

INTRODUCED BY COUNCILMEMBER \_\_\_\_\_

\_\_\_\_\_  
CITY ATTORNEY

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

**Chapter 3.12**

**THE CITY OF OAKLAND CAMPAIGN REFORM ACT**

**Article I. Findings and Purpose**

**3.12.010 Title**

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

**3.12.020 Findings and Declarations**

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

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

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

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

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

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

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

**COMMENT:**

***The basic reason for so-called "legislative findings" is to provide a factual basis for why the ordinance is necessary. The above findings were made at the time the City Council first enacted campaign finance legislation in 1993.***

**3.12.030 Purpose of this Act**

The purpose of this Act is to accomplish the following:

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

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

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

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

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

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

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

**COMMENT:**

***Section 3.12.030 helps to establish Oakland's objectives or "interests" in regulating local campaign finances. Because of First Amendment concerns, courts have recognized only a limited number of reasons that may properly justify government regulation in the campaign finance area.***

***Federal and state courts have historically ruled that making campaign contributions and expenditures are, in varying degrees, forms of self expression and free association protected by the First Amendment. Generally, any law regulating activities protected by the First Amendment must be compelling or important enough to justify the curtailment of these protected activities. The greater the protection under the First Amendment, the more compelling the government's interest must be to regulate it.***

***For laws regulating campaign contributions (as OCRA does), the U.S. Supreme Court has recognized only the avoidance of corruption and/or the appearance of corruption as legitimate government interests. Section 3.12.020(E) makes only a passing reference to "corruption" in its findings and there is no mention of this interest in Section 3.12.030. For laws regulating campaign expenditures, courts have also recognized the need to avoid corruption as a legitimate interest but subject such laws to a higher level of scrutiny than those regulating campaign contributions (see discussion following Section 3.12.050, below).***

***Section 3.12.030(D) states that one of the purposes of the Act is to "reduce the advantage of incumbents and thus encourage competition for elective office." The Supreme Court has expressly rejected the goal of enhancing the voice of one group at the expense of another as a legitimate government interest (i.e., "leveling the playing field" among competing interests). The remaining purposes set forth in Section 3.12.030 are probably appropriate to justify the other regulations contained in OCRA.***

**Article II. Definitions**

**3.12.040 Interpretation of This Act**

Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Sections 81000 et seq., as they appear in 1998 shall govern the interpretation of this Act.

**COMMENT:**

***The significant feature of Section 3.12.040 is that it defers to the definitions contained in the California Political Reform Act (CPRA) "as they appear***

***in 1998" unless OCRA provides otherwise. While most of the fundamental terms have not been amended recently, there is a policy question of whether OCRA's terms should be made consistent with current state law. This not only would allow the Commission and the regulated community to rely upon the great body of state regulatory law and interpretive analysis by the Fair Political Practices Commission ("FPPC"), but would also overcome the practical difficulty of maintaining access to statutes, regulations and opinions that may be out of date.***

"Broad-based political committee" means a committee of persons which has been in existence for more than six months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five or more candidates.

**COMMENT:**

***OCRA's use and application of so-called "broad-based political committees" was adapted from the CPRA at the time OCRA was drafted. A committee meeting the definition of a broad-based political committee enjoys special advantages under OCRA because it may contribute, and a candidate may receive from it, a substantially greater amount of money than from other persons. [See Section 3.12.050, discussed below.] However, broad based political committees have since been eliminated as a term under the CPRA.***

***A newer and comparable term currently used in the CPRA is "small contributor committee." The only difference between a "broad-based political committee" and a "small contributor committee" is that a small contributor committee additionally requires that no one person be allowed to contribute to the committee more than \$200 per calendar year.***

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

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

**COMMENT:**

***OCRA's definition of "election" is significant because it states that the March primary and November general elections are considered "separate" elections under the Act. This means that candidates involved in a "run-off"***

***election may seek new contributions from previous contributors and may spend up to the expenditure limit a second time in the general election.***

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

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

**COMMENT:**

***OCRA's definition of "person" is a verbatim adaptation from the definition of "person" as contained in the CPRA, except that the CPRA's definition expressly includes "limited liability company" as one of its enumerated entities.***

Qualified Campaign Expenditure.

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

a. Any expenditure made by a candidate, officeholder or committee controlled by the candidate or officeholder, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate for city office.

b. A nonmonetary contribution provided at the request of or with the approval of the candidate, officeholder or committee controlled by the candidate or officeholder.

2. "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made in any part for political purposes.

**COMMENT:**

***OCRA's definition of the term "Qualified Campaign Expenditure" is taken in part from the CPRA's definition of "expenditure". In reviewing how the term is used throughout OCRA, it is not clear why or how the term "expenditure" as currently defined under the CPRA could not be used in its place. Again, the benefit of doing so would be to achieve consistency with state law and to take advantage of the extensive body of interpretive law and opinion regarding this term.***

"Redevelopment Agency" means the Oakland Redevelopment Agency.

### **Article III. Contribution Limitations**

#### **3.12.050 Limitations On Contributions From Persons**

A. No person shall make to any candidate for city office and the controlled committee of such a candidate, and no such candidate for city office and the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than one hundred dollars (\$100.00) for each election except as stated in subsection B of this section.

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no person shall make to a candidate for city office and the controlled committee of such candidate, and no such candidate for city office and the controlled committee of such candidate shall accept contributions totaling more than five hundred dollars (\$500.00) from any person for each election.

