

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
SPECIAL MEETING
One Frank Ogawa Plaza (City Hall)
Wednesday, September 22, 2010
Hearing Room Two
6:30 p.m.
Page 1



Commission Membership: Jonathan Stanley (Chair), Barbara Green-Ajufo, (Vice Chair), Alaric Degrafinried, Alex Paul, Ai Mori. Richard Unger, Vacancy (Mayoral)

Staff Members: Commission Staff:
Daniel Purnell, Executive Director
Tamika Thomas, Executive Assistant
City Attorney Representative:
Alix Rosenthal, Deputy City Attorney

SPECIAL MEETING AGENDA

- A. Roll Call And Determination Of Quorum
- B. Open Forum
- C. A Staff Report And Action To Be Taken To Receive A Written Opinion From The Office Of the City Attorney Relating To Independent Expenditure Committees And The Expenditure Ceiling For Candidates
- D. A Staff Report And Action To Be Taken Relating To The Eligibility Of District Four Candidates Libby Schaaf and Clinton Killian To Receive Public Financing In The November 2010 Election; Potential Re-Allocation Of The Election Campaign Fund To Include Candidates Schaaf and Killian
- E. A Staff Report And Action To Be Taken Regarding Proposed Amendments To Oakland's Lobbyist Registration Act

The meeting will adjourn upon the completion of the Commission's business.

You may speak on any item appearing on the agenda; however, you must fill out a Speaker's Card and give it to a representative of the Public Ethics Commission. All speakers will be allotted three minutes or less unless the Chairperson allots additional time. In compliance with the Americans with Disabilities Act, if you need special assistance to participate in the meetings of the Public Ethics Commission or its Committees, please contact the Office of the City Clerk (510) 238-7370. Notification two full business days prior to the meeting will enable the City of Oakland to make reasonable arrangements to ensure accessibility. Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at (510) 238-3593 or visit www.oaklandnet.com.

Approved for Distribution

Date

**JANUARY 2010
EXPENDITURE CEILINGS FOR CITY OF OAKLAND
ELECTED OFFICIALS AND CANDIDATES PER ELECTION**

Voluntary expenditure ceiling amounts are adjusted once annually on a calendar basis by the City Clerk to reflect any increase in the cost of living in the immediate San Francisco Bay Area as shown on the Consumer Price Index.

City Wide Offices (399,484 residents):

Mayor	\$379,000	\$.70 per resident / plus annual adjustment
City Auditor	\$271,000	\$.50 per resident / plus annual adjustment
City Attorney	\$271,000	\$.50 per resident / plus annual adjustment
Councilmember At-Large	\$271,000	\$.50 per resident / plus annual adjustment

Councilmembers

District 1 (53,749 residents)	\$109,000	\$1.50 per resident / plus annual adjustment
District 2 (53,228 residents)	\$108,000	\$1.50 per resident / plus annual adjustment
District 3 (57, 680 residents)	\$117,000	\$1.50 per resident / plus annual adjustment
District 4 (57,076 residents)	\$116,000	\$1.50 per resident / plus annual adjustment
District 5 (60,353 residents)	\$123,000	\$1.50 per resident / plus annual adjustment
District 6 (55,854 residents)	\$114,000	\$1.50 per resident / plus annual adjustment
District 7 (61,537 residents)	\$125,000	\$1.50 per resident / plus annual adjustment

School Board Members

District 1 (53,749 residents)	\$73,000	\$1.00 per resident / plus annual adjustment
District 2 (53,228 residents)	\$72,000	\$1.00 per resident / plus annual adjustment
District 3 (57, 680 residents)	\$78,000	\$1.00 per resident / plus annual adjustment
District 4 (57,076 residents)	\$77,000	\$1.00 per resident / plus annual adjustment
District 5 (60,353 residents)	\$82,000	\$1.00 per resident / plus annual adjustment
District 6 (55,854 residents)	\$76,000	\$1.00 per resident / plus annual adjustment
District 7 (61,537 residents)	\$83,000	\$1.00 per resident / plus annual adjustment

**JANUARY 2010
CONTRIBUTION LIMITATIONS FOR CITY OF OAKLAND
ELECTED OFFICIALS AND CANDIDATES**

Contribution Limitation amounts are adjusted once annually on a calendar basis by the City Clerk to reflect any increase in the cost of living in the immediate San Francisco Bay Area as shown on the Consumer Price Index.

Contributions from Persons (per election):

To Candidates and Controlled Committees who **have not** adopted the voluntary expenditure ceiling (**OCRA Article 3 §3.12.050 (A)**):

\$100.00

To Candidates and Controlled Committees who **have** adopted the voluntary expenditure ceiling (**OCRA Article 3 §3.12.050 (B)**):

\$700.00

Contributions from Broad-Based Political Committees (per election):

To Candidates and Controlled Committees who **have not** adopted the voluntary expenditure ceiling (**OCRA Article 3 § 3.12.060 (A)**):

\$300.00

To Candidates and Controlled Committees who **have** adopted the voluntary expenditure ceiling (**OCRA Article 3 §3.12.060 (B)**):

\$1,300.00

CITY OF OAKLAND, FILED
OFFICE OF THE CITY CLERK
PUBLIC ETHICS COMMISSION AND
LPF FORM NO. 1

10 AUG 18 PM 4:06

"STATEMENT OF ACCEPTANCE OR REJECTION
OF PUBLIC FINANCING"



I, Libby Schaaf (print name), declare that I am a candidate for the Office of City Council District 4 (state district number) in the November 2, 2010, municipal election.

I hereby agree to Accept (state preference) public financing
Accept/Reject

pursuant to the laws and rules of the Limited Public Financing Act (O.M.C. Chapter 3.13) during the November 2, 2010, election.

I understand that if I choose to *reject* public financing for the November 2, 2010, election that my decision is irrevocable and I will not be eligible to apply for or receive public financing at a later time for the November 2, 2010, election.

I further understand that if I fail to file this "Statement Of Acceptance Or Rejection Of Public Financing" by the deadline specified in O.M.C. §3.13.070(B) that my failure to do so will constitute an irrevocable rejection of public financing for the November 2, 2010, election.

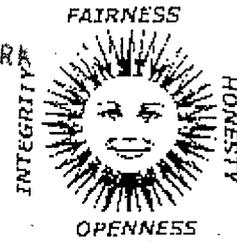
I hereby certify that the above statement is true and correct.

Executed on this 18th day of August, 2010.

Signature Libby Schaaf (candidate must sign here)

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
LPF FORM NO. 1

FILED
OFFICE OF THE CITY CLERK
OAKLAND
10 AUG 26 PM 3:50



"STATEMENT OF ACCEPTANCE OR REJECTION
OF PUBLIC FINANCING"

I, Clinton Killian (print name), declare that I am a candidate for the Office of City Council District 4 (state district number) in the November 2, 2010, municipal election.

I hereby agree to Accept (state preference) public financing
Accept/Reject
pursuant to the laws and rules of the Limited Public Financing Act (O.M.C. Chapter 3.13) during the November 2, 2010, election.

I understand that if I choose to **reject** public financing for the November 2, 2010, election that my decision is irrevocable and I will not be eligible to apply for or receive public financing at a later time for the November 2, 2010, election.

I further understand that if I fail to file this "Statement Of Acceptance Or Rejection Of Public Financing" by the deadline specified in O.M.C. §3.13.070(B) that my failure to do so will constitute an irrevocable rejection of public financing for the November 2, 2010, election.

I hereby certify that the above statement is true and correct.

Executed on this 25 day of August, 2010.

Signature: Clinton Killian (candidate must sign here)

II. APPLYING FOR PUBLIC FINANCING

1. Who May Participate In The Public Financing Program?

All candidates for the office of District City Councilmember who are certified to appear on the ballot may apply for public financing. Candidates for the Oakland Unified School District Board of Directors are no longer eligible.

2. How Does A Candidate Become Eligible To Receive Public Financing?

The first step in applying for public financing is to complete and file with the Public Ethics Commission LPF Form No. 1, entitled: "Statement Of Acceptance Or Rejection Of Public Financing." **See Enclosed Form No. 1.**

The candidate must complete, execute and timely file LPF Form No. 1 no later than fourteen (14) days after the City Clerk has certified the names of all candidates to appear on the ballot. Commission staff will send candidates a notice advising them of the specific deadline for filing LPF Form No. 1. ***The failure to timely file LPF Form No. 1 shall constitute an irrevocable rejection of public financing for the election in which the candidate's name appears on the ballot.***

After the candidate has timely filed his or her "Statement Of Acceptance Or Rejection Of Public Financing" the candidate may, prior to the date of the election, submit a claim for reimbursement. In order to do so, the candidate must meet the following conditions of eligibility:

- The City Clerk must have certified the candidate's name to appear on the ballot;
- The candidate must have filed OCRA Form No. 301 with the City Clerk, in which the candidate agrees to accept voluntary expenditure limitations;
- The candidate demonstrates that he or she has received campaign contributions totaling at least five (5) percent of the voluntary expenditure ceiling for the office being sought, exclusive of any personal loans or contributions, and which contributions originate from within the City of Oakland;
- The candidate demonstrates that he or she has made campaign expenditures totaling at least five (5) percent of the voluntary expenditure ceiling for the office being sought;
- The candidate is opposed by another candidate for the same office;

CITY OF OAKLAND
Public Ethics Commission

Jonathan Stanley, *Chair*
Barbara Green-Ajufo, *Vice-Chair*
Alaric Degrafinried
Alex Paul
Ai Mori
Richard Unger
Vacancy (Mayoral)



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612

(510) 238-3593

Fax: (510) 238-3315

**NOTICE TO ALL CANDIDATES
RUNNING IN CITY COUNCIL DISTRICTS
TWO, FOUR AND SIX DURING THE NOVEMBER 2010
MUNICIPAL ELECTION:**

AVAILABILITY OF PUBLIC FINANCING

At its meeting of July 20, 2010, the Oakland City Council will consider extensive amendments to the current program for providing public financing to eligible candidates for the office of City Council. If adopted, the amendments will transform the manner in which public financing is provided to candidates from a dollar-for-dollar match of contributions received, to one that reimburses candidates for certain campaign expenditures made.

