commodities and equipment.

4. "Commencement of negotiations" on a regulated contract occurs on the date when a prospective contractor submits a written bid, proposal, or statement of qualifications for the purpose of entering into a regulated contract to any elected or appointed Oakland officer or employee. "Commencement of negotiations" does not include the unsolicited receipt of marketing or advertising materials, a request to be placed on mailing lists, routine inquiries for information about a regulated contract, or attendance at an informational meeting.

5. "Completion of negotiations" occurs for a prospective contractor that is awarded the regulated contract when such prospective contractor or prospective contractor's agent executes the regulated contract. "Completion of negotiations" occurs for a prospective contractor that is not awarded the regulated contract on the date the City Council or Redevelopment Agency votes to award the regulated contract to the successful prospective contractor.

6. "Termination of negotiations" occurs for a prospective contractor when the prospective contractor provides written notice that it is withdrawing from negotiations on the regulated contract.

D. A prospective contractor shall, at the time it submits a written bid, proposal, or statement of qualifications for the purpose of entering into a regulated contract, file a form with the appropriate City agency, department or office and the Public Ethics Commission that contains the following information and representations:

1. The name, business address and business telephone number of the prospective contractor;

2. A brief description of the regulated contract being sought, the City agency, division, department or office responsible for administering the contract, and the name of an Oakland officer or employee with knowledge of the contract specifications or provisions;

3. Where applicable, the name and title of the prospective contractor's corporate officers, the agent(s) authorized to represent the prospective contractor in regard to the regulated contract, the name of the managing person if the prospective contractor is a limited liability company, and the name and title of the person(s) having a majority ownership interest in the prospective contractor;

4. The date when the prospective contractor submitted its written bid, proposal, or statement of qualifications for the purpose of entering into a regulated contract to any elected or appointed Oakland agency officer or employee; and

~~5. Amendments to contracts described in subsections (F)(1), (2), (3), and (4) of~~

5. An acknowledgement that the person signing the form is authorized by the prospective contractor to do so, that he or she has read this section, and that the prospective contractor has not made and will not make contributions prohibited pursuant to this section.

- ***COMMENT:*** *OCRA currently provides that 1) contractors must sign an acknowledgement that they have read the OCRA section on contractor restrictions, 2) no contract may be awarded to a contractor that has not signed the acknowledgement, and 3) the City Clerk shall keep a current list of contractors. While City staff typically provides prospective contractors with the acknowledgment form as part of any contract submission, current law and practice do not require any further information from the contractor to assist in the administration of these provisions. The proposed language is subsection (D) would require prospective contractors to provide the necessary information needed to implement this provision and to provide a copy of the form to the Public Ethics Commission.*

~~G. "Commencement of negotiations" for city contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed city officer or employee or when any elected or appointed city officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.~~

~~H. "Commencement of negotiations" for Redevelopment Agency contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed Redevelopment Agency officer or employee or when any elected or appointed Redevelopment Agency officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.~~

~~I. "Commencement of negotiations" for Oakland School District contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed School District officer or employee or when any elected or appointed School District officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.~~

~~J. "Commencement of negotiations" does not include unsolicited receipt of proposal or contract information or documents related to them, requests to be placed on mailing lists or routine inquiries for information about a particular contract, request for~~

~~proposal or any information or documents relating to them or attendance at an informational meeting.~~

~~K. "Completion of negotiations" occurs when the city, the Redevelopment Agency or the School District executes the contract or amendment.~~

~~L. "Termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when the contractor files a written withdrawal from the negotiations, which is accepted by an appointed or elected City officer, Redevelopment Agency officer, City employee or Redevelopment Agency employee or an appointed or elected School District officer or employee.~~

~~M. The Oakland City Manager shall be responsible for implementing procedures for City of Oakland and Redevelopment Agency contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:~~

> ~~"The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.~~
>
> ~~I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.~~
>
> ~~Business Name _____ Date _____ Signature _____"~~

~~The signed and dated statement must be received and filed by the City Clerk at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The City Clerk shall keep an updated list of current contractors available for inspection.~~

~~N. The Oakland Superintendent of Schools shall be responsible for implementing procedures for Oakland School District contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:~~

> ~~"The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland, the Oakland Redevelopment Agency or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.~~