#### **COMMENT:**

***Sections 3.12.050(A) and (B) contain the basic limitation on campaign contributions for candidates to Oakland office. The method by which this is accomplished -- tying the amount of money candidates may receive to their decision to accept voluntary expenditure ceilings -- is known as a "variable" contribution limit. Under Sections 3.12.050(A) and (B), the variable limit on contributions from "persons" is \$100 for candidates not agreeing to expenditure ceilings, and \$500 for those who agree to expenditure ceilings.***

***[NOTE: The current amount for candidates agreeing to expenditure ceilings is now \$600 based on cost of living increases calculated pursuant to Section 3.12.050(G)].***

***Generally, courts are more permissive towards restrictions on campaign contributions than restrictions on expenditures. The U.S. Supreme Court has ruled that limits placed on how much a candidate may spend pose a more serious threat to First Amendment rights than restrictions on how much a candidate may receive. While local governments may generally create incentives to induce candidates to voluntarily limit their campaign spending (such as making it a condition of public financing), courts are more likely to overturn "voluntary" limits on campaign spending if they appear to coerce candidates into accepting them or penalize candidates for rejecting them.***

***In analyzing variable contribution limits, courts have examined the disparity between the two contribution limits for evidence of coercion. For example, if candidates who accept expenditure ceilings may receive significantly more in contributions than those who do not agree to limit campaign spending, a court may conclude that candidates were being "coerced" into accepting the***

**expenditure ceiling. Courts have also examined whether the minimum contribution amounts for candidates who do not accept the spending limits allow such candidates to raise enough money to conduct a meaningful campaign.**

**Sections 3.12.050(A) and (B) currently create a 6:1 disparity between candidates accepting spending limits and those who do not for contributions received from "persons." The current disparity for contributions received from "broad-based political committees" is almost 4 to 1. [See Sections 3.12.060(A) and (B), below.] While there is no formula that indicates when the disparity becomes too great, Commission staff is concerned that the current 6 to 1 ratio and 4 to 1 ratio may be too large, and that the maximum contribution amount of \$100 for candidates not accepting expenditure ceilings could be found to be too low, to permit such candidates to conduct an effective campaign in Oakland.**

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

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

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

**COMMENT:**

**Sections 3.12.050(C), (D) and (E) attempt to regulate contributions to "persons" who make independent expenditures. These sections raise a number of issues and questions.**

**First, the provisions apply only to persons who receive contributions to make independent expenditures. OCRA does not regulate persons using their own money to do the same thing.**

**Second, these sections do not specify what a person must do to "separately account" for the contributions they receive and the contributions and expenditures they make. Persons who receive contributions, such as a small contributor committee, may receive thousands of contributions from members all**

**over the state. The people making the contributions almost never designate the purpose to which the contribution shall be put or the candidate to be supported or opposed.**

**Third, since all contributions are commingled in one campaign account, it is unclear how the City could ever verify that no portion of a single contribution in excess of the contribution limit was used to influence elections to city office.**

**Finally, recent court decisions have ruled similar ordinances unconstitutional on grounds that laws restricting contributions to committees making independent expenditures are less likely to involve a government's legitimate interest in preventing corruption than laws restricting direct contributions to candidates. That means that these laws may be subject to more exacting scrutiny by the courts and thus more susceptible to being overturned.**

**The Commission has previously adopted a policy for interpreting the provisions of Section 3.12.050 (C), (D) and (E). It states essentially that: 1) a person making independent expenditures to influence an election for local office may satisfy the "separate accounting" provisions by timely filing a properly completed FPPC campaign statement with the appropriate filing officer; and, 2) an independent expenditure will be considered to have been made from "qualifying contributions" (i.e., contributions of \$100/\$300 or less) if the person making the independent expenditure has received an amount of qualifying contributions at least equal to the amount of the independent expenditure before or during the reporting period in which the independent expenditure is disclosed.**

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

**COMMENT:**

**Subsection (F) was added to Section 3.12.050 as part of the amendment package that added subsections (C), (D) and (E). Thus the language stating that candidates for City office shall not be held responsible for violations of "this provision" by any person was arguably intended to apply only to violations of subsections (C), (D) and (E) and not intended to apply to subsections (A) and (B). On the other hand, the term "this provision" is arguably broad and vague enough to extend its exculpatory protections to cover violations involving Sections 3.12.050(A) and (B).**

**In addition, subsection (F) may be so broadly stated as to frustrate enforcement efforts against candidates who directly cooperate with the maker of an independent expenditure. By their very definition, independent expenditures are those expenditures made without any cooperation or coordination with the**

***benefited candidate. If, for example, a candidate cooperates with the maker of the independent expenditure, state law may deem that expenditure to be a contribution from the maker that would be then subject to OCRA's contribution limits. If this "contribution" exceeds OCRA's limits, the benefited candidate could argue that subsection (F) excuses him or her from local enforcement proceedings.***

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

**COMMENT:**

***Indexing contribution limits according to the CPI is a common feature in local campaign finance laws. Commission staff questions why OCRA's indexing is calculated on a calendar year basis in light of Oakland's primary election schedule. Calculating and announcing changes to the contribution limit in every January raises questions and uncertainty as to the amount a candidate can properly receive during the entire course of a campaign.***

***Beginning in 2006, the City's March election will be moved to June in order to conform to the state's new primary election schedule. The Commission may wish to consider language that would adjust contribution limits at a date far enough in advance to apply to an entire election cycle so that candidates would know well enough in advance what the contribution limits will be for future primary and any run-off elections. One way this could be accomplished is to adjust the contribution limits every two years instead of annually. For example, the contribution limits could be adjusted for inflation during every January following a June/November election cycle; i.e., every January in odd-numbered years. The newly adjusted contribution limits would then apply for all pre-election and run-off election fundraising in the next election cycle.***

**3.12.060 Limitations On Contributions From Broad-Based Political Committees**

A. No broad-based political committee shall make to any candidate for city office and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than two hundred fifty dollars (\$250.00) for each election except as stated in subsection B of this section.

***[NOTE: The current amount is now \$300 based on cost of living increases calculated pursuant to Section 3.12.050(G)].***

B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act, no broad-based political committee shall make to any candidate for city office and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee accept from a broad-based political committee, a contribution or contributions totaling more than one thousand dollars (\$1,000.00) for each election.