A copy of the proposed amendments is posted on the Ethics Commission's website at www.oaklandnet.com.

Commission staff will notify all persons who have obtained Nomination Papers for eligible races regarding any City Council decision affecting the public financing program.

Please contact the Public Ethics Commission at 238-3593 if you have any questions or would like further information.

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**NOTICE TO CITY COUNCIL CANDIDATES
IN THE NOVEMBER 2010 MUNICIPAL ELECTION**

AVAILABILITY OF PUBLIC FINANCING

At its meeting of July 27, 2010, the Oakland City Council approved amendments to the Limited Public Financing Act. This Act provides public funds to eligible candidates to assist them in running for City Council office.

The new amendments will permit eligible candidates to obtain reimbursement for certain campaign expenditures, such as candidate filing and ballot fees, campaign literature, postage and website design. The candidate must provide a copy of the invoice and of the check(s) used to pay the invoice in order to obtain reimbursement. There are other qualifications and conditions that apply. The maximum amount of public financing available to each candidate has yet to be determined.

The Public Ethics Commission will be reviewing and approving the forms necessary to participate in the program at its meeting of August 2, 2010. Commission staff will send every City Council candidate a package of information about the program by August 6, 2010. A key requirement of the program is for candidates to complete, execute and timely file a "Statement Of Acceptance Or Rejection Of Public Financing" no later than fourteen (14) days after the City Clerk has certified the names of all candidates to appear on the November 2, 2010, ballot. Commission staff will send candidates a separate notice of the deadline and instructions for filing this form.

Please contact the Public Ethics Commission at 238-3593 if you have any questions or would like further information.

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**NOTICE TO CITY COUNCIL CANDIDATES
IN THE NOVEMBER 2010 MUNICIPAL ELECTION**

**DEADLINE TO FILE ACCEPTANCE OR REJECTION OF
PUBLIC FINANCING (LPF FORM NO. 1) IS AUGUST 26, 2010**

This is to advise all candidates running for City Council in Districts Two, Four and Six that the deadline to file their "Statement of Acceptance Or Rejection Of Public Financing" (LPF Form No. 1) is due in the office of the Public Ethics Commission no later than Thursday, August 26, 2010, by 5 p.m. A copy of LPF Form No. 1 is attached to this notice.

Please be advised that the decision to "reject" public financing for the November 2010 election is irrevocable. Also please be advised that the failure to timely complete and file LPF Form No. 1 by the August 26th deadline will constitute an irrevocable rejection of public financing for the November 2010 election.

Enclosed with this notice is a package of information about the public financing program. Please read the enclosed material carefully before deciding whether to accept or reject public financing. There are conditions and restrictions associated with the public financing program that could affect your decision whether to participate.

The Public Ethics Commission will determine at a meeting on August 17, 2010, the maximum amount that each candidate may be entitled to receive in public financing. Commission staff will advise all candidates of the Commission's decision in a subsequent notice.

Please contact the Public Ethics Commission at 238-3593 if you have any questions or would like further information.

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**NOTICE TO CITY COUNCIL CANDIDATES
IN THE NOVEMBER 2010 MUNICIPAL ELECTION**

**ETHICS COMMISSION AUTHORIZES INITIAL
ALLOCATION OF UP TO \$9,408 IN PUBLIC FINANCING
FOR EACH QUALIFYING CITY COUNCIL CANDIDATE**

**DEADLINE TO FILE ACCEPTANCE OR REJECTION OF
PUBLIC FINANCING (LPF FORM NO. 1) IS AUGUST 26, 2010**

At a special meeting on August 17, 2010, the Oakland Public Ethics Commission allocated a total of \$9,408 in available public financing for every qualifying district city council candidate in the November 2010 election. This amount may increase depending on the number of candidates who timely file an acceptance of public financing by the August 26, 2010, deadline.

Candidates running for City Council in Districts Two, Four and Six have until next Thursday, August 26 at 5 p.m., to file their "Statement of Acceptance Or Rejection Of Public Financing" (LPF Form No. 1) with the Public Ethics Commission. A copy of LPF Form No. 1 has been previously provided to candidates and is available from the Commission upon request.

Please contact the Public Ethics Commission at 238-3593 if you have any questions or would like further information about the public financing program.

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CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
RESOLUTION NO. 10-04

PROPOSED



**RESOLUTION AUTHORIZING THE RE-ALLOCATION OF AVAILABLE PUBLIC
FINANCING FROM THE ELECTION CAMPAIGN FUND
FOR THE NOVEMBER 2010 MUNICIPAL ELECTION**

BY ACTION OF THE OAKLAND PUBLIC ETHICS COMMISSION:

WHEREAS, Section 3.13.065 of the Limited Public Financing Act (Act) requires the Commission to determine at a noticed public meeting whether, based on the number of potentially eligible candidates, the amount of money in the Election Campaign Fund is adequate to provide the maximum amount to potentially eligible candidates and, if not, to order the disbursement of available funds on a pro rata or other equitable basis; and,

WHEREAS, Section 3.13.060(D) of the Act provides that the Public Ethics Commission ("Commission") may utilize up to 7.5 percent of the amount allocated to the Fund to cover the anticipated costs of administering the provisions of the Act; and,

WHEREAS, On August 17, 2010, the Commission adopted Resolution 10-02 allocating from the Election Campaign Fund a total of \$9,408 for each of the 12 potentially eligible candidates for district City Council elections in November 2010; and,

WHEREAS, On September 8, 2010, the Commission adopted Resolution 10-03 re-allocating the per candidate share of money in the Election Campaign Fund among five candidates who timely filed their respective "Statements Of Acceptance" of public financing with the Public Ethics Commission by the deadline of August 26, 2010, for a total maximum allocation of \$22,579 per participating candidate; and,

WHEREAS, On September 13, 2010, Commission staff learned that two potentially eligible district City Council candidates, Libby Schaaf and Clinton Killian, filed their "Statements Of Acceptance" with the Office of the City Clerk on August 18 and on August 26, respectively; and,

WHEREAS, Section 3.13.100(B) provides that the Commission shall review records submitted to determine a candidate's eligibility to receive public financing; and,

WHEREAS, Section 3.13.220 provides that the Act shall be "liberally construed" to accomplish its stated purposes which include, but are not limited to, ensuring that all

individuals have a fair and equal opportunity to participate in elective and governmental processes; encouraging competition for elective office; and ensuring that serious candidates are able to raise enough money to communicate their views and positions adequately to the public; and,

WHEREAS, Section 3.13.065 authorizes the Commission to revise the initial disbursement plans contained in Resolution 10-02; **therefore be it:**

RESOLVED: That the Statements of Acceptance by candidates Libby Schaaf and Clinton Killian are deemed to have been timely filed for purposes of determining their respective eligibility for public financing in the November 2010 election; and,

RESOLVED: that the allocated shares for all seven candidates who have timely filed a "Statement Of Acceptance" shall be re-allocated in the following manner:

1. After the deduction of an amount equal to 3 percent of the total funds existing in the Election Campaign Fund (\$116,387 - \$3,492), the difference (\$112,895) shall be allocated equally among seven participating candidates for a maximum total allotment of \$16,128 that each participating candidate may ultimately be entitled to receive; and,

RESOLVED, that any unclaimed money existing in the Election Campaign Fund after the November 2010 election shall remain in the Fund pursuant to Section 3.12.060(C) of the Act; and,

RESOLVED, that the Commission authorizes the Executive Director to make any changes to draft versions of this Resolution as directed by the Commission and to certify and issue a final version of this Resolution without further approval by the Commission.

CERTIFICATION RE: APPROVAL OF RESOLUTION

The foregoing Resolution was presented for approval at a duly noticed special meeting of the Oakland Public Ethics Commission ("Commission") held on September 22, 2010. A quorum of the membership of the Commission was present at the meeting. A motion approving the Resolution was made and seconded, and the motion was adopted by a majority of said quorum.

I hereby certify that the foregoing is true and correct.

