

CITY OF OAKLAND



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Councilmember Dick Spees, Chairperson and members of the Oakland City Council Rules Committee
Oakland, California

Re: Proposed Amended Oakland Campaign Reform Act

Attached you will find a copy of a revised amended Oakland Campaign Reform Act, Chapter 3.12 of the Oakland Municipal Code, which was prepared pursuant to your direction at your March 9, 1999, City Council meeting. You directed the City Clerk to forward the proposed amendments that were presented at the March 9, 1999 meeting to the School Board directors and to invite their comments. Additionally, the City Clerk was directed to receive written comments from the City Councilmembers. The City Clerk set an April 12, 1999 deadline for her receipt of written comments. Councilmembers DeLaFuentes, Miley, Spees, and Brunner have provided written comments, copies of which are attached. Additionally, School Board Director Jason Hodge has provided written comments, a copy of which is attached.

I have incorporated four of the nine proposed amendments into the attached revised amended Oakland Campaign Reform Act. (Paragraphs 1, 4, 5 and 6.) I recommend against two of the five remaining proposals, because of the loopholes they could create. (Paragraphs 2 and 7.) The remaining three proposals I did not include because they include major policy considerations for which I would like to receive additional direction. (Paragraphs 3, 8 and 9.) The Rules Committee can provide further guidance to this office on developing a final revised amended ordinance to be forwarded to the City Council.

The proposed changes and my recommended actions are as follows:

1. **OMC § 3.12.070. Return of Contributions. Councilmembers' proposed changes:** Delete return of contributions 72-hour provision. (Councilmember Brunner) Amend return of contributions to provide a 30-day grace period.

City Attorney's recommended action: A 14 day period for the return of excess contributions is consistent with California Code of Regulations, Title 2, section 18531 which was adopted pursuant to Proposition 73 and applies to special elections. Councilmember Nate Miley recommends 30 days, however, one of the goals of Oakland's Act has been to remain as consistent as possible with state law, and thus we recommend 14 days. Councilmember Brunner suggests that we drop

this section but since state law only applies to special elections and the 14-day period is only referenced in a regulation, we recommend incorporating the language into Oakland's Act.

2. **OMC § 3.12.130. Identification of Contributor Required. Councilmember's proposed change:** Amend identification of contributor provision to remove the absolute requirement that prior to deposit of contributions the contributor must be identified by name, address and occupation. (Councilmember DeLaFuente)

City Attorney's recommended action: Do not remove the identification requirement, as the Political Reform Act does not require the return of contributions that omit this information. Until the City of San Diego included this provision in its campaign reform act, candidates failed to list occupations and employers for up to 40% of their itemized donations. Other cities including Long Beach and Anaheim also require identification in the candidate's file prior to deposit of a check in excess of \$100.00.

3. **OMC §3.12.140. Contractors Doing Business With the City or School District Prohibited from Making Contributions. School Board Trustee's proposed change:** Remove School Board Directors from "Contractors Doing Business Prohibited from Making Contributions" (Recommended by School Board Trustee Jason Hodge.)

City Attorney's recommended action: None as this is a major policy decision and the City Council has not provided direction on this matter.

4. **OMC §3.12.140. Contractors Doing Business With the City or School District Prohibited from Making Contributions. Councilmembers' proposed change:** Delete proposed candidate liability for violation of "Contractors Doing Business Prohibited from Making Contributions" (OMC §3.12.140 paragraph 0.) (Councilmembers Dick Spees, Ignacio DeLaFuente and Jane Brunner.)

City Attorney's recommended action: Delete proposed candidate liability for violation of OMC § 3.12.140 because of the difficulty candidates would have in determining whether or not they were in receipt of a contribution prohibited pursuant to this provision.

5. **OMC §3.12.140. Contractors Doing Business With the City or School District Prohibited from Making Contributions. Councilmembers' proposed**

changes: Include on campaign contribution card the following certification to be signed by the contributor, “I/We hereby certify that this contribution is not prohibited by the city contractor provisions of the Oakland Campaign Reform Act:” (OMC § 3.12.140 paragraph N.) (Councilmember Richard Spees) Amend section 3.12.140 N to provide for notice on fundraising materials only. (Councilmember Jane Brunner)

City Attorney’s recommended action: Amend the OMC § 3.12.140 paragraph N to include the certification requirement and to provide notice on fundraising materials only.