***[NOTE: The current amount for candidates agreeing to expenditure ceilings is now \$1,200 based on cost of living increases calculated pursuant to Section 3.12.050(G)].***

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

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

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

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

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

**COMMENT:**

*See comments to section 3.12.050 above.*

**3.12.070 Return of Contributions**

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

**COMMENT:**

*The first sentence is a close restatement of existing CPRA §84211(q). The second sentence is adapted from CPRA §84203(c), although it differs in several important respects:*

*1) A "late contribution as defined in Government Code Section 82036" consists only of contributions or loans which total \$1,000 or more and which are made before the election but after the last pre-election filing (i.e., contributions or loans of \$1,000 or more received during the last two weeks or so before the election.) Since the only contributions that can lawfully be made to a local candidate totaling \$1,000 or more are contributions from broad-based political committees, this second sentence has only limited application under OCRA.*

*2) The OCRA language pertaining to late contributions does not contain the CPRA requirement that a late contribution not be "cashed, negotiated or deposited" before its return. The absence of this language could mislead a local candidate into believing that he or she may lawfully cash a contribution of \$1,000 or more and then return an equal amount to the contributor within 48 hours. While permitted under OCRA, such conduct would not meet the requirements of the CPRA.*

*3) OCRA permits the return of a late contribution within 48 hours instead of the 24-hour requirement under state law. Thus OCRA is more permissive than state law in the return of so-called late contributions. This discrepancy may confuse local candidates into believing they have more time to return a late contribution than state law allows.*

### **3.12.080 Aggregation of Payments**

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

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

#### **COMMENT:**

***Section 3.12.080 provides the circumstances in which a contribution from one entity will be associated (or "aggregated") with another and thereby deemed to have come from a single person. These aggregation provisions are arguably necessary to prevent persons from evading the limitations placed on campaign contributions by "spreading out" or "laundering" the money to make it appear that it came from separate sources.***

***Section 3.12.080(A) above treats a contribution from one person that is "financed, maintained or controlled" by another as coming from a single person. The CPRA will only aggregate the contributions of one person that are "directed and controlled" by another. [See Gov't Code §85311]. Even with its broader language, OCRA may still not be adequate to cover all the potential situations in which contributions may be spread out among related sources. There may be other types of conduct that could be used to spread out contributions that would not be covered in OCRA's current language, such as when contributions are compelled, ordered or directed by another person.***

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

1. The entities share the majority of members of their boards of directors.
2. The entities share two or more officers.
3. The entities are owned or controlled by the same majority shareholder or shareholders.
4. The entities are in a parent-subsidiary relationship.

C. An individual and any general or limited partnership in which the individual has more than a fifty (50) percent share, or an individual and any corporation in which the individual owns a controlling interest (more than fifty (50) percent), shall be treated as one person.

**COMMENT:**

***Subsections 3.12.080(B) and (C) aggregate contributions when certain corporate or partner relationships exist. Conspicuously omitted from these relationships is any mention of so-called limited liability companies, or "LLC's." LLC's are a form of corporate organization commonly used to attract capital and manage risk, especially in the context of specific development projects. A unique feature of an LLC is that it permits its members to delegate management and control of the LLC to a "manager." The manager may or may not be a member of the LLC or may only have a minority stake in the enterprise. This contrasts with traditional forms of business associations, such as partnerships and corporations, in which management and control are typically predicated on having a majority interest in the enterprise.***

***In recent elections there have been contributions made by LLC's as well as the managing entity of an LLC. A policy question is raised whether and to what extent should the contributions from an LLC, one of its members or its managing entity be aggregated with contributions from any of the rest. Another policy question is whether a campaign contribution from an officer or director of a corporation should be aggregated with the corporation itself, regardless of the ownership interest by any officer or director.***

D. No committee and no broad-based political committee which supports or opposes a candidate for office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee or broad-based political committee shall act in concert with, or solicit or make contributions on behalf of, any other committee or broad-based political committee. This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on which a candidate or candidates receive contributions.

**COMMENT:**

***Subsection 3.20.080(D) is not so much a rule regarding the aggregation of contributions as it is a prohibition on having the same individual serve as an "officer" for two or more committees that support or oppose the same candidate.***

***It is not clear why subsection (D) distinguishes between a "committee" and a "broad-based political committee" -- All BBPC's are, by***

**definition, "committees." Also, committees are not required to have "officers." Thus the prohibition on cooperation between committees having mutual officers is likely to have very limited application.**

**Second, the last sentence of subsection D presumably permits committees to share treasurers if the treasurers do not participate in or control a decision on which candidates should "receive contributions." It is unclear why the participation of treasurers should be limited merely to decisions about "contributions" and not other campaign-related decisions.**

### **3.12.090 Loans**

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

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

C. The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limitations of this Act.

#### **COMMENT:**

**Subsection (A) requires that loans are subject to OCRA's limit on campaign contributions. Subsection (C) provides an exception to the OCRA limits for loans made to a candidate by a commercial lending establishment in the regular course of business. Subsection (C) also requires that the loan be "secured or guaranteed" but does not say by whom or by what.**

**Subsections (A) and (C) notably do not address loans from a candidate to his or her own campaign committee. Historically, Oakland has not regulated such personal loans except for those candidates participating in the Limited Public Financing program. The CPRA limits the amount that a statewide candidate may make to his or her campaign and further prohibits a candidate from charging interest on the loan.**

D. Other than loans pursuant to subsection C of this section, extensions of credit in excess of one thousand five hundred dollars (\$1,500.00) for a period of more than ninety (90) days are subject to the contribution limitations of this Act, unless the candidate can demonstrate good faith evidence of an intent to repay through a set payment schedule which is being adhered to through repayment of the extension of credit on a regular basis.