Dated:

Daniel D. Purnell
Executive Director
Oakland Public Ethics Commission

ORDINANCE No. _____ C.M.S.

**ORDINANCE ESTABLISHING REGULATION OF
LOBBYISTS IN OAKLAND
MUNICIPAL CODE CHAPTER 3.20**

Oakland Municipal Code is amended to add Chapter 3.20 as follows:

Chapter 3. 20

THE CITY OF OAKLAND LOBBYIST REGISTRATION ACT

Article I. Findings and Purpose

3.20.010 Title

This ordinance shall be known as the City of Oakland Lobbyist Registration Act, hereafter "the Act."

3.13.011 Findings and Declarations

The Oakland City Council finds and declares:

A. Organizations rely upon the services of lobbyists to influence City officials and City employees about proposed or pending governmental decisions.

B. The people of Oakland have the need and right to know the identity of lobbyists who attempt to influence the decisions of City government and the means employed by them to advance the interests of their clients.

C. The disclosure of lobbyists, their activities, their clients and the interests being represented will improve public knowledge and confidence in the integrity of City government.

D. The disclosure of lobbyists, their activities, their clients and the interests being represented is necessary to ensure City officials are kept informed about the identity of persons whose interests the lobbyists represent and that City officials are not improperly influenced by such lobbyists.

3.13.012 Purpose of This Act

The purpose of this Act is to maintain a fair and open decision-making process in City government by requiring those who seek to influence the legislative and administrative actions of the City to register and publicly disclose their lobbying activities.

COMMENT: The Commission considered the above proposed "Findings" and "Purpose" language at its special meeting of September 24, 2009. Commission staff previously reported that the current version of the LRA does not contain any factual findings or a legislative purpose. The Commission generally favored the inclusion of the above-proposed "Findings" and "Purpose" language based on the established history of lobbying activities in Oakland as documented by the LRA's ongoing registration and reporting process.

Article II. Definitions and Interpretation of This Act

3.20.020 Words And Phrases

Words and phrases used in this Act shall have the same meanings and be interpreted in the same manner as words and phrases used in the Political Reform Act of 1974 as amended and the regulations issued pursuant thereto, unless otherwise expressly provided or unless the context otherwise requires.

3.20.030 Definitions

For the purposes of this ordinance, the following definitions shall be applicable:

- A. "Client" means the real party in interest, other than the local governmental lobbyist himself or herself, for whose benefit the services of a local governmental lobbyist are actually performed. An individual member of an organization shall not be deemed to be a "client" solely by reason of the fact that such organization is represented by a local governmental lobbyist as long as such member does not pay an amount of money or other consideration in addition to the usual membership fees for such representation.

Deleted: member is individually

Deleted: an employee or agent of the organization as a regular part of such employee's or agent's duties with the organization

COMMENT: At its meeting of November 2, 2009, the Commission directed staff to prepare language that would clarify that a "person is not a 'lobbyist' merely for representing his or her own interests" and that an individual who is a member of an organization is not a "client" of an organization's lobbyist unless the member pays additional compensation for representation.

Deleted: "Contractor" means any party to an agreement in which the value of the consideration exceeds one thousand dollars, and, (1) The city is a party, or (2) the redevelopment agency is a party, or (3) the agreement or its effectiveness is in any way dependent or conditioned upon approval by the city council or redevelopment agency board or any board or commission, officer or employee of the city or the agency. ¶

- B. ***COMMENT: At its meeting of November 2, 2009, the Commission determined that a "contractor" and a "person doing business with the City", as defined below, should be regulated outside the provisions of the LRA. Commission staff will develop an alternative proposal for their***

modification and submission into a different chapter of the municipal code.

C. "Designated employees" mean City and Redevelopment Agency employees and consultants who are designated employees within the meaning of the Political Reform Act of 1974, as amended, and who are required by the Political Reform Act or a City or Redevelopment Agency conflict of interest code to file financial interest disclosure statements. For purposes of this Act, a "designated employee" shall include those City employees and consultants whose positions are one of the designated positions listed in Appendix A of O.M.C. Chapter 3.16.

- Deleted: ¶
- Deleted: C.
- Deleted: city and redevelopment agency
- Deleted: city or redevelopment agency

COMMENT: *The last sentence of above subsection (C) is intended to provide guidance as to what City positions are included in the term "designated employees."*

D. "Local governmental lobbyist" means any individual:

(1) who receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month or who receives or is entitled to receive five-thousand dollars (\$5,000) or more in economic consideration in any calendar year for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action, or

- Deleted: : 1)
- Deleted: , other than reimbursement for reasonable travel expenses, or

(2) whose compensated activities as an employee, officer, director, manager or partner on behalf of any corporation, partnership, organization or any other entity operating under a fictitious name, include communication for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action.

- Deleted: duties
- Deleted: a salaried
- Deleted: or
- Deleted: association
- Deleted: directly or through agents with any public official, officer or designated employee,

When determining whether a person qualifies as a local governmental lobbyist, the provisions of this Act shall be interpreted broadly.

- Deleted: any
- Deleted: of the city or the redevelopment agency.
- Deleted: No
- Deleted: is
- Deleted: by reason of activities described in Section 3.20.030(A). In case of any ambiguity
- Deleted: definition of "local governmental lobbyist"

COMMENT: *Much Commission time has been spent reviewing proposals to amend the fundamental definition of "local governmental lobbyist." The Commission initially considered the provisions of above subparagraph (2), relating to the definition of an "in house" lobbyist. At its November 2, 2009, meeting, the Commission directed staff to prepare the above amendments to the definition of "local governmental lobbyist."*

At a May 5, 2010, meeting of the Lobbyist Registration and Campaign Finance Subcommittee, the Committee considered additional and alternative language to the definition of "in-house" lobbyist. The Committee discussed whether the existing, as well as the above-proposed definition of "in-house" lobbyist, created too broad of a definition, essentially regulating "professionals who lobby" rather than "professional lobbyists." The Committee thus submitted the following proposed language for Commission consideration. The following language retains the proposed definition for a "contract" lobbyist and modifies the above-proposed definition for "in-house lobbyist" by providing that lobbying

must be part of a compensated employee's, officer's, director's etc. "regular" job duties. It further provides that influencing City officers and employees is a "regular" job duty if such activity is specified in or inferred from that individual's job title or description, or if that individual influences two or more items of proposed or pending governmental actions within a consecutive six-month period:

D. "Local governmental lobbyist" means any individual:

Deleted: who:

(1) who receives or is entitled to receive one thousand dollars (\$1,000) or more in economic consideration in a calendar month or who receives or is entitled to receive five-thousand dollars (\$5,000) or more in economic consideration in any calendar year for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action or

Deleted: , other than reimbursement for reasonable travel expenses;

Deleted: (2) whose duties as a salaried employee, officer

Deleted: director of any corporation, organization or association include communication directly or through agents with any public official, officer or designated employee,

Deleted: any

Deleted: of the city or redevelopment agency. No

(2) whose regular and compensated duties as an employee, officer, director, manager, or partner on behalf of any corporation, partnership, organization or any other entity operating under a fictitious name, include making communications for the purpose of influencing a public officer or designated employee about a proposed or pending governmental action. For purposes of this subsection, making communications for the purpose of influencing a public officer or designated employee shall be deemed a "regular" job duty whenever: (a) such duties are specified in or reasonably inferred from an individual's written job description, job announcement or job title, or (b) the individual seeks to influence a public officer or designated employee on two or more items of proposed or pending governmental action during any consecutive six-month period.

When determining whether a person qualifies as a local governmental lobbyist, the provisions of this Act shall be interpreted broadly.

Deleted: is

Deleted: by reason

Deleted: activities described in Section 3.20.030(A). In case of any ambiguity, the definition of "local governmental lobbyist"

The Commission is asked to determine which of the above-two proposed definitions should be forwarded to the City Council for consideration.

An issue which the Commission did not determine was whether to include uncompensated representatives of organizations who make a minimum number of contacts with City officials and employees within the definition of "lobbyist." The Commission requested its legal counsel for an advisory opinion on whether the City could legally require uncompensated representatives to register as lobbyists and for staff to develop a minimum threshold of "contacts" that would trigger a registration and reporting requirement.

Commission staff has previously advised that it was not aware of any local lobbying laws that regulate "volunteer" representatives of organizations and that any proposal to include them would be controversial and possibly subject to legal challenge. Staff continues to recommend that the Commission proceed with the amendments already under consideration and take up the issue of whether to regulate

uncompensated representatives separately from the current set of proposed amendments.

E. "Governmental action" means any administrative or legislative action of the city or the redevelopment agency other than an action which is ministerial in nature.

Deleted: and

F. "Payment" means a payment, distribution transfer, loan advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

G. ***COMMENT: At its meeting of November 2, 2009, the Commission determined that a "contractor" and a "person doing business with the City", as defined, should be regulated outside the provisions of the LRA. Commission staff will develop an alternative proposal for their modification and submission into a different chapter of the municipal code.***

Deleted: "Person doing business with the city" means any person whose financial interests are materially affected by governmental action as defined by Section 3.20.030(E). It includes persons currently doing business with the city or the redevelopment agency, planning to do business with the city or agency, or having done business with the city or agency within two years. For purposes of this Act a person's financial interests shall not be found to be materially affected by the issuance of any license or permit which does not require the exercise of discretion by city or agency officers or employees. ¶

"Public officer" means the Mayor, members of the City Council, the City Attorney, the City Auditor, the City Clerk, and members of City boards and commissions who are required to file a statement of economic interest in connection with their service on a City board or commission.

