

1 MILAD DALJU
Enforcement Chief
2 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
1 Frank Ogawa Plaza, Room 104
3 Oakland, CA 94612
(510) 238-3593

4 Petitioner

5
6 BEFORE THE CITY OF OAKLAND

7 PUBLIC ETHICS COMMISSION

8
9 In re the Matter of

) Case No.: 14-20

10 DESLEY BROOKS, and
11 FRIENDS OF DESLEY BROOKS
12 FOR CITY COUNCIL 2014,

) **STIPULATION, DECISION AND ORDER**

13 Respondents.

14
15 **STIPULATION**

16 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and Desley
17 Brooks and *Friends of Desley Brooks for City Council 2014* (collectively Respondents), agree as
18 follows:

- 19 1. This Stipulation will be submitted for consideration by the City of Oakland Public
20 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 21 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
22 the final resolution to this matter without the necessity of holding an administrative
23 hearing to determine the liability of Respondents;
- 24 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
25 City Charter, Oakland Municipal Code, and Public Ethics Commission Complaint
26 Procedures, including, but not limited to, the right to personally appear at an
27 administrative hearing held in this matter, to be represented by an attorney at their own
28

1 expense, to confront all witnesses testifying at the hearing, to subpoena witnesses to
2 testify at the hearing, and to have the matter judicially reviewed;

3 4. This Stipulation is not binding on any other law enforcement agency, and does not
4 preclude the Commission or its staff from referring the matter to, cooperating with, or
5 assisting any other government agency with regard to this matter, or any other matter
6 related to it;

7 5. Respondents did not file the Oakland Campaign Reform Act Form 301 to voluntarily
8 accept the expenditure ceiling for the 2014 election, which then allows the candidate to
9 receive contributions at higher limits, before accepting contributions at the higher limits,
10 as required by the Oakland Campaign Reform Act.

11 6. The attached exhibit (“Exhibit in Support of Stipulation, Decision and Order, PEC Case
12 No. 14-20”) is a true and accurate summary of the facts in this matter and is
13 incorporated by reference into this Stipulation;

14 7. The Commission agrees to settle this matter with Respondents for a total administrative
15 penalty in the amount of \$700;

16 8. A cashier’s check from Respondents, in said amount, made payable to the “City of
17 Oakland,” is submitted with this Stipulation as full payment of the administrative
18 penalty, to be held by the Commission until the Commission issues its decision and
19 order regarding this matter;

20 9. In the event the Commission refuses to accept this Stipulation, it shall become null and
21 void, and within 15 business days after the Commission meeting at which the
22 Stipulation is rejected, all payments tendered by Respondents in connection with this
23 Stipulation will be reimbursed to them; and

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10. In the event the Commission rejects the Stipulation and a full evidentiary hearing before the Commission becomes necessary, neither any member of the Commission, nor the Executive Director, shall be disqualified because of prior consideration of this Stipulation.

DATED: _____

Milad Dalju, Enforcement Chief of the City of
Oakland Public Ethics Commission, Petitioner

DATED: _____

Desley Brooks, individually and on behalf of
Friends of Desley Brooks for City Council 2014,
Respondents

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DECISION AND ORDER

The foregoing Stipulation of the parties “In the Matter of Desley Brooks and *Friends of Desley Brooks for City Council 2014*,” PEC Case No. 14-20, including all attached exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

DATED: _____

Marc Pilotin, Chair
City of Oakland Public Ethics Commission

INTRODUCTION

Desley Brooks was the successful incumbent candidate for City Council, District 6, in the November 4, 2014, election, and *Friends of Desley Brooks for City Council 2014* was her candidate-controlled campaign committee for that particular election.

As a candidate for City Council, Ms. Brooks was required to sign and file an Oakland Campaign Reform Act (OCRA) Form 301 before she and her campaign committee accepted any contributions at the higher limits allowable under OCRA for the November 2014, election. Ms. Brooks and *Friends of Desley Brooks for City Council 2014* started accepting contributions at the higher limits on August 17, 2013, approximately 11 months before Ms. Brooks signed and filed an OCRA Form 301 on July 21, 2014. Between August 17, 2013, and July 21, 2014, Ms. Brooks and *Friends of Desley Brooks for City Council 2014* accepted 55 contributions in amounts over the applicable contribution limits, totaling \$28,100 in contributions received over the applicable contribution limits.