**COMMENT:**

***Subsection D essentially transforms a so-called "extension of credit" of more than \$1,500 into a contribution to a candidate if payment is not made within 90 days. For example, a \$5,000 printing bill could become a \$5,000 "in-kind" campaign contribution if the printer chooses to waive the debt or the candidate fails to make any arrangement to pay the printer. A \$5,000 contribution would easily exceed OCRA's contribution limit and expose the candidate to local enforcement proceedings.***

***Subsection D also raises a question of how extensions of credit of less than \$1,500 should be treated: Should they be treated, after some period of time, as contributions subject to the contribution limit, or as another type of "credit" that does not need to be repaid or even considered a violation of the \$600/\$1,200 contribution limit. Another policy question is raised whether all campaign debt should be fully paid off within a fixed period of time. As a practical matter, it is not unusual for campaigns to incur debt. The question is whether subsection (D) provides an adequate period of time for that debt to be repaid before treating unpaid debt as an unlawful contribution in excess of OCRA's contribution limits.***

**3.12.100 Family Contributions**

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

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

**COMMENT:**

***Subsection (A) is virtually identical to state law. Subsection (B) differs from state law in that state law creates a presumption that a contribution from a minor is a contribution "from the parent or guardian of the child" and has no provisions governing how the minor's contribution shall be attributed to any parent.***

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

A candidate for city office shall have no more than one campaign committee and one checking account for the city office being sought, out of which all expenditures for that office shall be made. This section should not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

**COMMENT:**

*The first sentence attempts to restate the state requirement that candidates may maintain only one controlled campaign committee and one campaign bank account for each specific election. There is no state requirement that the "campaign bank account" be a checking account, although as a practical matter they usually are. The first sentence could probably benefit from a clarification that a candidate can maintain separate campaign committees and campaign bank accounts for past, current and future elections to the same office, which is permitted under state law and which constitutes common practice in Oakland.*

*The second sentence is consistent with state law that permits the deposit of campaign funds into other interest bearing accounts. This language attempts to avoid any conflict with OCRA Sections 3.12.150 and 3.12.170, which permit the establishment of so-called Officeholder Funds and Legal Defense Funds, respectively. [See discussion of these sections below.]*

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

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

**3.12.130 Identification Of Contributor Required**

No contribution of one hundred dollars (\$100.00) or more shall be deposited into a campaign checking account of a candidate for city office unless the name, address, occupation, and employer of the contributor is on file in the records of the recipient of the contribution.

**COMMENT:**

*The CPRA requires candidates to itemize single or cumulative contributions of \$100 or more per election on their campaign statements. For individuals who contribute \$100 or more, the contributor's name, street address, occupation and employer must be given. State regulations further require that if the contributor is self-employed, the name of the contributor's business also be disclosed. Failing to provide this information is a common omission on many local campaign statements.*

**State law also requires candidates to return within 60 days any contribution of \$100 or more for which the campaign does not have on file the name, address, occupation and employer of the contributor. OCRA therefore imposes a more stringent requirement than state law provides -- local candidates may not even deposit a contribution unless they already have obtained the contributor information.**

**The first indication that a campaign may not have had the required contributor information "on file" at the time of deposit is revealed in a candidate's campaign statements. However the omission of this information on a Form 460 does not necessarily prove that the information was not "on file" at the time it was deposited. Such information could have been lost or improperly entered. The City of San Francisco addresses this local enforcement issue by creating a presumption that a candidate did not have the required information if the information is not timely provided on a campaign statement for the period in which the contribution was received and reported. The burden then shifts to the candidate to demonstrate that they possessed the required information at the time the campaign deposited the contribution.**

**Finally, more and more campaigns are using the Internet to solicit and receive campaign contributions. In a typical Internet transaction, a donor is linked to a commercial website from the candidate's website. The donor can make a contribution to the candidate after first filling-in his or her required contributor information. The donor then provides his or her credit card number and the contribution is instantly transferred to the candidate's campaign bank account, less any fees for the service. If the donor does not provide the proper information (such as incomplete address or employment information), has a contribution been deposited for which the candidate does not have "on file" the proper contributor information? Under state law, the candidate would have up to 60 days to review the transaction and request and obtain complete contributor information. This section of OCRA should arguably address this increasingly popular form of receiving campaign contributions.**

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

**COMMENT:**

**Staff comments to the Contractor Contribution section will follow in a separate analysis.**

### 3.12.150 Officeholder Fund

A. Every elected city officeholder shall be permitted to establish one officeholder expense fund. All contributions deposited into the officeholder expense fund shall be deemed to be held in trust for expenses associated with holding the office currently held by the elected city officer. Contributions to the officeholder fund must be made by a separate check or other separate written instrument. Single contributions may not be divided between the officeholder fund and any other candidate committee. For District Councilmembers, City Auditor and School Board Directors total contributions to an officeholder fund shall not exceed twenty-five thousand dollars (\$25,000.00) per year in office. For Councilmember-At-Large and City Attorney, total contributions to an officeholder fund shall not exceed thirty thousand dollars (\$30,000.00) per year in office. For the office of the Mayor, total contributions to an officeholder fund shall not exceed fifty thousand dollars (\$50,000.00) per year in office.

#### **COMMENT:**

***Subsection A authorizes elected city officials to establish so-called "officeholder funds" for expenses associated with holding public office. Total contributions are capped annually at specified amounts depending on the office held.***

***Nothing in state law prohibits officeholders from using campaign money to pay officeholder expenses. In the absence of local laws permitting such officeholder funds, officeholders can simply use money from their campaign accounts to pay for expenses "reasonably related to a legislative and governmental purpose." One reason officeholder funds tend to exist in jurisdictions that limit campaign contributions is once a successful candidate has received from his or her group of contributors the maximum contribution limit (which is frequently spent during the course of the election), they cannot receive, in the absence of an officeholder fund, any more money from those contributors to fund officeholder expenses during their remaining term.***

***The maintenance and administration of officeholder funds present a complex administrative challenge for officeholders and treasurers. Under the state's "one bank account rule," a candidate may have only one campaign bank account and one controlled committee for each election. The FPPC has previously advised that all contributions to an OCRA officeholder fund must first be deposited into the campaign bank account and THEN transferred to a certificate of deposit, savings or other similar account. In order to spend officeholder funds, the FPPC advises that the money be transferred from the savings account back into the campaign account, and then a check written from the campaign account to pay the officeholder expenses.***