COMMENT: Commission staff revised the definition of "public officer" to make it consistent with the Oakland City Charter and existing reporting requirements.

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H. "Public official" means an elected or appointed officer or employee or officially designated representative, whether compensated or not, of the United States or any of its agencies, the State of California, any political subdivision of the state, including cities, counties, districts, or any public corporation, agency or commission.

Article III. Registration of Lobbyists

3.20.040 Registration With The Public Ethics Commission

A. No person shall act as local governmental lobbyist before registering as a local governmental lobbyist with the Public Ethics Commission.

Deleted: City Clerk

B. At the time of registering, the local governmental lobbyist shall file with the Public Ethics Commission, in writing, his or her name, business and business addresses.

Deleted: City Clerk

Deleted: residence

C. The lobbyist shall reregister annually during the month of January and at that time shall resubmit the required information.

COMMENT: At its meeting of May 10, 2010, the Committee proposed that lobbyists register with the Commission and not the City Clerk.

3.20.045 Registration Fees

A. At the time of initial registration and annual re-registration as specified in Section 3.20.040, each local governmental lobbyist shall pay a fee of \$180.00. The Public Ethics Commission shall prorate the fee for initial registration by calendar quarter. The Public Ethics

Commission shall annually review the amount of registration fees and make any recommendation for their adjustment to the City Council.

B. The Public Ethics Commission shall deposit all fees collected pursuant to this Section to the City's general purpose fund.

COMMENT: The Commission directed staff to develop language for the imposition of an annual filing fee. The proposed amounts are based on the following factors: The number of hours Commission staff expends on an annual basis administering the registration and reporting process; the "mid range" salaries of Commission staff; and the number of lobbyists currently registered.

3.20.050 Cessation of Lobbying Activities

No later than thirty (30) days after a local governmental lobbyist has terminated all activities requiring registration under this Act, he or she shall file with the Public Ethics Commission: 1) A Notice Of Termination, and 2) a disclosure of lobbying activities containing the information required in Section 3.20.110 that has not been reported since the date of his or her last Quarterly Report. Upon the timely filing of a Notice Of Termination and disclosure of lobbying activities, the local governmental lobbyist shall be relieved of any further obligations under this Act until such time as he or she commences activity requiring registration.

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COMMENT: Commission staff submits the above-proposed amendments to clarify and memorialize current practice whenever a lobbyist terminates his or her lobbying activities.

3.20.060 Exceptions

The provisions of this Act shall not apply:

- A. To a public officer, City employee or City consultant acting in his or her official capacity.
- B. To the publication or broadcasting of news items, editorials, or other comments, or paid advertisements, which directly or indirectly urge governmental action.
- C. To a person specifically invited by the city council or redevelopment agency or any committee thereof, or by any board or commission, or any committee of a board or commission, or by any officer or employee of the city or agency charged by law with the duty of conducting a hearing or making a decision, for the purpose of giving testimony or information in aid of the body or person extending the invitation so long as any testimony or information is communicated at a public meeting or hearing, or is submitted in a writing subject to public inspection or copying.

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COMMENT: Above subsection (C) is the so-called "invited testimony" exception to the LRA. Other local lobbying ordinances contain similar provisions. At its meeting of May 10, 2010, the Committee proposed that

the exception be limited only to testimony or information provided in a public forum or as a public record.

- D. To a person who, without extra compensation and not as part of, or in the ordinary course of, his or her regular employment, presents the position of his or her organization or any information or analysis when that organization has one or more of its officers, directors, employees or representatives already registered under the provisions of this Act and the person communicating such position, information or analysis is in the presence of the organization's registered local governmental lobbyist.

COMMENT: Above subsection (D) addresses the situation in which a representative of an organization accompanies or assists a registered lobbyist in "present[ing] the position of his or her organization." A lobbyist may, for example, bring a person who has specific knowledge of an issue to a meeting with City officials or employees. Under current law, it is likely that person would not be considered a lobbyist.

At its May 10, 2010, meeting, the Committee noted that the application of this section becomes potentially broader when these other persons begin influencing City officials outside the presence of a lobbyist. Thus the Committee recommends that the current exception be amended to provide that the exception apply only when the communication is made in the presence of the organization's registered local governmental lobbyist.

- E. Any attorney, architect or licensed engineer whose attempts to influence governmental action are limited to: (1) appearing at a public meeting, public hearing, or other official proceeding open to the public; or (2) Preparing or submitting documents or writings in connection with the governmental action for use at a public meeting, public hearing, or other official proceeding open to the public; and (3) Contacting city or redevelopment agency employees or agents working under the direction of the city administrator or agency or department director directly relating to (1) or (2) above.

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COMMENT: Many local lobbyist registration ordinances provide an exception similar to above subsection E. Commission staff previously commented on the above exception stating that its application is primarily in the context of the City's planning and development process in which "attorneys, architects and civil engineers" are retained by an applicant to obtain the necessary permits and approvals on a particular project. Since these persons could otherwise meet the definition of a "contract" lobbyist, the policy issue is whether to require the many licensed professionals who routinely meet and confer with City staff in connection with securing permits and approvals on various residential, commercial or industrial projects to register as lobbyists. Any communications occurring outside those specified in the current exception could trigger a registration and reporting requirement.

Commission staff notes that the above exception is narrowly drawn in that it applies only to three recognized and licensed professions, and is

confined to a fairly narrow range of communications. The existing exception should arguably be modified to 1) permit any kind of "licensed" engineer (structural, seismic, geologic, mechanical) to take advantage of this exception, and 2) "city manager" should be conformed to the current term of "city administrator", and "executive director" should be conformed to the current term of "agency or department director".

At its May 10, 2010, meeting, the Committee affirmed the Commission's support for this exception.

- F. To designated representatives of an employee organization recognized by the City whose activities are limited to communicating with City officials or their representatives regarding 1) wages, hours and other terms and conditions of City employment pursuant to the procedures set forth in Government Code Sections 3500 -- 3510, or 2) the administration, implementation or interpretation of an existing employment agreement with the City.

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COMMENT: Government Code Sections 3500 -- 3510 (aka the "Meyers-Milias-Brown Act") governs the process by which public employers and their employees "resolve disputes" regarding wages, hours and other terms and conditions of employment. At its May 10, 2010, meeting, the Committee recommended that the above-amendments be considered to clarify that it is the employee organizations recognized by the City of Oakland whose designated representatives are exempted from registering as lobbyists so long as they confine their communications to the existing two specified subject matters.

- G. To persons whose only activity is to 1) submit a bid on a competitively bid contract, 2) respond to a request for proposal or qualifications, or 3) negotiate the terms of a written contract if selected pursuant to such bid or request for proposal or qualifications. This exception shall not apply to persons who attempt to influence the award of terms of a contract with any elected official or member of any City board or commission.

- H. To a person whose only communications regarding a proposed or pending governmental decision are made, submitted or distributed at a publicly noticed meeting of the City Council, Redevelopment Agency, City board or commission, or any standing committee of the City Council, Redevelopment Agency or City board or commission, and the person publicly identifies himself or herself and the name of the person or client on whose behalf the communication is made.

COMMENT: The above-proposed subsection H is another proposed exception that the Commission has debated extensively. It seeks to exempt persons who would otherwise qualify as lobbyists as long as they limit their efforts to influence governmental decisions to public meetings.

At its May 10, 2010, meeting, the Committee affirmed the Commission's support for this exception.

I. To a compensated representative of a non-profit corporation that operates or manages property in which the City or Redevelopment Agency has an ownership or possessory interest and on which property the non-profit corporation performs a public function or service on behalf of the City, Redevelopment agency, or on behalf of a multi-governmental agency in which the City or Redevelopment Agency is a member.

COMMENT: *The above-proposed subsection I also has a long history of Commission discussion. It proposes a policy exemption for compensated representatives of local non-profit organizations such as the Museum Foundation, the Chabot Foundation, and the Zoo Society, who communicate regularly with City officials regarding the operation and maintenance of facilities that perform a public function or service.*

At its May 10, 2010, meeting, the Committee affirmed the Commission's support for this exception.

3.20.070 RESERVED

COMMENT: *Commission staff proposes that the above "Order To Show Cause" process be eliminated primarily because of staff concerns that it fails to provide sufficient notice and fair process to respondents. Commission staff recommends that any allegations pertaining to a violation of the Act be submitted under the Commission's General Complaint Procedures as specified in Section 3.20.200, below. The language in above sub-paragraph (C) has been modified and included as part of the civil penalties contained in Section 3.20.200(C), below.*

3.20.080 Availability of Information.

All registration information shall be retained by the Public Ethics Commission for a period of five years from the date of filing, shall constitute part of the public records of the City, and shall be open to public inspection.

