

**ORDINANCE No. \_\_\_\_\_ C.M.S.**

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**AN ORDINANCE ESTABLISHING PROHIBITIONS ON FALSE ENDORSEMENTS  
IN CAMPAIGN LITERATURE**

Oakland Municipal Code is amended to add Chapter 3.14 as follows:

Chapter 3.14

ARTICLE I:	IN GENERAL
ARTICLE II:	DEFINITIONS
ARTICLE III:	PROHIBITION ON FALSE ENDORSEMENTS
ARTICLE IV:	ENFORCEMENT
ARTICLE V:	MISCELLANEOUS

**ARTICLE I: IN GENERAL**

**SECTION 3.14.010 Findings and Purpose.**

The Oakland City Council finds and declares:

(A) Campaign literature that falsely represented the position of persons was distributed in a recent municipal election.

(B) Such false representations confuse voters and do not materially advance the public's interest in an uninhibited, robust and wide-open debate on public issues or in the election of candidates for public office.

(C) False representations made and distributed during a period near the election unduly burden persons whose positions are misrepresented by precluding them from effectively addressing the falsehood through the production of more speech in order to bring forth a more truthful campaign.

(D) Prohibiting falsehoods that are knowingly or recklessly made in campaign literature during the period set forth in this Act will serve the City of Oakland's compelling interest in ensuring the integrity of the electoral process.

**SECTION 3.14.020 Citation.**

This Ordinance may be cited as the Oakland False Endorsement In Campaign Literature Act.

**ARTICLE II: DEFINITIONS**

**SECTION 3.14.030 Definitions.**

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

- A.** "Campaign literature" includes but is not limited to any advertisements on radio or television or in a newspaper or periodical, sample ballots, press releases, flyers, door hangers, pamphlets, brochures, cards, or billboards distributed with the intent of influencing the outcome of an election.
- B.** "Candidate" means any individual who seeks election to any City elective office.
- C.** "False endorsement" means the use of any statement, signature, name, photograph or image which represents that a person supports or opposes a candidate or measure when in fact the person does not.
- D.** "Measure" means any City referendum, recall, initiative or ballot proposition, which is submitted or intended to be submitted to the voters of the City of Oakland.
- E.** "Person" means any individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

**ARTICLE III: PROHIBITION ON FALSE ENDORSEMENTS**

**Section 3.14.040 False Endorsement In Campaign Literature Prohibited**

No person, within [Option A: twenty-one (21); Option B: thirty (30)] days before any primary or general election held in the City of Oakland, shall knowingly pay for, direct, supervise or authorize the distribution of any campaign literature that contains a false endorsement in which the person acts with knowledge of the falsity of the endorsement or with reckless disregard for the truth or falsity of the endorsement.

**Section 3.14.050 Exemptions**

- A.** This Act shall not apply to any person whose only action in connection with the false endorsement is to make a lawful contribution to any candidate or committee.

**B.** This Act shall not apply to the publisher or an employee of a newspaper, magazine or other periodical that is published on a regular basis for any advertisement that contains a false endorsement published in that newspaper, magazine, or periodical. A "newspaper, magazine, or other periodical that is published on a regular basis" shall not include any newspaper, magazine, or other periodical that has as its primary purpose the election or defeat of a candidate or measure.

## **ARTICLE IV: ENFORCEMENT**

### **Section 3.14.060 Enforcement And Penalties**

**A.** Criminal Violation. Any person who violates the provisions of this Act is guilty of a misdemeanor.

**B.** Civil Liability. Any person who violates the provisions of this Act shall also be liable in a civil action for an amount of up to one thousand dollars (\$1,000) per violation. Any civil violation of this Act shall be proven by clear and convincing evidence. No civil action alleging a violation of this Act may be filed against a person if a criminal action is being maintained against the same person.

**C.** Responsibility For Enforcement. The District Attorney is responsible for enforcing criminal violations of this Act. The elected City Attorney of the City of Oakland is responsible for enforcing civil violations of this Act. Nothing in this section is intended to create a mandatory duty to prosecute, or to request prosecution of, an alleged violation.

**D.** Complaints Filed With The Public Ethics Commission. The Oakland Public Ethics Commission, pursuant to its General Complaint Procedures, may receive complaints alleging a violation of this Act for the purpose of determining whether to request the District Attorney or the elected City Attorney to prosecute a criminal or civil violation.

## **ARTICLE V: MISCELLANEOUS**

### **Section 3.14.070 Recovery of Costs**

The court in any civil action may award the prevailing party the costs of litigation.

### **Section 3.14.080 Statute Of Limitations**

No criminal or civil action alleging a violation of this Act shall be filed more than four years after the date the violation occurred.

### **Section 3.14.090 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.

IN COUNCIL, OAKLAND, CALIFORNIA, (DATE), 2003

#### **PASSED BY THE FOLLOWING VOTE:**

AYES-                      BROOKS, BRUNNER, CHANG, NADEL, QUAN, REID, WAN, AND  
                                    PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-