6. **OMC § 3.12.150. Officeholder Fund. Councilmembers’ proposed change:** Amend the officeholder account provision so officeholders can directly deposit officeholder contributions into a separate account and withdraw monies for officeholder expenditures directly from that account. (Recommended by Councilmembers Jane Brunner and Nate Miley)

City Attorney’s recommended action: Amend the officeholder account provision to provide that a separate officeholder fund may be established in a manner consistent with state law. State law still only allows one campaign account per office. However, in other jurisdictions with officeholder accounts, officeholders open campaign accounts for future elections into which they segregate their officeholder account. I have forwarded a request to the Fair Political Practices Commission for confirmation of this practice. The FPCC anticipates answering my request by June 6, 1999.

7. **OMC § 3.12.230. Independent Expenditures – Contribution Limits. Councilmembers’ proposed change:** Apply contribution limits to persons who make independent expenditures for city office only if they are required to file with the City Clerk (Councilmembers Brunner and DeLaFuente)

City Attorney’s recommended action: This amendment would open a large fundraising loophole for state or county general purpose committees that make independent expenditures for local candidates. We recommend against amending this provision. Other cities including Los Angeles and Long Beach limit contributions that persons making independent expenditures can receive.

8. **OMC § 3.12.280 and 3.12.290 Councilmembers’ proposed changes:** Do not amend the ordinance. Leave the statute of limitations at two (2) years for both

civil and criminal. (Councilmember Brunner) Amend the statute of limitations to three (3) years for both civil and criminal. (Councilmember DeLaFuente)

City Attorney's recommended action: None as this is a major policy decision and the City Council has not provided direction on this matter. The Act's current civil and criminal statutes of limitations are two (2) years; the proposed revisions as of March 9, 1999 were four (4) years for criminal and three (3) years for civil violations. I will leave the proposed March 9, 1999, revisions in place until I receive further direction.

9. **OMC § 3.12.300. Councilmember's proposed changes:** Eliminate right of private action and only allow the Public Ethics Commission to sue for injunctive relief. (Councilmember Jane Brunner)

City Attorney's recommended action: None as this is a major policy decision and the City Council has not provided direction on this matter

Additional changes that I have incorporated to accommodate March elections are the definition of election and time period for expenditures. (OMC § 3.12.040 and 3.12.210.)

The proposed amended Act as now drafted would make the following changes to Oakland's current Campaign Reform Act, Oakland Municipal Code Chapter 3.12:

1. Add City Attorney to City Offices. (OMC §3.12.040.)
2. Amend the definition of "Election" to provide for March elections. (OMC §3.12.040.)
3. Amend "Aggregation of Payments" regarding partnerships and individuals and controlling interests in corporations to require a 50% or greater interest before aggregation occurs. (OMC §3.12.080 C.)
4. Amend "Identification of Contributors" section to require reporting of name, address and occupation of contributor in the candidates files rather than requiring the information to be placed in a campaign statement before depositing checks of \$100.00 or more. (OMC §3.12.130.)
5. Amend "Contractors Doing Business Prohibited from Making Contributions" provision to include the School Board, elaborate on transactional limits, require contractor certification on contribution card and in contracts and notice on campaign fundraising materials. (OMC §3.12.140.)
6. Amend "Officeholder Fund" provision to allow officeholders to establish a separate officeholder account, require contributions on a separate check or written

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- instrument, provide City Auditor and School Board Directors with the same fund amount as District City Councilmembers, allow the City Attorney the same fund amount as Councilmember-at-Large, and elaborate on allowable and disallowed uses of Officeholder Fund. (OMC §3.12.150.)
7. Add the City Attorney to "Allowance for Donation of Office Space". (OMC §3.12.160.)
 8. Provide the same expenditure ceilings for the City Attorney as the City Auditor, Councilmember-at-Large and the Mayor. (OMC §3.12.200.)
 9. Change time periods for expenditures to conform to March election date. (OMC § 3.12.210.)
 10. Increase criminal misdemeanor statute of limitations from two years to four years. (OMC §3.12.280.)
 11. Clarify mediation provisions. (OMC §3.12.290 subds. C and D.)
 12. Increase civil statute of limitations from two years to three years. (OMC §3.12.290 subd. E.)
 13. Amend injunctive relief provision to provide taxpayers with a cause of action. (OMC §3.12.300.)

The proposed revised amended Act is provided in redlined and clean copy for your consideration. As I have previously stated, any additional revisions proposed by the Rules Committee will be drafted for City Council consideration.

Very truly yours,
JAYNE W. WILLIAMS
City Attorney

By:

Joyce M. Hicks
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Enclosures