3.20.090 Filing Under Penalty of Perjury

All information required by this Act shall be filed with the Public Ethics Commission on forms prescribed by the Public Ethics Commission, and accompanied by a declaration by the local governmental lobbyist that the contents thereof are true and correct under penalty of perjury.

3.20.100 Records

A local governmental lobbyist shall retain, for a period of five years, all books, papers and documents necessary to substantiate the registration required to be made under this chapter.

Deleted: Noncompliance - Order to Show Cause¶

¶
A. Upon the request of the council, the mayor, or any board or commission or member thereof, or any officer or designated employee of the city or redevelopment agency, the Public Ethics Commission shall issue an order to show cause to any unregistered person.¶

¶
B. Such order shall specify a time and place where such person shall appear to provide evidence satisfactory to the Public Ethics Commission that he or she has complied with the registration requirement or is exempt from registration.¶

¶
C. If the Public Ethics Commission determines that such person is subject to registration and he or she fails to register within seven days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the city council, redevelopment agency or other board or commission at a noticed public meeting or upon oral petition on his or her own behalf. Such debarment shall be in effect for three months from the date of such determination or until registration, whichever is later.

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Article IV. Disclosure Of Lobbying Activities

3.20.110 Quarterly Disclosure

For each calendar quarter in which a local governmental lobbyist was required to be registered, he or she shall file a quarterly report with the [Public Ethics Commission](#). The reports shall be due no later than 30 days after the end of the calendar quarter. The report shall contain the following information:

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- A. The item(s) of governmental action and the name and address of the client(s) on whose behalf the local governmental lobbyist sought to influence.
- B. For each item of governmental action sought to be influenced, 1) the name of each city officer with whom the lobbyist communicated, 2) the name and title of any city boardmember or commissioner with whom the lobbyist communicated, and 3) the identity of any city employee with whom the lobbyist communicated identified only by the office or department in which the employee works and his or her job title.
- C. A brief narrative description (no longer than three sentences) of the position advocated by the local governmental lobbyist on behalf of the identified client.
- D. If any lobbyist, or a registered client at the behest of a lobbyist, employs or hires an elected city officeholder, candidate for elected office, a designated employee, or a member of the immediate family of one of these individuals, the lobbyist shall disclose 1) the name of the person employed or hired, 2) a description of the services actually performed, and 3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.
- E. If any elected city officeholder or candidate for elected city office employs or hires a lobbyist to provide compensated services to the officeholder or candidate, the lobbyist shall disclose 1) the name of the person who employed or hired the lobbyist, 2) a description of the services actually performed, and 3) the total payments made during the reporting period identified only by the following categories: less than \$250; between \$250 and \$1,000; greater than \$1,000 but less than \$10,000; greater than \$10,000.
- F. If a lobbyist solicits any person to make a contribution to an elected city officeholder, candidate for city office or to any committee or fund controlled by such officeholder or candidate, the lobbyist shall disclose the names of the persons whom the lobbyist solicited, and the officeholder or candidate for whose benefit each solicitation was made. A solicitation does not include a request for a contribution made (1) in a mass mailing sent to members of the public, (2) in response to a specific request for a recommendation, (3) to a gathering which members of the public may attend, or (4) in a newspaper, on radio or television, or in any other mass media. A lobbyist does not "solicit" solely because his or her name is printed with other names on stationary or a letterhead used to request contributions. If a lobbyist makes a solicitation to more than fifty (50) individual members or employees of a corporation, union or other association that is a registered client of the lobbyist, or if the lobbyist makes a solicitation to all members or employees of a corporation, union or association that is a registered client

of the lobbyist, the lobbyist may choose to disclose the name of the registered client instead of the names of the persons whom the lobbyist actually solicited.

Article V. Prohibitions

3.20.120 No Unregistered Employment or Activity

- A. A local governmental lobbyist shall not engage in any activity on behalf of a client as a local governmental lobbyist unless such lobbyist is registered and has listed such client with the Public Ethics Commission.
- B. No person shall accept compensation for acting as a local government lobbyist except upon condition that he or she forthwith register as required by this Act.

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3.20.130 Personal Obligation of City Officials Prohibited

Local governmental lobbyists and their clients shall abstain from doing any act with the express purpose and intent of placing any public officer or designated employee under personal obligation to such lobbyist or client.

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COMMENT: The above references to "contractors" and "persons doing business with the City" were removed for the reasons cited above.

3.20.140 Deception Prohibited

Local governmental lobbyists and their clients shall not deceive or attempt to deceive a public officer or designated employee as to any material fact pertinent to any pending or proposed governmental action including, without limitation, sending a written communication in the name of a fictitious person.

Deleted: No local

Deleted: , client, contractor or person doing business with the city or the redevelopment agency

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COMMENT: The above references to "contractors" and "persons doing business with the City" were removed for the reasons cited above. The final phrase, "including, without limitation, sending a written communication in the name of a fictitious person" reflects the Commission's previous intent to include part of Section 3.20.160 into above Section 3.20.140.

3.20.150 Improper Influence Prohibited.

No local governmental lobbyist shall cause or influence the introduction of any ordinance, resolution, appeal, application, petition, nomination or amendment thereto for the purpose of thereafter being employed as a lobbyist to secure its granting, denial, confirmation, rejection, passage or defeat.

Deleted: False Appearances Prohibited.

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¶ No local governmental lobbyist, client, contractor, or person doing business with the city or the redevelopment agency shall attempt in any way to create a fictitious appearance of public favor or disfavor of any governmental action or to cause any communication to be sent to a city or agency officer or designated employee in the name of any fictitious person or in the name of any real person, except with the consent of such real person. ¶

3.20.160 RESERVED.

COMMENT: The above Section 3.20.160 was recommended for deletion based on the Commission's assessment that "creating a fictitious appearance of public favor or disfavor" was too vague to be enforceable

but for the prohibition on sending a communication in the name of a fictitious person, which has been incorporated into Section 3.20.140, above.

3.20.170 Prohibited Representations.

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Local governmental lobbyists shall not represent that they can control or obtain the vote or action of any public officer or designated employee.

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Deleted: , client, contractor, or person doing business with the city or the redevelopment agency

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Deleted: , either directly or indirectly, orally or in writing

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COMMENT: The above references to "contractors" and "persons doing business with the City" were removed for the reasons cited above.

3.20.180 Restriction On Payments And Expenses Benefiting Local Public Officials, Candidates For Local Office, Designated Employees And Immediate Families

- A. No lobbyist or a lobbyist's registered client shall make any payment or incur any expense that directly benefits an elected city officeholder, candidate for elected city office, a designated employee, or a member of the immediate family of one of these individuals, in which the cumulative value of such payments or expenses exceeds \$240 during any calendar year.
- B. The payments and expenses specified in subsection A include gifts, honoraria, and any other form of compensation but do not include (1) campaign contributions; (2) payments or expenses that, within 30 days after receipt, are returned unused or are reimbursed; (3) food, beverages or occasional lodging provided in the home of an individual lobbyist or individual lobbyist's registered client when the individual or member of the individual's family is present; (4) a pass or ticket to a fundraising event for a campaign committee or candidate, or for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code; (5) a pass or ticket given to a public agency and which meets the provisions of 2 Cal.Code of Regs. No. 18944.1(a) through (e), inclusive; (6) informational material; and (7) salaries, consulting fees or other payments for services rendered or bargained for. No other exception to, or exclusion from, the definition of gift or honoraria contained in the Political Reform Act of 1974 as amended, and the regulations issued pursuant thereto, shall apply to this section.

3.20.190 Restriction On Former City Officers, Department Heads And Budget Directors From Acting As A Local Governmental Lobbyist

Deleted: Elected

No officer of the city, or person who has held the position of department head or budget director, shall be permitted to act as a local governmental lobbyist for a period of one year after leaving office.

COMMENT: The above proposed amendment merely conforms the title to the current text.

Article VI. Enforcement

3.20.200 **Civil Violation; Procedures and Action**

- A. Any person who intentionally or negligently violates this Act is subject to civil enforcement proceedings before the Public Ethics Commission pursuant to the Commission's General Complaint Procedures. No complaint alleging a violation of any provision of this Act shall be filed with the Public Ethics Commission more than four years after the date the violation occurred.
- B. If the Public Ethics Commission finds a violation of this Act, the Commission may (1) Find mitigating circumstances and take no further action, (2) issue a public statement or reprimand, or (3) impose a civil penalty in accordance with this Act.
- C. In addition to any other penalty or remedy available, if the Public Ethics Commission determines, pursuant to a hearing conducted under the Commission's General Complaint Procedures, that a person has been acting as a local governmental lobbyist without first registering with the Public Ethics Commission in accordance with this Act and he or she fails to register within fourteen (14) days of that determination, he or she shall be barred from acting as a local governmental lobbyist except when appearing before the city council, redevelopment agency or other board or commission at a noticed public meeting or upon oral petition on his or her own behalf. Such debarment shall be in effect until registration occurs.

COMMENT: The above-subsection (C) was transferred from existing Section 3.20.070(C).