***The above process is unquestionably cumbersome and inefficient. The County of Contra Costa has enacted an officeholder fund system that appears to offer advantages over the Oakland system and does not violate the "one bank account rule" according to the FPPC. Under the Contra Costa system, a successful candidate may designate a previous controlled committee as a committee to be used only for collecting funds for officeholder expenses. Any new money received into the re-designated committee's bank account may not be used for campaign-related expenses or transferred into any committee used for campaign purposes. This system technically does not create a new or separate "officeholder fund" but uses an existing campaign account for officeholder expenses. The officeholder reports his or her officeholder expenses on a typical campaign statement (Form 460.) The officeholder simply creates a new campaign committee and opens a new campaign account for re-election or election to another office.***

B. Expenditures from an officeholder fund may be made for any political, governmental or other lawful purpose, but may not be used for any of the purposes prohibited in subsection (C)(1) through (5) of this section. Such allowable expenditures shall include, but are not limited to the following categories:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder expense fund;
2. Expenditures for office equipment, furnishings and office supplies;
3. Expenditures for office rent;
4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;
5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;
6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the officeholder (2) a member of the officeholder's staff; or (3) such other person designated by the officeholder who is authorized to perform such government duties;
7. Expenditures for travel, including lodging, meals and other related disbursements, incurred in the performance of governmental duties by (1) the officeholder, (2) a member of the officeholder's staff, (3) such other person designated by the officeholder who is authorized to perform such

government duties, or a member of such person's household accompanying the person on such travel;

- ***This language permits officeholder funds to be used to fund travel, lodging and meals for a member of the officeholder's "household."***

8. Expenditures for meals and entertainment directly preceding, during or following a governmental or legislative activity;

9. Expenditures for donations to tax-exempt educational institutions or tax exempt charitable, civic or service organizations, including the purchase of tickets to charitable or civic events, where no substantial part of the proceeds will have a material financial effect on the elected officer, any member of his or her immediate family, or his or her committee treasurer;

10. Expenditures for memberships to civic, service or professional organizations, if such membership bears a reasonable relationship to a governmental, legislative or political purpose;

11. Expenditures for an educational course or educational seminar if the course or seminar maintains or improves skills which are employed by the officeholder or a member of the officeholder's staff in the performance of his or her governmental responsibilities;

12. Expenditures for advertisements in programs, books, testimonials, souvenir books, or other publications if the advertisement does not support or oppose the nominations or election of a candidate for city, county, regional, state or federal elective office;

13. Expenditures for mailing to persons within the city which provide information related to city-sponsored events, school district-sponsored events, an official's governmental duties or an official's position on a particular matter pending before the Council, Mayor, or School Board;

14. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the officeholder communicates in his or her official capacity;

15. Expenditures for payment of tax liabilities incurred as a result of authorized officeholder expense fund transactions;

16. Expenditures for accounting, professional and administrative services provided to the officeholder fund;

17. Expenditures for ballot measures.

C. Officeholder expense funds shall not be used for the following:

1. Expenditures in connection with a future election for any city, county, regional, state or federal elective office;
2. Expenditures for campaign consulting, research, polling, photographic or similar services for election to city, county, regional, state or federal elective office;
3. Membership in any athletic, social, fraternal, veteran or religious organization;
4. Supplemental compensation for employees for performance of an act which would be required or expected of the person in the regular course or hours of his or her duties as a city official or employee;
5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519.

**COMMENT:**

***The City of Los Angeles restricts certain officeholder expenditures within a twelve month period before the date on which the officeholder stands for re-election. Among those officeholder expenses subject to a 12-month "black-out" rule are expenditures for polling, mass mailings to constituents, and certain charitable contributions.***

D. No funds may be transferred from the officeholder fund of an elected city officeholder to any other candidate committee.

**COMMENT:**

***This section prohibits the transfer of officeholder funds to any other "candidate committee." The term "candidate committee" is not defined in OCRA and does not exist in state law. Commission staff presumes the term refers to a candidate's "controlled committee" for election to office. Such an interpretation would impliedly permit officeholder funds to be transferred to other types of recipient committees, such as a ballot measure committee, or to a slate mail organization. This section could arguably benefit from language specifying what type of committee or organization is prohibited from receiving transfers of officeholder funds.***

***In a related action, a federal court has ruled that local jurisdictions may not prohibit candidates from transferring funds among their own controlled committees. However, where contribution limits are in place, the FPPC has advised that some restriction on transfers between a candidate's committees can remain. For example, state law permits the transfer between a state candidate's own funds provided that the transfers are attributed to specific contributors on a LIFO or FIFO attribution basis and that these contributions, when aggregated with other contributions by the same donor, do not exceed the contribution limits governing the committee that receives the transferred funds.***

E. Annual contributions received by or made to the officeholder fund shall be subject to the contribution limitations of Article III of this Act.

**COMMENT:**

***Article III of OCRA establishes the variable contribution limit. That provision generally authorizes candidates who voluntarily agree to limit their spending to receive contributions in greater amounts than candidates who do not. [See discussion at Section 3.12.050 above.]***

***Subsection E appears to mean that officeholders who agree to spending limits may collect contributions to their officeholder accounts in greater amounts than their colleagues who did not agree to expenditure ceilings. A policy question is raised whether it is fair to restrict contributions to an officeholder account based on how the candidate chose to run his or her campaign.***

F. Expenditures made from the officeholder fund shall not be subject to the voluntary expenditure ceilings of Article IV of this Act.

**COMMENT:**

***There is no limit to the amount an officeholder can spend from his or her officeholder account. Section 3.12.150(A), discussed above, only regulates how much an officeholder can receive annually in contributions. Under existing law, nothing prevents an officeholder from accumulating and carrying over balances in an officeholder account from year to year. A policy question is therefore raised whether there should be a limit on the total balance of an officeholder fund for any given year and, if so, what that limit should be. Also, a question is raised whether there should be a limit on the amount or type of officeholder expenditures in any calendar year. Such a restriction, however, could compromise community outreach efforts for those officeholders who make extensive use of officeholder funds to supplement their administrative budgets.***

### **3.12.160 Allowance For Donation Of Office Space**

A. Donation of office space for use by city officeholders in furtherance of their duties and responsibilities by a person or broad based political committee shall not be considered a campaign contribution subject to the provisions of this Act, provided that:

1. The donation is made to the City and accepted pursuant to Oakland City Charter Section 1203 for use by the Mayor, City Councilmembers, City Attorney or City Auditor or in the case of School Board Directors, the donation is made to the Oakland Unified School District; and
2. The name, address, employer, and occupation of the donor, and the current market value of the donated office space, are provided to the City Clerk.