At no time did Ms. Brooks and her committee exceed the voluntary expenditure ceiling or report receiving contributions in excess of the higher contribution limits, which supports Ms. Brooks' assertion that she was operating under the assumption that she had accepted the voluntary expenditure ceiling before she filed the OCRA Form 301. Additionally, prior to 2016, the OCRA Form 301 provided to candidates did not state a filing deadline.

SUMMARY OF THE LAW

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

OCRA requires every candidate for City Council to sign and file an OCRA Form 301 to notify the public that the candidate has accepted the voluntary expenditure limit before accepting contributions at the higher limits from each donor. (OCRA § 3.12.190.) Candidates in the 2014 election that did not accept the voluntary expenditure ceiling and their campaign committees were prohibited from accepting contributions in excess of \$100 from each individual and \$400 from each broad-based political committee. Candidates that accepted the voluntary expenditure ceiling, and their campaign committees, were allowed to receive contributions up to \$700 from each individual and up to \$1,400 from each broad-based political committee, but only after the candidate accepted the voluntary expenditure ceiling by signing and filing an OCRA Form 301. (OCRA §§ 3.12.050 and 3.12.060.) The voluntary expenditure ceiling for candidates for City Council, District 6, in the 2014 election was \$121,000.

SUMMARY OF THE FACTS

Friends of Desley Brooks was created by Ms. Brooks in 2002 and was Ms. Brooks' candidate-controlled committee for her campaign for City Council in the 2002, 2006, and 2010 elections. Ms. Brooks filed an OCRA Form 301 for her campaigns in the 2006 and 2010 elections.

On August 17, 2013, Ms. Brooks and *Friends of Desley Brooks* began receiving contributions to Ms. Brooks' campaign for City Council in the November 2014 election.

On January 30, 2014, Ms. Brooks and her committee filed the California Form 460 for the July 1, 2013, through December 31, 2013, reporting period, reporting 34 contributions at varying amounts in excess of \$100 per individual and \$400 per broad-based political committee. The total amount of funds reported that exceeded \$100 per individual or \$400 per broad-based political committee was \$17,750.

On July 10, 2014, Ms. Brooks and her committee filed the California Form 460 for the January 1, 2014, through June 30, 2014, reporting period, reporting an additional 15 contributions over \$100 per individual or \$400 per broad-based political committee, for a total overage of \$7,600.

Sometime in July, 2014, the City Clerk's Office made the nomination packets available to candidates running for City office in the November election. The nomination packet included an OCRA Form 301, which did not include a filing deadline. The OCRA Form 301, as with most campaign-related forms, was available on the City Clerk's website prior to the nomination packets becoming available.

On July 16, 2014, Ms. Brooks filed the California Form 501, indicating that she was planning on being a candidate for City Council, District 6, in the November 2014, election.

On July 21, 2014, Ms. Brooks filed an OCRA Form 301, indicating that she accepted the voluntary expenditure ceiling.

On October 7, 2014, Ms. Brooks and her committee filed the California Form 460 for the August 1, 2014, through September 30, 2014, reporting period, reporting an additional 6 contributions received prior to July 21, 2013, that were over \$100 per individual or \$400 per broad-based political committee, for a total overage of \$2,750.

Between August 17, 2013, and July 21, 2014, Ms. Brooks and *Friends of Desley Brooks* received 61 contributions totaling \$35,160. Ms. Brooks and *Friends of Desley Brooks* reported all 61 contributions on the California Form 460s they filed. Further, in Ms. Brooks' application materials to the City of Oakland Public Ethics Commission's (Commission) Limited Public Financing Program, Ms. Brooks submitted copies of the contribution checks received in August 2013 in order to meet the eligibility requirements to receive campaign public funding for the November 2014 election.

The aggregate total of all contributions received that exceeded the applicable contribution limits before Ms. Brooks filed the OCRA Form 301 was \$28,100.