3.20.210 **Civil Penalties; Late Fines**

- A. Civil penalties shall be imposed by resolution of the Public Ethics Commission.
- B. Except as otherwise specified in this Act, the Commission may impose penalties of up to one thousand dollars (\$1,000) for each violation sustained.
- C. In addition to any other penalty or remedy available, if any person fails to file any report or statement required by this Act, after any deadline imposed by this Act, such person may be liable to the City in the amount of \$25 per day after the deadline until the statement or report is filed, up to a maximum amount of \$500. Liability need not be enforced by the Commission if its Executive Director determines that the late filing was not willful and that enforcement of the penalty would not further the purposes of this Act. No liability shall be waived if a statement or report is not filed within 10 days after the Executive Director has sent specific written notice to the filer of the filing requirement.

Deleted: complaint

COMMENT: The Commission agreed conceptually to include the above "late fine" provision to the LRA. As a general principle, late fines have a dual purpose: to create an incentive for timely filing and to penalize those who are late and delay public disclosure of information. At its meeting of May 10, 2010, the Committee recommended a \$25 per day late fine up to a

maximum amount of \$500 as appropriate for achieving these two purposes.

D. If any civil penalty, late fine or registration fee imposed by the Public Ethics Commission is not timely paid, the Commission shall refer the debt to the appropriate City agency or department for collection.

3.30.220 Criminal Violation

- A. Any person who knowingly or willfully violates the provisions of this Act is guilty of a misdemeanor.
- B. The prosecution of any misdemeanor violation of this Act shall commence within four years after the date on which the alleged violation occurred.
- C. No person convicted of a misdemeanor violation of this Act may act as a lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one year after such conviction.

3.20.230 Effective Date

The effective date of this Act shall be September 1, 2002.

3.20.240 Severability

The provisions of this Chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Chapter, or the validity of its application to other persons or circumstances.

CITY OF OAKLAND
Public Ethics Commission

Jonathan Stanley, *Chair*
Barbara Green-Ajufo, *Vice-Chair*
Alaric Degrafinried
Alex Paul
Ai Mori
Richard Unger
Vacancy (Mayoral)



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: September 22, 2010

RE: A Staff Report And Action To Be Taken Regarding Proposed Amendments To O.M.C. Chapter 3.20 (Lobbyist Registration Act)

On May 10, 2010, the Commission's Lobbyist Registration and Campaign Finance Committee considered a proposed set of amendments to the Lobbyist Registration Act (LRA). The Commission had previously requested the Committee to review the proposed amendments which the Commission has developed over a 12-month period. The Committee reviewed the amendments and, in several cases, made additional recommendations which now return to the Commission for consideration. **Attachment 1.**

Commission staff has annotated the attached redline to identify and discuss the sections that the Committee reviewed and any further modifications that the Committee recommends.

As stated before, Commission staff recommends that the Commission take action on some version of the proposed amendments to address needed revisions to the LRA. Two new areas of consideration, whether to require volunteer representatives of an organization to register as lobbyists, and how best to re-write and re-codify existing restrictions on the activities of so-called "contractors" and "persons doing business with the City" are recommended for separate Commission consideration.

Respectfully submitted,

Daniel D. Purnell
Executive Director

CITY OF OAKLAND
Public Ethics Commission

Jonathan Stanley, *Chair*
Barbara Green-Ajufo, *Vice-Chair*
Alaric Degrafinried
Alex Paul
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Vacancy (Mayoral)



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: September 22, 2010

RE: A Staff Report And Action To Be Taken Relating To The Eligibility Of District Four Candidates Libby Schaaf and Clinton Killian To Receive Public Financing In The November 2010 Election; Potential Re-Allocation Of The Election Campaign Fund To Include Candidates Schaaf and Killian

I. BACKGROUND

On July 27, 2010, the Oakland City Council adopted a broad set of amendments to the Limited Public Financing Act (LPFA), O.M.C. Chapter 3.13. The amendments revised the manner in which candidates for district City Council can apply for and receive public financing to assist in their campaigns. The program now permits eligible candidates to seek reimbursement of specified campaign expenses.

Following the City Council's adoption of the amendments, Commission staff sent a series of announcements to potentially eligible district City Council candidates advising them of the availability of public financing, and reminding them of the August 26, 2010, deadline by which their "Statement of Acceptance or Rejection of Public Financing" ("Statement") would be due. **Attachment 1.** On or about August 6, 2010, all potentially eligible candidates also received a copy of the Commission's guide, "How To Apply For Public Financing." In the deadline announcements and in the relevant portions of the handbook, Commission staff advised that the Statements should be filed with the Public Ethics Commission. **Attachment 2.**

By the close of business on August 26, 2010, a total of five candidates for district City Council had filed their respective Statements with the Commission. On that basis, Commission staff prepared and submitted for Commission approval a proposed re-allocation of the money existing in the Election Campaign Fund among the five candidates. The Commission approved the proposed re-allocation at its meeting of September 8, 2010.

On September 13, 2010, Commission staff learned that two district City Council candidates, Libby Schaaf and Clinton Killian, had filed their respective Statements with the Office of the City Clerk instead of with the Commission. City Clerk records indicate that Ms. Schaaf filed her Statement on August 18, 2010. Mr. Killian filed his statement with the City Clerk on August 26, 2010, at 3:50 p.m. **Attachments 3 and 4.** The Office of the City Clerk never apprised the Commission that these Statements had been filed by the candidates. Both candidates request the Commission to determine that their Statements were timely filed for purposes of determining their eligibility to participate in the public financing program.

II. ELIGIBILITY OF CANDIDATES LIBBY SCHAAF AND CLINTON KILLIAN

Section 3.13.070(B) provides that the Statements shall be filed with the Commission:

*"Each candidate for District City Council shall file **with the Public Ethics Commission** a Statement of Acceptance or Rejection of Public Financing on a form approved by the Public Ethics Commission no later than fourteen (14) calendar days after the date the City Clerk has certified the names of candidates to appear on the ballot for the election in which public financing will be sought. The Statement of Acceptance or Rejection of Public Financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a Statement of Acceptance or Rejection of Public Financing shall constitute a rejection of public financing." [Emphasis added.]*

Section 3.13.100(B) authorizes the Commission to determine candidate eligibility:

"The Public Ethics Commission shall review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the Commission or its designee shall inform the candidate of the reasons why the candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies."

Section 3.13.220 states "The act shall be liberally construed to accomplish its purposes."

Section 3.13.030 sets forth the "purposes" of the Act:

"The purpose of this act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:

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 of Oakland, 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 reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.*
- D. To encourage competition for elective office.*
- E. To allow candidates and office holders 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 important issues involved in political campaigns.*
- G. To help preserve public trust in governmental and electoral institutions."*

Ms. Schaaf told Commission staff that she presented her Statement on August 18 to the City Clerk's Office for filing. The Clerk's Office date-stamped and received the document. As the City's "filing officer" for all other election and campaign-related material, Ms. Schaaf said she believed the form was timely and properly filed. Mr. Killian's campaign treasurer, Dean Jackson, also told Commission staff that he and Mr. Killian filed their Statement of Acceptance under the belief that filing with the City Clerk would constitute a timely filing.

In light of the broad legislative purposes of the LPFA and its requirement for a "liberal construction" to accomplish those purposes, Commission staff recommends that the Commission determine that both Statements were timely filed for purposes of determining eligibility. There appears to be no material prejudice or harm resulting from filing the Statements in one City office as opposed to another. Ms. Schaaf and Mr. Killian will still be required to meet other specified conditions of eligibility. Furthermore, at the time of this writing, no other candidate has submitted a formal claim for reimbursement indicating they or their campaigns would be prejudiced from a possible reduction in the maximum amount to which they may ultimately be entitled to receive.¹ The Commission should, however, consider any claim of material hardship or prejudice from other participating candidates after they receive notice of this proposed action.

Respectfully submitted,

Daniel D. Purnell
Executive Director

¹ As proposed Resolution 10-04 indicates, a re-allocation of money in the Election Campaign Fund would result in a reduction from \$22,579 to \$16,128 in the maximum amount that a participating candidate could claim.

CITY OF OAKLAND
CITY ATTORNEY'S OFFICE

LEGAL OPINION

TO: DANIEL D. PURNELL
Executive Director
Public Ethics Commission

FROM: JOHN A. RUSSO
City Attorney
Office of the City Attorney



DATE: September 2, 2010

RE: Independent expenditure committees and the expenditure ceiling for candidates

INTRODUCTION

In 1999, the Oakland City Council approved Ordinance 12158, The City of Oakland Campaign Reform Act (OCRA), with the purposes of placing limitations on contributions made to political campaigns, establishing expenditure ceilings for certain campaigns, and providing for enforcement procedures. (OCRA is found at Oakland Municipal Code Chapter 3.12.)

You have asked this Office to opine as to the provisions concerning independent expenditure committees and the expenditure ceiling for candidates.

QUESTIONS

1) What is an "independent expenditure committee" as used in OCRA Section 3.12.220? Does it refer to a committee defined under Government Code Section 82013(a) and/or Section 82013(b)?