~~I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.~~

~~Business Name _____ Date _____ Signature _____"~~

~~The signed and dated statement must be received and filed with the School District at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The School District shall keep an updated list of current contractors available for inspection.~~

~~O. A person who contracts with the City, the Redevelopment Agency or the School District for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, the Redevelopment Agency or the School District, or for selling any land or building to the City, the Redevelopment Agency or the School District or for purchasing any land or building from the Redevelopment Agency or the School District, whenever the value of such transaction would require approval by the City Council, the Redevelopment Agency or the School Board, and who violates subsection A of this section, shall be subject to the enforcement provisions of Article VII of this Act.~~

~~P. Elected city officeholders, candidates for city office and their controlled committees shall include a notice on all campaign fundraising materials equivalent to eight point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:~~

~~"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.)."~~

E. The form referenced in subsection D shall be developed and approved by the Public Ethics Commission and signed under penalty of perjury by the prospective contractor or the person authorized by the prospective contractor to make the representations contained in the form. Neither the City nor Redevelopment Agency shall award a regulated contract to any prospective contractor that has not executed and filed the form referenced in subsection D.

F. The Public Ethics Commission shall post on its website the information submitted on the form referenced in subsection D. All information shall be posted within 72 hours of receipt by the Public Ethics Commission, excluding holidays and weekends.

- *COMMENT: Proposed subsection (F) would require the Commission to post the information provided by all prospective contractors within 72 hours of receipt. This information can then be accessed by officeholders and candidates to determine which contractors (and their respective officers and owners) from whom they may not accept contributions.*

G. Elected city officials and candidates for City office who reasonably rely on the list of prospective contractors maintained on the Public Ethics Commission website shall not be in violation of receiving a contribution regulated pursuant to subsections A or B if the name of the prospective contractor is not posted to the Public Ethics Commission website at the time the contribution is deposited into their campaign bank accounts.

- *COMMENT: Once a list of contractors is in place, the Committee believes that officeholders and candidates should be entitled to rely upon such a list to decide whether they can accept a contribution from a potential contributor.*

- *The current OCRA provisions requiring candidates to place a statement on their campaign fundraising material has been moved to Section 3.12.223.*

3.12.160 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 thirty thousand dollars ($30,000.00) per ~~twenty-five thousand dollars ($25,000.00) perthirty 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.~~calendar year in office. For Councilmember-At-Large and City Attorney, total contributions to an officeholder fund shall not exceed thirty-eight thousand dollars ($38,000.00) per calendar year in office. For the office of the Mayor, total contributions to an officeholder fund shall not exceed sixty-two thousand dollars ($62,000.00) per calendar year in office.

- *COMMENT: The proposed changes in the above amount reflect the approximate change in the Consumer Price Index between 1998 and 2007.*

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;

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.~~

E. No person shall make to any elected city officeholder, and no elected city officeholder shall accept from any person, a contribution or contributions to an officeholder fund totaling more than the amount permitted in Section 3.12.050(B), as adjusted, during any calendar year.

- ***COMMENT**: Existing subsection (E) appears to limit contributions to an officeholder account depending on whether the officeholder agreed to accept a voluntary expenditure ceiling during the course of his or her campaign. The Committee concluded that officeholders should be able to raise officeholder funds in the same contribution amounts, regardless of how they chose to finance their campaigns.*

F. Expenditures made from the officeholder fund shall~~not be subject to the voluntary expenditure ceilings of Article IV of this Act.~~not, during a calendar year, exceed the amount permitted to be contributed to the officeholder fund in a calendar year. At no time shall the account balance in any officeholder fund exceed the amount permitted to be contributed to the officeholder fund in a calendar year.

- ***COMMENT**: OCRA currently does not limit the amount that an officeholder may spend from his or her officeholder account or limit the total balance in such an account. The Committee was concerned that without such limits officeholders could create a "war chest" of officeholder funds that could be used to support re-election efforts. The proposed language in subsection (F) would limit the amount officeholders could spend in a given calendar year and prohibits the account balance to exceed the permitted annual amount for contributions.*

G. During the six months prior to the date of the election on which the elected officeholder's name shall appear on the ballot for any city, county, regional, state or federal office, no officeholder funds shall be expended for the following purposes, goods or services:

1. Consulting, research, polling, photographs or image recording;

2. Mass mailings to persons within the city which (a) contain the officeholder's photograph or visual representation, or (b) the name of the officeholder other than as part of a letterhead, signature line or return address and in no event larger than a font size of 12 points; and

3. Expenditures for donations to tax-exempt educational institutions or tax-exempt charitable, civic or service organizations, except for the purchase of tickets to charitable or civic events sponsored by such institutions or organizations.