On September 15, 2014, Ms. Brooks filed a California Form 410, changing the name of her committee from *Friends of Desley Brooks* to *Friends of Desley Brooks for City Council 2014*.

Ms. Brooks and *Friends of Desley Brooks for City Council 2014* made expenditures totaling \$74,149 towards the November 2014 election.

In preparation for the November 2016 election, the City Clerk's Office updated the OCRA Form 301 to include express language regarding the form's filing deadline.

VIOLATION

As a candidate for City Council in the November 2014 election and her campaign committee, Ms. Brooks and *Friends of Desley Brooks for City Council 2014* were prohibited from accepting contributions in excess of \$100 per individual and \$400 per broad-based political committee before Ms. Brooks accepted the voluntary expenditure ceiling by signing and filing an OCRA Form 301.

Ms. Brooks and *Friends of Desley Brooks for City Council 2014* received 55 contributions in amounts above the applicable contribution limits before Ms. Brooks signed and filed an OCRA Form 301. The total amount of contributions Ms. Brooks and *Friends of Desley Brooks for City Council 2014* raised over the applicable contribution limits was \$28,100.

CONCLUSION

The OCRA Form 301 is in place to provide a mechanism by which the candidate can opt into the City's voluntary expenditure ceiling program that allows the candidate to accept larger contributions from each donor. This arrangement was designed to meet the goals of OCRA to, among other things, limit campaign spending, reduce the pressure on candidates to raise large campaign war chests for defensive purposes, and reduce the influence of large contributors. By signing and filing the OCRA Form 301, the candidate opts into the spending limit and alerts the City, the public, and other candidates that the candidate plans to limit his or her overall campaign spending. The acceptance of the spending limit is the trigger that allows the candidate to accept higher individual contributions.

It was unclear whether Ms. Brooks intended to accept voluntary expenditure ceilings until July 21, 2014, almost a year after she began accepting contributions for the 2014 election and less than four months from the 2014 election.

Commission Staff conducted a broad review of all candidates' filings for OCRA Form 301 compliance in February 2014. The review revealed that several candidates failed to timely file an OCRA Form 301, including a candidate running for the same office as Ms. Brooks. In response, the Commission fined the candidate \$50 for failing to timely file an OCRA Form 301. (PEC No. 14-07; *In the Matter of Michael Johnson and Committee to Elect Michael V. Johnson City Council 2014*.) That candidate received contributions totaling \$525 over the lower contribution limit before filing an OCRA Form 301.

The Commission also fined a mayoral candidate in the same election \$500 for failing to timely file an OCRA Form 301. (PEC No. 14-06; *In the Matter of Joe Tuman and Joe Tuman for Mayor 2014*.) That candidate received contributions totaling \$99,350 over the lower contribution limit before filing an OCRA Form 301.

Ms. Brooks received contributions totaling \$28,100 over the lower contribution limit before filing an OCRA Form 301. However, she testified that her failure to timely file the OCRA Form 301 was unintentional and due to the lack of a deadline on the form itself. Additionally, Ms. Brooks and her committee did not exceed the voluntary expenditure ceiling of \$121,000 or report receiving contributions in excess of the higher contribution limits, which supports Ms. Brooks' testimony that she and her committee were operating under the assumption that she had accepted the

voluntary expenditure ceiling despite not submitting the OCRA Form 301 until approximately 11 months after she and her committee started collecting contributions in excess of the lower contribution limits. Additionally, Ms. Brooks does not have a prior enforcement action related to failing to timely file an OCRA Form 301 and has twice agreed to settle this matter.

PROPOSED PENALTY

Pursuant to the Commission's Enforcement Penalty Guidelines, the base-level fine amount for failing to timely file an OCRA Form 301 is \$1,000. The maximum fine amount in this matter is \$84,300—three times the amount of the unlawful contributions received.

Based on the fine amounts prescribed by the Commission's Enforcement Penalty Guidelines, prior fines imposed by the Commission for similar violations, and consideration of all the relevant aggravating and mitigating circumstances of this particular case, Commission Staff recommends imposing a fine in the amount of \$700 on Desley Brooks and *Friends of Desley Brooks for City Council 2014*.