2) What does the phrase "in the aggregate" mean as used in OCRA Section 3.12.220 with respect to whether an independent expenditure committee has spent more than the specified threshold limits in any given election for City office?

3) What is the proper methodology for adjusting the current threshold limits in Section 3.12.220 (i.e., \$15,000 and \$70,000) by the increase in the CPI when the

existing cross-reference to Section 3.12.180 is inapplicable? Should the method contained in Section 3.12.200 be used instead?

4) Do the existing cross references to Sections 3.12.050C and 3.12.060C in Section 3.12.220 actually refer to existing Sections 3.12.050B and 3.12.060B, respectively?

SUMMARY CONCLUSIONS

1) The term "independent expenditure committee" as used in OCRA Section 3.12.220 means any "committee" that makes \$1,000 or more in "independent expenditures." It includes committees as defined by Government Code Subsections 82013(a) and 82013(b).

2) The phrase "in the aggregate" means the total amount that an independent expenditure committee has spent on a single race, regardless of how many separate payments were made by that independent expenditure committee in support of or opposed to a single candidate.

3) The existing reference to Section 3.12.180 is a citation error. The City Council intended the threshold limits in Section 3.12.220 to be increased by the method described in Section 3.12.200.

4) The existing reference to Sections 3.12.050(C) and 3.12.060(C) in Section 3.12.220 is a renumbering error. Reference should have been made to Sections 3.12.050(B) and 3.12.060(B), respectively.

ANALYSIS

Question 1: What is an "independent expenditure committee" as used in OCRA Section 3.12.220? Does it refer to a committee defined under Government Code Section 82013(a) and/or Section 82013(b)?

OCRA Has Not Defined "Independent Expenditure Committee"

Because there is no definition in OCRA of "independent expenditure committee," the Executive Director of the PEC has asked the City Attorney's Office for an interpretation. OCRA provides that Oakland's ceilings on campaign expenditures lift when an "independent expenditure committee" spends more than certain trigger amounts set in the ordinance. The triggers are \$15,000 for district elections and \$70,000 in City-wide elections. (The City Clerk adjusts the amounts annually based on changes in the Consumer Price Index.)

3.12.220 - Expenditure ceilings lifted.

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 independent expenditure committee in the aggregate spends more than fifteen thousand dollars (\$15,000.00) on a District City Council or School Board election or seventy thousand dollars (\$70,000.00) 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 (\$15,000.00) and seventy thousand dollars (\$70,000.00) 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 of this chapter. (Emphasis added.)

OCRA refers to the definitions of the state Political Reform Act, "Government Code Sections 81000 et seq., as they appear in 1998 . . ." for interpretations of other terms.

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 shall govern the interpretation of this Act.

The State Government Code Implies That An Independent Expenditure Committee Is A Committee That Makes Independent Expenditures.

The 1998 state Political Reform Act itself does not have a definition of "independent expenditure committee." It does have definitions for "independent expenditure" and "committee."

"Independent expenditure" means an expenditure made by any person, including a payment of public moneys by a state or local government agency, in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. (Government Code Section 82031.)

A "committee" is any person or combination of persons who either (a) receives \$1,000 in contributions, (b) makes independent expenditures of \$1,000, or (c) makes political contributions of \$10,000 or more.

"Committee" means any person or combination of persons who directly or indirectly does any of the following:

- (a) Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year;
- (b) Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- (c) Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees. (Government Code Section 82013.)

Putting these two sections together, under the text of the 1998 state Political Reform Act, an "independent expenditure committee" should mean any "committee," defined by Government Code 82013 (a),(b), or (c), that makes "independent expenditures."

Proposition 208 And FPPC Staff's 1998 Usage Of "Independent Expenditure Committee"

As mentioned above, the terms of OCRA are to be interpreted with the definitions of the 1998 Political Reform Act. (OCRA Section 3.12.040.) The City Council adopted OCRA in 1999. Although it has been amended since then, in 1998 the Political Reform Act included provisions – very similar to those in OCRA – for expenditure limits and the lifting of expenditure limits when an "independent expenditure committee" spends more than a set amount in independent expenditures. The people of the state of California enacted Government Code Section 85404 and 85500 through Proposition 208. Section 85404(c) reads:

If an independent expenditure committee or committees in the aggregate spend in support or opposition to a candidate for statewide office more than 25 percent of the applicable voluntary expenditure ceiling, the voluntary expenditure ceiling shall be increased two times the limit specified in Section 85400 for any candidate running for the same statewide office. Any candidate running for that office who originally accepted voluntary expenditure ceilings shall be exempt from the limits that political party committees may contribute to a candidate in Section 85304, and such candidates shall be permitted to continue receiving contributions at the amounts set forth in subdivision (c) of Section 85402. (Former Government Code Section 85404(c), emphasis added.)

Proposition 208 did not define the term "independent expenditure committee." However, FPPC staff, in interpreting Proposition 208 in 1997, referenced Government Code Section 85500(b) and used the term "independent expenditure committee" to include any committee that made \$1,000 or more in independent expenditures. ("[I]ndependent expenditure committee as defined by Government Code Section 85500(b)." Frommer Advice Letter, Cal. FPPC Adv. A-97-297. (July 1, 1997).) Section 85500(b) states:

(b) Notwithstanding subdivision (d) of Section 85301, any committee that makes independent expenditures of one thousand dollars (\$1,000) or more supporting or opposing a candidate shall not accept any contribution in excess of two hundred fifty dollars (\$250) per election." (former Government Code Section 85500(b). (Emphasis added.)

See also Shaw Advice Letter, Cal. FPPC Adv. A-97-066 (April 2, 1997), see also usage in Lapsley Advice Letter, Cal. FPPC Adv. A-97-014 A-97-014 (February 05, 1997); Johnson Advice Letter Cal. FPPC Adv. I-97-427 (September 30, 1997). Thus the FPPC staff used this shorthand in a context, similar to Oakland's current context, Proposition 208's expenditure ceilings (former Government Code Section 85404(d)) as well on limits on contributions to "any committee that makes independent expenditures" (former Government Code Section 85500(b)).

In January 1998, a federal district court enjoined enforcement of Proposition 208. In the 2000 November election, while the case was on appeal, the voters adopted Proposition 34, which repealed Proposition 208. The repeal swept away the state's expenditure limit along with the trigger involving "independent expenditure committees." However, as of 1998, the time period referenced for definitional guidance in Oakland's OCRA, an "independent expenditure committee" under state law was any committee that made \$1,000 or more in independent expenditures.

The Fair Political Practices Commission Staff's Current Narrower Usage Is Inapplicable to OCRA

The FPPC's staff usage of the term "independent expenditure committee" has varied over time. Currently FPPC staff uses the term "independent expenditure committee" narrowly. This narrow usage is not applicable to OCRA.

According to FPPC Manual 6, "Independent expenditure committees do not receive contributions for the purpose of making expenditures supporting or opposing California candidates or ballot measures." FPPC Manual 6. In other words, under current FPPC staff usage, any committee that receives political contributions is not an "independent expenditure committee." This usage is based on the staff's delineation between three subsections of Government Code Section 82013, *supra*, which defines

committees. See also Garcia Advice Letter, Cal. FPPC Adv. I-00-198 (September 6, 2000.)

In FPPC staff short hand, committees that receive political contributions (Section 82013(a)) are exclusively "recipient committees, committees that only make independent expenditures (Section 82103(b)) are "independent expenditure committees," and committees that only give \$10,000 or more in political contributions (Section 82013(c)) are exclusively "major donor committees." Mark Advice Letter, Cal. FPPC Adv. I-93-139 (May 20, 1993).

The term "independent expenditure committee" is also not defined by the current Political Reform Act, or its interpreting regulations. Moreover, current state law does not have expenditure limits as Oakland does now. OCRA, by its own terms, looks to earlier state law for definitional guidance. For these reasons, the FPPC current staff usage is not applicable to OCRA. Given the history of FPPC's staff usage in the similar context in 1998 and the text of the former Political Reform Act, we conclude that "independent expenditure committee" in OCRA means any "committee" that makes \$1,000 or more in independent expenditures. This includes committees as defined by Government Code Subsections 82013(a) and 82013(b).

Question 2: What does the phrase "in the aggregate" mean as used in OCRA Section 3.12.220 with respect to determining whether an independent expenditure committee has spent more than the specified threshold limits in any given election for City office?

OCRA Section 3.12.220 ("Expenditure ceilings lifted") provides in relevant part:

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 independent expenditure committee ***in the aggregate*** spends more than fifteen thousand dollars (\$15,000) ***on a District City Council or School Board election*** or seventy thousand dollars (\$70,000) ***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. (Emphasis added.)

The phrase "in the aggregate" as used in this section means the total amount that an independent expenditure committee has spent on a single race, regardless of how many separate payments the independent expenditure committee made on that race.