- *COMMENT: The proposed language in subsection (G) reflects the Committee's desire to limit those officeholder expenditures that could be used to coordinate with re-election efforts. The Committee also discussed prohibiting officeholder accounts altogether, which the Commission will need to consider as part of its final recommendation to the City Council.*

~~3.12.160~~3.12.170 Allowance For Donation Of Office Space

A. ~~Donation of office space for use by city officeholders in furtherance of their duties and responsibilities by a person or broad based political committee shall not be considered a campaign contribution subject to the provisions of this Act,~~Candidates for City elected office shall be permitted to receive non-monetary contributions of office space that are not subject to the contribution limitations of Section 3.12.050 or 3.12.060 provided that:

~~1. The donation is made to the City and accepted pursuant to Oakland City Charter Section 1203 for use by the Mayor, City Councilmembers, City Attorney or City Auditor or in the case of School Board Directors, the donation is made to the Oakland Unified School District; 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.~~

~~B. Use of office space donated pursuant to this section by a city officeholder shall not be considered a "qualified campaign expenditure" pursuant to Section 3.12.040 of this Act.~~ 1. The candidate receives only one such contribution of office space, consisting of one contiguous premises, per election;

2. The candidate accurately and timely reports the fair market value of the contribution of office space on his or her campaign statements;

3. The candidate does not take possession of make use of the office space any earlier than the date the candidate files nomination papers with the City Clerk for the office being sought and no later than the end of the semi-annual reporting period following the election for the office being sought;

4. The premises is not used for any purpose other than for election-related activities by the candidate; and

5. The fair market value of the premises shall constitute a qualified campaign expenditure subject to the voluntary expenditure ceiling of Section 3.12.210.

- *COMMENT: The Committee concluded that existing Section 3.12.170 is unclear and does not adequately address the issue regarding donations of campaign office space. The Committee proposes to permit donations of*

office space not subject to the $600 contribution limit, but constituting a qualified campaign expenditure subject to the voluntary expenditure ceiling.

~~3.12.170~~3.12.180 Legal Expense Funds

A. An elected city officeholder or candidate for city office may receive contributions for a separate legal expense fund, for deposit into a separate account, to be used solely to defray attorney's fees and other legal costs incurred in the candidate's or officeholder's legal defense to any civil, criminal, or administrative action or 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. Contributions to the legal expense fund must be earmarked by the contributor for contribution to the fund at the time the contribution is made. All funds contributed to an officeholder or candidate for legal expense fund must be deposited into the officeholder's appropriate campaign bank account prior to being deposited into the legal expense fund. The legal expense fund may be in the form of a certificate of deposit, interest-bearing savings account, money market account, or similar account, which shall be established only for the legal expense fund.

B. ~~Contributions received by or made to the~~No person shall make to any elected City officeholder or candidate for City office, and no elected City officeholder or candidate for City office shall accept from any person, a contribution or contributions to a legal expense fund ~~shall not be subject to the contribution limitations of Article III of this Act.~~totaling more than the amount permitted in Section 3.12.050(B), as adjusted, during any calendar year.

C. Expenditures made from the legal expense fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act.

D. Prior to the receipt of any contributions to a legal expense fund, the officeholder or candidate shall file with the Office of the City Clerk a form entitled "Statement Of Proceedings" that identifies the specific civil, criminal or administrative proceedings for which the legal expense fund is established. Information on the form shall include the case or administrative proceeding number, the case name or title of proceedings, and the venue or location of the proceedings.

- *COMMENT: The Committee believes that officeholders and candidates should be required to disclose basic information about the legal proceedings justifying the initiation of a legal defense fund.*

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.

- *COMMENT: The Committee notes that current law permits any person to make a contribution in any amount to a local legal defense fund. The Committee concluded that contributions to a legal defense fund should be subject to the same limits as contributions to a campaign account or an officeholder account.*

~~3.12.180~~3.12.190 Volunteer Services Exemption

Volunteer personal services, and payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, are not contributions or expenditures subject to this Act.