B. Use of office space donated pursuant to this section by a city officeholder shall not be considered a "qualified campaign expenditure" pursuant to Section 3.12.040 of this Act.

#### **COMMENT:**

***Subsection 3.12.160(A) attempts to define a donation of office space as a "contribution" not subject to OCRA's contribution limits if 1) the donation is accepted by the City Council pursuant to City Charter Section 1203 and 2) the name and other information about the donor is provided to the City Clerk. Subsection B states that the use of such donated office space shall not be considered a "qualified campaign expenditure" that is not subject to voluntary expenditure ceilings.***

***City Charter Section 1203 authorizes the City Council to accept "gifts and trusts" on behalf of the City and to administer such gifts and trusts in accordance with the terms in which they were provided. A question arises whether such a donation must be for the use of all city officeholders, or whether the above exemptions from OCRA's restrictions should apply if the donor specifies that the office space is to be used only by a particular officeholder.***

### **3.12.170 Legal Expense Funds**

A. An elected city officeholder or candidate for city office may receive contributions for a separate legal expense fund, for deposit into a separate account, to be used solely to defray attorney's fees and other legal costs incurred in the candidate's or officeholder's legal defense to any civil, criminal, or administrative action or actions arising directly out of the conduct of the campaign or election process, or the performance of the candidate's or officeholder's governmental activities and duties. Contributions to the legal expense fund must be earmarked by the contributor for

contribution to the fund at the time the contribution is made. All funds contributed to an officeholder or candidate for legal expense fund must be deposited into the officeholder's appropriate campaign bank account prior to being deposited into the legal expense fund. The legal expense fund may be in the form of a certificate of deposit, interest-bearing savings account, money market account, or similar account, which shall be established only for the legal expense fund.

**COMMENT:**

***The first sentence of Section 3.12.170 mirrors a corresponding state law that permits state officeholders and candidates to establish legal defense funds separate from their campaign bank accounts. This authorization for a separate legal defense fund does not extend to local candidates or officeholders who must still abide by the "one bank account" rule of CPRA §85201 [see discussion in Section 3.20.150, above.]***

***The remainder of subsection A is consistent with FPPC advice on how to maintain and administer separate funds within a candidate's or officeholder's existing campaign account. As a technical matter, the language in subsection A should also require that money from the legal defense fund be transferred back into the campaign fund before it is spent.***

***As discussed in Section 3.20.150 above, OCRA's system for maintaining separate accounts for officeholder or legal expenses within a campaign account is cumbersome and difficult to administer. Since the need to establish legal defense funds arises very infrequently, there may not be such a compelling need to revise this provision as with officeholder funds.***

B. Contributions received by or made to the legal expense fund shall not be subject to the contribution limitations of Article III of this Act.

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

**COMMENT:**

***The major difference between OCRA's officeholder and legal defense fund provisions is that candidates and officeholders may solicit, receive and spend as much as they like from a legal defense fund. Contributions to, and expenditures from, officeholder accounts are restricted by OCRA. While no one would dispute that legal expenses are difficult to predict and can become significant in some cases, at least one other local jurisdiction, Los Angeles, limits the amount of contributions to legal defense funds to \$1,000 per contributor per year. Both Los Angeles and the State of California also restrict***

***the use of remaining legal expense funds after a dispute has been discharged. Section 3.12.170 contains no such restriction. Finally Los Angeles requires candidates and officeholders to submit a declaration at the time the fund is established that identifies and describes the legal action requiring the establishment of the fund.***

### **3.12.180 Volunteer Services Exemption**

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

#### **COMMENT:**

***This section is an almost verbatim restatement of CPRA §82016(g), which exempts "volunteer personal services" and payments made for individual travel expenses from the definition of what constitutes a "contribution." However OCRA further exempts volunteer personal services and individual travel expenses from the definition of "expenditures" subject to OCRA regulation. Thus the value of any volunteer personal service or individual travel expense is not restricted by OCRA's contribution limits or voluntary expenditure ceilings.***

## **Article IV. Expenditure Ceilings**

### **3.12.190 Expenditure Ceilings**

All candidates for city office who adopt campaign expenditure ceilings as defined below are permitted the higher contribution limit as defined in Sections 3.12.050C and 3.12.060C of this Act. Before accepting any contributions at the higher contribution limit, candidates who adopt voluntary expenditure ceilings must first file a statement with the City Clerk on a form approved for such purpose indicating acceptance of the expenditure ceiling. Said statement shall be filed no later than the time for filing for candidacy with the City Clerk. This statement will be made public.

#### **COMMENT:**

***This section authorizes candidates who agree to voluntary expenditure ceilings to receive contributions at the higher of the two stated limits set forth in Sections 3.12.050 and 3.12.060, respectively. As a technical matter, the cross references in this section are inaccurate -- they should refer to subsection 3.12.050(B) and 3.12.060(B) instead of subsections 3.12.050(C) and 3.12.060(C).***

***In addition, this section states that candidates must file a form with the City Clerk agreeing to accept voluntary expenditure ceilings before accepting any contributions at the higher contribution amount. It then states: "Said statement shall be filed no later than the time for filing for candidacy with the City Clerk." Presumably, this means that the expenditure ceiling statement must be filed with the City Clerk no later than the time for filing a Candidate Intention Statement (Form 501). The CPRA requires candidates to file a Form 501 before soliciting or receiving any campaign contribution. The ordinance should arguably clarify that "filing for candidacy" means filing a properly executed Campaign Intention Statement with the City Clerk.***

**3.12.200 Amount Of Expenditure Ceilings**

A candidate for office of Mayor who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding seventy cents (\$.70) per resident for each election in which the candidate is seeking elective office. A candidate for other citywide offices who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding fifty cents (\$.50) per resident for each election in which the candidate is seeking office. A candidate for District City Councilmember who voluntarily agrees to expenditure ceilings shall not make qualified expenditures exceeding one dollar and fifty cents (\$1.50) per resident in the electoral district for each election in which the candidate is seeking elective office. A candidate for School Board Director who voluntarily agrees to expenditure ceilings shall not make qualified campaign expenditures exceeding one dollar (\$1.00) per resident for each election in the electoral district for each election for which the candidate is seeking office. Residency of each electoral district shall be determined by the latest decennial census population figures available for that district.