The goal of statutory construction is to ascertain and effectuate the legislature's intent, looking first to the words of the statute, giving them their usual and ordinary meaning. People v. Jefferson, 21 Cal. 4th 86 (1999); Palmer v. GTE California, Inc., 30 Cal. 4th 1265 (2003); People v. Cheek, 25 Cal.4th 894 (2001). The American Heritage

Dictionary of Idioms defines "in the aggregate" as "considered as a whole." The American Heritage Dictionary of the English Language defines "aggregate" as "A total considered with reference to its constituent parts." The usual and ordinary meaning of the phrase "in the aggregate," therefore, must mean to apply to all of the various payments that an independent expenditure committee has made.

The ordinance applies this trigger to expenditures made in any single race, not the total in all City races. This is because the ordinance specifically uses the word "or" between the different kinds of races, and not the word "and." It would not make sense to lift the ceiling for the mayoral race, for example, when an independent expenditure committee has spent \$70,000 on the City Auditor and the Councilmember-at-Large races. Thus, the ordinance provides that the expenditure ceiling is lifted when an independent expenditure committee spends \$15,000 on a district or school board race (but not both), or spends \$70,000 on one of the citywide races, not all of them.

Moreover, the trigger in Section 3.12.220 is calculated by looking at all payments made by an independent expenditure committee in an election or race, and not just payments supporting or opposing a single candidate or campaign in that race. The language reads:

...if an independent expenditure committee in the aggregate spends more than...\$15,000 on a District City Council or School Board **election** or... \$70,000 in a City Attorney, Auditor, Councilmember-at-Large or Mayoral **election**. (Emphasis added.)

It does not read:

...if an independent expenditure committee in the aggregate spends more than...\$15,000 on a District City Council or School Board **candidate** or... \$70,000 in a City Attorney, Auditor, Councilmember-at-Large or Mayoral **candidate**. (Emphasis added.)

If the City Council intended for the expenditure ceiling to be lifted when its payments made to a single candidate or campaign surpassed the limit, it would have used the latter language.

In sum, if there are multiple candidates in the race for City Councilmember At Large, for example, an independent expenditure committee's payments supporting or opposing any, some or all the candidates in the City Councilmember At Large race would be totaled to determine whether the \$70,000 trigger has been met for that race. When the trigger amount is hit by any single "independent expenditure committee," the expenditure limit is lifted for all candidates in the race. OCRA Section 3.12.220 ("the applicable expenditure ceiling shall no longer be binding on any candidate running for the same office).

Question 3: *What is the proper methodology for adjusting the current threshold limits in Section 3.12.220 (i.e., \$15,000 and \$70,000) by the increase in the CPI when the existing cross-reference to Section 3.12.180 is inapplicable? Should the method contained in Section 3.12.200 be used instead?*

Section 3.12.220 ("Expenditure ceilings lifted") provides, in relevant part:

The independent expenditure committee amounts of fifteen thousand dollars (\$15,000) and seventy thousand dollars (\$70,000) respectively, shall be increased in proportion to any increase of the voluntary expenditure ceiling amounts resulting from an increase in the CPI [Consumer Price Index] as provided by Section 3.12.180 of this chapter. (Emphasis added.)

The reference to Section 3.12.180 ("Volunteer services exemption") is clearly in error, because it is not the section that refers to calculating "any increase of the voluntary expenditure ceiling amounts."

The ordinance states that trigger amount shall "be increased in proportion to any increase of the voluntary expenditure ceiling amounts." Section 3.12.200 is the section that refers to increase of "the voluntary expenditure ceiling amounts."

If context or other considerations show erroneous use of one word for another, substitution of which will make statute harmonious, courts may correct the error.

"[I]f the context of the statute or other considerations therefrom arising show that the word has been by the Legislature erroneously used for another word which, when substituted for the mischievous one, will make the statute harmonious in all its parts and with the obvious purpose and intent of the statute so that its enforcement will be in full accord with such purpose and intent, then the courts may correct the error." (Meier v. Superior Court of California, in and for Stanislaus County, 67 Cal.App. 135, 140 (1924).)

The reference to Section 3.12.180 is clearly in error and contradicts the remainder of the ordinance. Section 3.12.180 is not the section that refers to increase of the voluntary expenditure ceiling amounts, 3.12.200 is. The City Council intended to increase the current trigger amounts in Section 3.12.220 by the method described in Section 3.12.200, the section that increases voluntary expenditure ceiling amounts.

Question 4: *Do the existing cross references to Sections 3.12.050(C) and 3.12.060(C) in Section 3.12.220 actually refer to existing Sections 3.12.050(B) and 3.12.060(B), respectively?*

Section 3.12.220 ("Expenditure ceilings lifted") provides, in relevant part:

...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 above-referenced sections, Sections 3.12.050C and 3.12.060C, do not set campaign contribution amounts, so they are clearly referenced in error. OCRA does set forth two campaign contribution limits for candidates who accept the expenditure ceilings, \$100 from individuals (Section 3.12.050B), and \$1,000 from broad-based political committees (Section 3.12.060B).

Ordinance 12207 C.M.S., approved by the City Council on February 8, 2000, repealed earlier versions of Sections 3.12.050(B) and 3.12.060(B), and provided, "Previous sections 3.12.050(C) and 3.12.060(C) shall be renumbered as sections 3.12.050(B) and 3.12.060(B), respectively." While Ordinance 12207 C.M.S. renumbered these sections, it failed to amend the other cross-references to these sections, found in Section 3.12.12.220, as well as in two other places: Sections 3.12.190 and 3.13.070(D). This led to the confusion underlying your Question #4, and leads us to the conclusion that the existing cross-reference to Sections 3.12.050C and 3.12.060C in Section 3.12.220 actually refer to existing Sections 3.12.050B and 3.12.060B, respectively.

CONCLUSION

The term "independent expenditure committee" as used in OCRA Section 3.12.220 means any "committee" that makes \$1,000 or more in "independent expenditures." It includes committees as defined by Government Code Subsections 82013(a) and 82013(b).

The phrase "in the aggregate" means the total amount that an independent expenditure committee has spent on a single race, regardless of how many separate payments were made by that independent expenditure committee in support of or opposed to a single candidate.

The existing reference to Section 3.12.180 is a citation error. The City Council intended the threshold limits in Section 3.12.220 to be increased by the method described in Section 3.12.200.

The existing reference to Sections 3.12.050(C) and 3.12.060(C) in Section 3.12.220 is renumbering error. Reference should have been made to Sections 3.12.050(B) and 3.12.060(B), respectively.

Very truly yours,



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CITY OF OAKLAND
Public Ethics Commission

Jonathan Stanley, *Chair*
Barbara Green-Ajufo, *Vice-Chair*
Alaric Degrafinried
Alex Paul
Ai Mori
Richard Unger
Vacancy (Mayoral)



Daniel D. Purnell, Executive Director

One Frank Ogawa Plaza, 4th Floor, Oakland, CA 94612 (510) 238-3593 Fax: (510) 238-3315

TO: Public Ethics Commission
FROM: Daniel Purnell
DATE: September 22, 2010

RE: A Staff Report And Action To Be Taken To Receive A Written Opinion From The Office Of The City Attorney Relating To Independent Expenditure Committees And The Expenditure Ceiling For Candidates

On September 2, 2010, the Office of the City Attorney issued a written opinion interpreting a provision of the Oakland Campaign Reform Act (OCRA), Section 3.12.220. **Attachment 1.** Commission staff previously requested this opinion to provide guidance to the Commission and candidates participating in the November 2010 municipal election.

I. BACKGROUND

Candidates seeking election to Oakland office may voluntarily agree to limit the amount of campaign expenditures. [O.M.C. §3.12.190] If they agree to voluntarily limit their expenditures, they are then permitted to receive contributions from persons in greater amounts than if they do not agree to limit campaign expenditures. [O.M.C. §§3.12.050; 3.12.060] The amount of the voluntary expenditure ceiling applicable to each elective office is established by a formula that has been in effect since 1999. [O.M.C. §3.12.200] Every January, the City Clerk publishes the applicable voluntary expenditure ceiling applicable to each local elective office. **Attachment 2.**

OCRA contains a provision by which the voluntary expenditure ceilings may be "lifted" during the course of a campaign. [O.M.C. §3.12.220] As more fully discussed in the attached opinion, the expenditure ceilings may be lifted, in relevant part:

". . .if an independent expenditure committee in the aggregate spends more than fifteen thousand dollars (\$15,000) on a District City Council or School board election or seventy thousand dollars (\$70,000) 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."

Section 3.12.220 further provides that the \$15,000 and \$70,000 thresholds shall be adjusted by changes in the Consumer Price Index (CPI). According to the revisions recently published by the City Clerk's Office, the current independent threshold amounts have been adjusted to \$20,000 to \$95,000, respectively, for the November 2010 election.

The attached opinion addresses itself primarily to what constitutes an "independent expenditure committee" for purposes of Section 3.12.220. Without repeating the City Attorney's answer and rationale, an independent expenditure committee is determined to mean any committee that makes \$1,000 or more in independent expenditures, whether or not it receives contributions for that purpose. The opinion also provides clarification on the applicable OCRA Sections used to determine changes in the CPI.

A representative from the Office of the City Attorney will be available to answer any questions about the opinion.

Respectfully submitted,

Daniel D. Purnell
Executive Director