3.12.195 Restriction On Hiring Family Members By Candidates And Officeholders

Campaign and officeholder funds shall not be used to pay for services rendered to or on behalf of an elected City officeholder or candidate for elected City office by such officeholder's or candidate's spouse, domestic partner, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle or first cousin.

- *COMMENT: The Committee seeks to avoid abuses reportedly occurring in other jurisdictions in which campaign funds are used to make payments to family members for vaguely defined or questionable professional services.*

Article IV. Expenditure Ceilings

~~3.12.190~~3.12.200 Expenditure Ceilings

All candidates for city office who adopt campaign expenditure ceilings as defined below are permitted the higher contribution limit as defined in Sections ~~3.12.050C and 3.12.060C~~3.12.050(B) and 3.12.060(B) of this Act. Before ~~accepting~~receiving any contributions at the higher contribution limit, candidates who adopt voluntary expenditure ceilings must first file a statement with the City Clerk on a form approved for such purpose indicating acceptance of the expenditure ceiling. Said statement shall be filed no later than the time for filing a Candidate Intention Statement for the office being sought or before the receipt of any ~~for candidacy with the City Clerk.~~contribution in excess of the contribution limits set forth in Sections 3.12.050(A) and 3.12.060(A), respectively, whichever occurs first. This statement ~~will be made public.~~shall be a public record subject to public inspection and copying.

- *COMMENT: The proposed amendments above are intended to clarify existing language.*

~~3.12.200~~3.12.210 Amount Of Expenditure Ceilings

A. 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.

~~Beginning in 1999, the~~B. The City Clerk shall ~~once annually on a calendar year basis increase~~adjust the expenditure ceiling amounts ~~upon a finding that~~in the January following every year in which an election is held in the City of Oakland for city office. Any increase shall be equal to the increase in the cost of living~~in the immediate San Francisco Bay Area,~~ as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics,~~has increased. The increase of the expenditure ceiling amounts shall not exceed the CPI increase, using 1998 as the index year. The increase shall be~~ rounded to the nearest ~~thousand.~~one hundred dollars. The City Clerk shall publish the adjusted expenditure ceiling amounts no later than ~~February 1st of each year.~~ January 31st of the year in which the adjustment is made.

C. Payments made to a professional bookkeeper, accountant or campaign treasurer to perform the duties and tasks necessary to comply with the requirements of the California Political Reform Act and this Act shall shall constitute a qualified expenditure not subject to the voluntary expenditure ceilings for the election in which the candidate is seeking office.

- ***COMMENT**: The above language is intended to create an incentive for officeholders and candidates to retain professional bookkeepers, accountants or campaign treasurers. The Committee noted that state and local campaign finance laws are complex. The Committee concluded that public disclosure is best served when candidates and officeholders are able to comply with these requirements without competing with other expenditures for a place within the expenditure ceiling.*

~~3.12.210~~3.12.220 Time Periods For Expenditures

For purposes of the expenditure ceilings, qualified campaign expenditures made at any time on or before ~~March 31st~~June 30th of the election year shall be considered

primary election expenditures, and qualified campaign expenditures made from ~~April~~July 1st until December 31st of the election year shall be considered general election expenditures. However, in the event that payments are made but the goods or services are not used during the period purchased, the payments shall be considered qualified campaign expenditures for the time period in which they are used. Payments for goods or services used in both time periods shall be prorated.

~~3.12.220~~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 ~~an~~a committee makes independent ~~expenditure committee in the aggregate spends~~expenditures of more than ~~fifteen~~twenty thousand dollars ~~($15,000.00) on~~($20,000.00) in a District City Council or School Board election or ~~seventy~~ninety thousand dollars ~~($70,000.00)~~($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 ~~3.12.050C and 3.12.060C of this Act. The independent expenditure committee amounts of fifteen thousand dollars~~3.12.050(B) and 3.12.060(B) of this Act. The amounts of twenty thousand dollars ($20,000.00) and ninety thousand ~~($15,000.00) and seventy thousand dollars ($70,000.00)~~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 ~~3.12.180~~3.12.210 of this chapter.