**COMMENT:**

***Section 3.12.200 provides the respective formulas by which the voluntary expenditure ceilings are calculated. In reviewing similar ordinances from other jurisdictions, Commission staff notes that most simply establish a flat amount for each office, rather than provide an "amount per resident" formula. That flat amount is then adjusted by the CPI to account for inflation.***

***Based on the above formulas, the voluntary expenditure ceilings for each City office are as follows (as of January, 2005):***

<b><i>Mayor</i></b>	<b><i>\$336,000 (\$.70/resident)</i></b>
<b><i>City Auditor</i></b>	<b><i>\$240,000 (\$.50/resident)</i></b>
<b><i>City Attorney</i></b>	<b><i>\$240,000 (\$.50/resident)</i></b>
<b><i>Councilmember (at-large)</i></b>	<b><i>\$240,000 (\$.50/resident)</i></b>
<b><i>District Councilmember</i></b>	<b><i>\$96-111,000 (\$1.50/resident)</i></b>
<b><i>District School Board</i></b>	<b><i>\$64-74,000 (\$1.00/resident)</i></b>

**Commission staff has reviewed past campaign statements and notes that in only a very few races did the candidates closely approach (but did not exceed) the voluntary expenditure ceilings for the office being sought. Nevertheless, as campaign costs continue to rise in excess of the CPI, there is a possibility that candidates will more frequently encounter the expenditure ceiling during well financed, competitive races.**

**Commission staff notes two provisions of state law that are relevant to OCRA's voluntary expenditure ceilings. First, state regulations expressly exempt from counting against state expenditure ceilings contributions to other candidates or committees, costs associated with preparing and filing campaign finance reports, candidate filing fees and costs of ballot pamphlet statements. Of these exempted expenditures, Commission staff believes that payments made for the professional preparation of campaign statements may encourage better and more timely reporting than currently exists with some campaign committees.**

**Second, state regulations provide that a "non-monetary contribution" is deemed to be a campaign expenditure made by the receiving committee on the date of receipt (rather than a contribution subject to contribution limits), if an expenditure for equivalent goods and services would otherwise have been a campaign expenditure. For example, it is not uncommon for landlords to donate office space during a campaign. Under OCRA, such donations would constitute an in-kind "contribution" that may not exceed \$600 in value. The effect of OCRA's current provisions would likely preclude the donation. Under the state regulation, such a donation would constitute an expenditure subject to the expenditure limit, giving the campaign broader discretion over whether to accept the donation or not. A policy question is raised whether OCRA should deem certain types of "in-kind" donations as "expenditures" subject to the voluntary expenditure ceiling rather than contributions subject to the contribution limit.**

Beginning in 1999, the City Clerk shall once annually on a calendar year basis increase the expenditure ceiling amounts upon a finding that the cost of living in the immediate San Francisco Bay Area, as shown on the Consumer Price Index (CPI) for all items in the San Francisco Bay Area as published by the U.S. Department of Labor, Bureau of Statistics, has increased. The increase of the expenditure ceiling amounts shall not exceed the CPI increase, using 1998 as the index year. The increase shall be rounded to the nearest thousand. The City Clerk shall publish the expenditure ceiling amounts no later than February 1st of each year.

**COMMENT:**

**As mentioned above, the Office of the City Clerk annually adjusts the expenditure ceilings whenever it finds that the CPI has increased. The**

***adjustments cannot exceed the increase in the CPI but presumably can be adjusted in an amount less than the CPI. As discussed in Section 3.12.050(G) above, adjusting the expenditure ceilings "no later than February 1st of each year" may be too close to the City's up-coming June election date. An alternative would be to adjust and announce the new expenditure ceilings (as well as contribution limits) on a date that will apply for an entire election cycle.***

### **3.12.210 Time Periods For Expenditures**

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

#### **COMMENT:**

***Most jurisdictions that administer expenditure limits and provide for a primary/general or primary/run-off election system have some method for allocating campaign expenditures between the two elections. From an enforcement perspective, such a method is important so that campaign expenditures are not "juggled" between the two elections in order to meet or evade the expenditure ceilings. Because of the pending changes in the date for local elections (i.e., from March to June), some amendment to Section 3.12.210 will be required to conform to the new election dates.***

### **3.12.220 Expenditure Ceilings Lifted**

If a candidate declines to accept expenditure ceilings and receives contributions or make 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.

**COMMENT:**

***This section attempts to address the potentially unfair situation in which a candidate who chooses to bind himself or herself to voluntary expenditure limits is opposed by a candidate who does not agree to limit his or her spending or is (presumably) benefited by independent expenditures.***

***The primary issue with this section is that it does not specify a practical or timely way for a candidate or the Public Ethics Commission to learn when these spending or contribution thresholds have been reached. With regard to a candidate's contributions or expenditures, it may be several weeks before expenditure or contribution information is reported in a campaign statement. Also, the last pre-election statement is filed approximately 16 days before the election date. Any contributions to, or expenditures by, a candidate controlled committee during the last 16 days of a campaign is not reported until months after the campaign is over. It is unclear how other candidates or the Public Ethics Commission are supposed to know when a candidate reaches or exceeds these threshold amounts.***

***[A related issue is found in the Limited Public Financing Act. One of the conditions of eligibility for the program is that the candidate is opposed by another eligible candidate or a candidate who has received contributions, made expenditures of has "cash on hand" in an amount of at least 7 percent of his or her voluntary expenditure ceiling. The administrative regulations implementing the limited public financing program require all local candidates to notify the Public Ethics Commission when they reach the 7 percent threshold amount. It may be preferable to make the 7 percent notification requirement a part of OCRA since it applies to all candidates whether they participate in the limited public financing program or not.]***

***Another issue raised by Section 3.12.220 is that it pertains to "independent expenditure committees" as opposed to persons who make independent expenditures. The former represents a certain type of political committee that essentially uses its own money to make independent expenditures. The latter includes other committees that receive contributions and use all or part of that money to make independent expenditures during a campaign. A policy question is raised whether both types of committees should be covered by Section 3.12.220. The existing language also does not address any spending on behalf of a candidate by a slate mail organization.***

***The final issue raised under Section 3.12.220 is the language that states: "if an independent expenditure committee in the aggregate spends more than [the specified amounts], 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." (Emphasis added.) The current language appears to require that the spending ceilings be lifted regardless of who was benefited by the independent expenditure. For example, if a candidate accepts a voluntary expenditure ceiling and then an independent expenditure is made that benefits his or her candidacy, the current language would require that his or her expenditure ceiling be lifted along with all other candidates in the race.*

**Article V. Independent Expenditures**

**3.12.230 Independent Expenditures For Mass Mailings, Slate Mailings Or Other Campaign Materials**

Any person who makes independent expenditures for a mass mailing, slate mailing or other campaign materials which support or oppose any candidate for city office shall place the following statement on the mailing in typeface of no smaller than fourteen points:

**Notice to Voters**

**(Required by the City of Oakland)**

**This mailing is not authorized or approved by any City candidate or election official.**

**It is paid for**

**by (name) \_\_\_\_\_  
\_\_\_\_\_ (address, city, state)**

**Total cost of this mailing is: (amount)**

**COMMENT:**

***Section 3.12.230 requires that any person making independent expenditures for a mass mailing, slate mailing or "other campaign materials" supporting or opposing a local candidate shall place the above "Notice To Voters" on the publication. A number of local jurisdictions require mass mailings financed by independent expenditures to contain various notices or disclaimers.***

***The first issue presented by Section 3.12.230 is the type of publication covered by the notice requirement. A "mass mailing" is defined under state law as more than two hundred "substantially similar pieces of mail" but excludes form letters or other mail sent in response to an unsolicited request or inquiry. A "slate mailer" is defined as a mass mailing which supports or opposes a total of four or more candidates or ballot measures. What is unclear in***

***this section is what constitutes "other campaign materials" for purposes of the notice requirement.***

***Read in context with the terms "mass mailing" and "slate mailing" one could infer that the term "other campaign material" refers to written materials and perhaps a certain number of written materials. But the absence of a definition leaves unanswered whether this term also applies to electronic, cyber and/or telephonic communications, such as email, materials posted on websites, and automated telephone messages. It also raises a policy question of whether the notice requirement should also apply to large, highly visible publications such as billboards.***

***The second issue is whether the required notice contains relevant or sufficient information. For example, the City of Los Angeles does not require disclosure of the mailing's cost, but requires the identification of the sender and disclosure of any person contributing \$25,000 or more to the committee responsible for the mailing. As an administrative matter, the ordinance should probably specify what components must be included in the "total cost" of the mailing, such as design, layout, printing, postage, etc.***

***Finally, experience has demonstrated a gap in the oversight and enforcement of the above provisions. With targeted mailings and other communications, it may possible for a candidate or committee to evade the notice requirements and the Commission's detection of it in the absence of a mandatory filing requirement with the Public Ethics Commission.***

## **Article VI. Agency Responsibility**

### **3.12.240 Duties Of The Public Ethics Commission**

The Public Ethics Commission shall:

- A. Oversee compliance with the Act.
- B. Propose necessary regulations in furtherance of this Act subject to City Council approval.

### **3.12.250 Duties Of The City Clerk**

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

## Article VII. Enforcement

### **3.12.260 Public Ethics Commission As Enforcing Body**

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

### **3.12.270 Criminal Misdemeanor Actions**

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

### **3.12.280 Enforcement Actions**

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

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

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

D. If mediation is not undertaken, if any party refuses mediation, or if mediation is unsuccessful in resolving the issues raised in the complaint, the Commission may within ninety (90) days thereafter convene a hearing. The Commission has full authority to settle any action filed by or on behalf of the Commission in the interest of justice.

#### **COMMENT:**

***The Commission's General Complaint Procedures specifies the process by which all complaints shall be filed and resolved, including the availability for mediation and settlement. OCRA sets forth a slightly different process from that provided in the General Complaint Procedures. A policy***

***question is raised whether all complaints brought before the Public Ethics Commission should be administered under a consistent set of procedures.***

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

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

### **3.12.290 Injunctive Relief**

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

### **3.12.300 Cost Of Litigation**

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

### **3.12.310 Disqualification**

In addition to any other penalties prescribed by law, if an official receives a contribution in violation of Sections 3.12.050 and 3.12.060, the official shall not be permitted to make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which the contributor has a financial interest. The provisions of Government Code Sections 87100 et seq. and the regulations of the Fair Political Practices Commission shall apply to interpretations of this section.

#### **COMMENT:**

***Section 3.12.310 provides that if a candidate receives a contribution from a person that exceeds the contribution limits in Sections 3.12.050 or 3.12.060, he or she is precluded from making or participating in a decision in which the contributor has a financial interest. This prohibition is based on the approach existing in state financial conflict of interest laws, to which the reference of Governmental Code Section 87100 refers.***

***Under state financial conflict of interest law, a public official is prohibited from making or participating in any governmental decision in which he or she has a financial interest, as state law defines that interest. It is unclear whether the reference to Section 87100 means that the contributor must have the same financial interest in the matter under consideration for this section to apply.***

*It is also unclear for how long this prohibition shall apply and whether an official can take action on the matter by first returning the contribution.*

### **Article VIII. Miscellaneous Provisions**

#### **3.12.320 Applicability Of Other Laws**

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

#### **3.12.330 Severability**

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