- ***COMMENT:** The Committee recognized that subsection A is limited merely to "independent expenditure committees." Such committees use their own money to make independent expenditures and technically do not include committees that receive contributions from other persons to make independent expenditures. The Committee desired that Subsection A apply to all committees that make independent expenditures and not to the narrow class of so-called "independent expenditure committees." The proposed changes in the amounts set forth in Subsection A reflect the approximate change in the CPI since OCRA was initially adopted.*

B. Any candidate or committee that fails to timely file or accurately report campaign contributions or expenditures pursuant to state law and such failure results in a delay or failure in the lifting of the expenditure ceilings as specified in Subsection 3.12.230(A), shall be subject to enforcement proceedings before the Public Ethics Commission pursuant to Article VII of this Chapter.

- ***COMMENT:** The Commission's ability to administer this section is wholly dependent on the timely filing and accurate completion of appropriate campaign financial statements. The Committee believes the Commission*

should have a local enforcement mechanism to ensure timely and accurate filing.

Article V. Independent Expenditures, Campaign Disclosures And Recordkeeping

~~3.12.230 Independent Expenditures For Mass Mailings, State Mailings Or Other Campaign Materials~~3.12.240 Filing Requirements For Election Communications

A. Any person who makes a payment or promise of payment in an aggregate amount of $1,000 or more during any calendar year for an election communication shall file a statement with the Office of the City Clerk on a form developed by the Public Ethics Commission disclosing (1) the name and street address of the person making the payment or promise of payment; (2) the name and street address of all recipients of any payment or promise of payment exceeding $100 or more; (3) the date and amount of payment or promise of payment for each recipient of $100 or more; (4) the name of the candidate mentioned in the election communication; and (5) a brief description of the goods and services provided for each payment or promise of payment exceeding $100 or more.

B. The person filing the statement required under this section shall verify, under penalty of perjury, that he or she has used reasonable diligence in preparing the statement and that to the best of his or her knowledge the information contained in the statement is true and complete.

C. The statement specified in subsection (A) shall be filed within 72 hours after paying or promising to pay $1,000 or more during a calendar year for an election communication. The statement shall be amended within 72 hours thereafter whenever the filer pays or promises to pay an additional amount of $100 or more to any person for an election communication.

- *COMMENT: This and the following sections implement the Committee's goal of regulating so-called "election communications." (See Section 3.12.040 for a proposed definition of an "election communication.") The Committee noted that current law does not require the disclosure of any information regarding the maker of an election communication or its source of funding. The above proposed Section 3.12.240 would require persons who pay more than $1,000 per year for an election communication to file a disclosure document with the Office of the City Clerk.*

3.12.241 Disclosures For Certain Election Communications and Independent Expenditures

The following provisions shall apply to any election communication or independent expenditure pertaining to an election for the office of Mayor, City Attorney, City Auditor,

City Councilmember or School Board Director whose cost equals or exceeds one thousand ($1,000) dollars:

A. All election communications and independent expenditures ~~for a mass mailing, slate mailing or other campaign materials which support or oppose any candidate for city office shall place the following statement on the mailing in typeface of no smaller than fourteen points:~~
contained in printed materials designed to be distributed personally or through the mail (e.g., letters, brochures, handbills) and that are distributed to 200 or more persons shall contain the following disclosure statement: "Paid

~~**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)**~~
for by _____ (insert the name and address of the person or persons who paid for the communication.)" The disclosure statement shall be printed in type no less than 12 points in size and printed in contrasting color to the background on which it appears.

B. All election communications and independent expenditures contained in a recorded telephone message distributed to 200 or more persons or households shall include a disclosure statement that identifies the name of the person or persons paying for the recorded telephone election communication.

1. The disclosure statement shall be spoken in a clearly audible manner and spoken at the same speed and volume as the rest of the recorded telephone message.

2. All persons who make or hire others to make election communications or independent expenditures contained in a recorded telephone message distributed to 200 or more persons or households shall maintain, for a period of at least four years, a transcript of each communication and a record indicating the date and number of calls made for each recorded telephone message.

3. Within forty-eight (48) hours of making an election communication or independent expenditure contained in a recorded telephone message distributed to 200 or more persons or households, the person making or hiring others to make the recorded telephone message shall file a copy of the transcript of the message with the Office of the City Clerk. Any transcript filed with the Office of the City Clerk shall be a public record.

C. All election communications and independent expenditures contained in printed signs or billboards with a minimum surface area of one hundred twenty (120) square feet shall contain the following disclosure statement: "Paid for by _____ (insert the name and address of the person or persons who paid for the communication.)" The disclosure statement shall be printed in typeface no smaller than five percent (5%) of the height of the sign or billboard and in contrasting color to the background on which it appears.

D. All election communications and independent expenditures contained in a televised or broadcast video communication shall contain the following disclosure statement: "Paid for by _____ (insert the name and address of the person or persons who paid for the communication.)" The disclosure statement shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than four seconds.

E. For all disclosure statements required pursuant to the section, the following shall apply:

1. If there is more than one person paying for the election communication or independent expenditure, the disclosure statement shall disclose the two highest payors.

2. If the person paying for the election communication or independent expenditure qualifies as a committee pursuant to Government Code Section 82013, the disclosure shall identify the exact name of the committee and its identification number.

3. No acronyms are permitted in any disclosure statement.

- ***COMMENT**: The changes proposed to above Section 3.12.241 would expand OCRA's current minimal disclosure requirements for independent expenditures to include "elections communications." It would also apply the disclosure requirement for independent expenditures and elections communications to other forms of communications not expressly identified under current law, specifically, telephone communications, printed signs and billboards, and televised broadcasts. Unidentified billboard and telephone messages have been a source of concern during previous elections.*

3.12.242 Certification Of Independent Expenditures

A. Any person who incurs a campaign filing obligation on account of making an independent expenditure supporting or opposing a local candidate shall file with the Office of the City Clerk on a form developed by the Public Ethics Commission a

declaration signed under penalty of perjury that all independent expenditures made during a reporting period was not made to or at the behest of a candidate.

B. The form specified in subsection A shall be filed with the Office of the City Clerk no later than the campaign statement required for each reporting period.

- ***COMMENT**: The CPRA generally defines an "independent expenditure" as an expense made in connection with a communication which urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. Occasionally concerns are raised whether an independent expenditure is truly "independent" of an affected candidate. This proposed section would require makers of independent expenditures to verify they have complied with existing law.*

3.12.243 Campaign Fundraising Notice

Elected city officeholders, candidates for city office and their controlled committees shall include a notice on all campaign fundraising materials equivalent to eight point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible. The notice shall consist of the following statement:

"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 persons negotiating certain contracts with the City of Oakland, the Oakland Redevelopment Agency or the Port of Oakland (OMC § 3.12.140)."

- ***COMMENT**: This proposed section is a re-statement of existing Sections 3.12.140(M-O).*

3.12.244 Record Keeping And Local Filing Requirements

A. Elected city officeholders, candidates for city office and the treasurers for such officeholders and candidates shall maintain detailed accounts, records, bills and receipts necessary to prepare all campaign statements required pursuant to the California Political Reform Act, establish that campaign statements were properly filed, and to comply with the California Political Reform Act and this Act. The detailed accounts, records, bills and receipts shall be retained by the filer for a period of four years following the date that the campaign statement to which they relate is filed.

B. Elected city officeholders and candidates for city office shall timely file, and completely and accurately execute, all campaign statements required pursuant to the California Political Reform Act.

3.12.245 Audits Of Campaign Finances

A. Every candidate for election to City office shall be subject to an audit of his or her campaign statements and campaign finances as provided in this Section.

B. The Office of the City Auditor shall conduct audits with respect to the campaign statements and campaign finances of candidates who seek election to City office for whom the Public Ethics Commission determines has 1) received or expended an amount equaling more than twenty-five (25) percent of the voluntary expenditure ceiling applicable to the office sought, 2) failed to file one or more campaign statements for the office sought, or 3) raised a reasonable doubt over the accuracy or completeness of his or her campaign statements. Audits of candidates for the Office of City Auditor shall be conducted by an audit provider selected by the Public Ethics Commission and which is not currently employed by the City of Oakland.

C. No audit shall begin until after the last date for filing the first campaign statement following the general, runoff or special election for the office for which the candidate ran. The audit shall cover the campaign statements and campaign finances pertaining to the election for the office sought by the candidate and shall exclude campaign statements or campaign finances which have already been audited pursuant to this Section or Section 3.13.100(D) of the Limited Public Financing Act.

D. All completed audit reports shall be transmitted to the Public Ethics Commission and to the Office of the City Clerk. All completed audit reports shall be public documents and made available for public inspection and copying.

- *COMMENT: The proposed amendments in subsections A through D would institute a mandatory audit program affecting only candidates who raise or expend significant amounts of money, fail to file required campaign statements, or whose own campaign statements raise a "reasonable doubt" over the accuracy or completeness of their financial reporting. The Committee noted that even though campaign statements are executed under penalty of perjury, there exists no other mechanism for reconciling reported financial information with actual transactions. This is especially significance in Oakland where contributions are regulated and expenditures voluntarily limited.*

Article VI. Agency Responsibility

~~3.12.240~~3.12.250 Duties Of The Public Ethics Commission And City Clerk

The Public Ethics Commission ~~shall:~~shall monitor, administer and enforce the provisions of this Act as specified herein. The Office of the City Clerk shall perform the duties specified herein.

~~A. Oversee compliance with the Act.~~

~~B. Propose necessary regulations in furtherance of this Act subject to City Council approval.~~

~~**3.12.250 Duties Of The City Clerk**~~

~~The City Clerk shall prescribe the necessary forms for filing the appropriate statements.~~

Article VII. Enforcement

3.12.260 Public Ethics Commission As Enforcing Body

The Public Ethics Commission is the sole body for civil enforcement of this Act. In the event criminal violations of the Act come to the attention of the Public Ethics Commission, the ~~commission~~Commission shall promptly advise in writing the City Attorney and the appropriate prosecuting enforcement ~~agency.~~agencies.

3.12.270 Criminal Misdemeanor Actions

Any person who knowingly or willfully violates Articles III, IV or V of this Act is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of the Act, or who knowingly or willfully aids and abets any other person in violation of any provision of this Act, shall be liable under the provisions of this section. Prosecution for violation of any provision of this Act shall be commenced within four years after the date on which the violation occurred.

3.12.280 Civil Enforcement Actions

A. Any person who intentionally or negligently violates Articles III, IV or V of this Act is subject to enforcement proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission's General Rules of Procedure.

B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

C. ~~Any person alleging a violation of Articles III, IV or V of this Act shall first file with the Public Ethics Commission a written complaint on a form approved for such purpose. The complaint shall contain a statement of the grounds for believing a violation has occurred. The Commission shall respond within ninety (90) days after receipt of the complaint indicating whether there is probable cause to conduct a hearing and whether mediation will be undertaken.~~

~~D. If mediation is not undertaken, if any party refuses mediation, or if mediation is unsuccessful in resolving the issues raised in the complaint, the Commission may~~

~~within ninety (90) days thereafter convene a hearing. The Commission has full authority to settle any action filed by or on~~If the Commission determines a violation has occurred, the Commission is authorized to impose appropriate penalties and fines in an amount not to exceed $1,000 per violation or three times the amount of the unlawful contribution or expenditure, whichever is greater. ~~behalf of the Commission in the interest~~ The Commission is authorized to settle any proceeding in the interests of justice.

~~E. If the Commission determines a violation has occurred, the Commission is hereby authorized to administer appropriate penalties and fines not to exceed three times the amount of the unlawful contribution or expenditure.~~

F. No complaint alleging a violation of any provision of this Act shall be filed with the Public Ethics Commission more than two years after the date the violation occurred.

- ***COMMENT**: The proposed changes to the above section seek to conform the complaint process under OCRA to the Commission's existing General Complaint Procedures. All other local laws under the Commission's jurisdiction are governed by the General Complaint Procedures.*

3.12.290 Injunctive Relief

The Public Ethics Commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.

3.12.300 Cost Of Litigation

The court may award to a complainant or respondent who prevails in any action for injunctive relief, his or her costs of litigation, including reasonable attorney's fees.

3.12.310 Disqualification

In addition to any other penalties prescribed by law, if ~~an official~~a candidate or elected city officeholder receives a contribution in violation of Sections ~~3.12.050 and 3.12.060, the official~~3.12.050, 3.12.060 or 3.12.140, the candidate or officeholder 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. The~~interest as defined by the provisions of Government Code Sections 87100 et seq. and the administrative regulations ~~of the Fair Political Practices Commission shall apply to interpretations of this section.~~adopted thereto.

- ***COMMENT**: The proposed changes to the above section intend to clarify that the "financial interest" of a contributor be defined by the same threshold financial interests as currently existing in the CPRA.*

Article VIII. Miscellaneous Provisions

3.12.320 Applicability Of Other Laws

Nothing in this Act shall exempt any person from applicable provisions of any other laws of this state or jurisdiction.

3.12.330 Severability

If any provision of this Act, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Act to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Act are severable.