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CITY OF OAKLAND

AGENDA REPORT

TO: **Rules and Legislation Committee**

ATTN: **Chair Kernighan and Committee Members**

FROM: **Council President Patricia Kernighan**

DATE: **May 29, 2014, revised August 12, 2014**

RE: **Ordinance Amending the Oakland Campaign Reform Act to Prohibit the Use or Transfer of Money from Ballot Measure Committees Controlled By Candidates for City Office or City Officeholders**

SUMMARY

An ordinance has been prepared for submittal to the City Council for a proposed amendment to the Oakland Campaign Reform Act to prevent the circumvention of Oakland's contribution limits by prohibiting candidates for City office or City officeholders from controlling ballot measure committees to use those committees to promote their own election or those of other City candidates.

FISCAL IMPACT

None

BACKGROUND

In 1999, the City of Oakland passed the Oakland Campaign Reform Act (OCRA) in order to curb the growing influence of campaign contributions on Oakland City races. Ordinance 12158 declares that it shall be City policy 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."

City candidates are subject to contribution limits:

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.

In contrast, under Supreme Court precedent, ballot measures can receive unlimited contributions.

To protect against circumvention, State candidates cannot divert money collected by their controlled ballot measure committees to support their own election or those of other candidates. Campaign Disclosure Manual 3, "Information for Committees Primarily Formed to Support or Oppose a Ballot Measure," p. 1-7 (2007) states, "A candidate may control a ballot measure committee as long as the committee's funds are not used to support the candidate's election or to support or oppose other candidates."

This FPPC Regulation only applies to candidates or office holders of State elective office and does not extend to local candidates or office holders.

Oakland's Campaign Reform Act does not yet contain such an express prohibition, even though it is clearly consistent with the intent of the Act and consistent with FPPC Regulations.

FPPC Regulation 18521.5 – Confining Candidate Controlled Ballot Measure Expenditures to Ballot Measures

After the ruling in the *Citizens* case, several reports appeared in the press indicating that elected state officers were using funds in their controlled ballot measure committees for numerous purposes not related to ballot measures. One report detailed how a state elected officer raised money into his ballot measure committee, ostensibly to promote a ballot proposition, but transferred \$1.9 million from the committee into his legal defense fund, ultimately spending 12 times more on transfers to the legal defense fund than on the ballot measure. (Memorandum to the Commission, December 31, 2008, "Adoption of Regulations 18521.5 and 18421.8, and Amendment of Regulation 18401, re: Ballot Measure Committees Controlled by Candidates for Elective State Office.") Soon thereafter, the Commission adopted Regulation 18521.5 (effective March 1, 2009) to ensure that State candidates spend their ballot measure committee funds for ballot measures, and not in ways that circumvent the Act's contribution limits.

FPPC Regulation 18521.5 states in part:

(d) Committee Expenditures.

(1) Except as permitted under paragraphs (2) and (3) below, committee funds shall be used only to make expenditures related to a state or local measure or potential measure anticipated by the committee, or to qualification or pre-qualification activities relating to such measures. Such expenditures include, but are not limited to, payment of the committee's reasonable and ordinary operating costs, administrative overhead, fundraising activities, travel, compliance costs, and attorney's fees incurred as a result of the committee's activities....

(f) No provision of this regulation shall be construed to permit any of the following:

(1) A contribution of committee funds to a controlled committee of a candidate for elective office that is not operated as a candidate controlled ballot measure committee pursuant to this section.

ANALYSIS

Use of ballot measure committee monies by candidates for city office or city officeholders for their election or reelection to city office or to support or oppose other candidates for city office circumvents the contribution limits of Oakland's Campaign Reform Act and is inconsistent with FPPC regulations. The proposed Oakland Campaign Reform Act amendment would address this by expressly prohibiting City candidates and officeholders from directly or indirectly using ballot measure committee monies for their own election or reelection to city office, or from transferring such funds to another committee to support their election or reelection or to support or oppose other candidates for City office.

3.12.115 Ballot Measure Committees Controlled By Candidates for City Office or City Officeholders.

A candidate for City office or City officeholder who controls a ballot measure committee may not directly or indirectly use or influence the use of ballot measure committee funds to support the candidate's or officeholder's election or re-election to City office or to support or oppose other candidates for City office, and may not transfer such funds to another committee supporting the candidate's or officeholder's election or re-election to City office, or supporting or opposing other candidates for City office. The foregoing notwithstanding, the prohibitions of this section shall not apply to a committee created to oppose or support the qualification of a recall measure and/or the recall election of the controlling candidate for City office or controlling City officeholder.

This language is based on FPPC Regulation 18521.5. The ordinance would need to exempt recalls because recalls are ballot measures. (Government Code 82043.) An officeholder who is subject to a recall must be able to control his or her committee to defend against a recall. "City office" is already defined in OMC 3.12.040.

SUSTAINABLE OPPORTUNITIES

Economic: The proposed resolution is unlikely to create any negative economic impact.

Environmental: The proposed resolution is unlikely to lead to any environmental impact.

Social Equity: This resolution may increase social equity by promoting greater trust in city government and limiting the influence of money on politics.

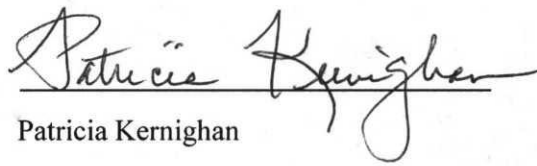
DISABILITY AND SENIOR CITIZEN ACCESS

There is no direct impact or benefit to seniors or people with disabilities.

ACTION REQUESTED OF THE CITY COUNCIL

Council President Kernighan recommends that the City Council receives the report and approves the Ordinance amending OCRA to prohibit the circumvention of Oakland's contribution limits.

Respectfully submitted,

A handwritten signature in cursive script that reads "Patricia Kernighan". The signature is written in black ink and is positioned above a horizontal line.

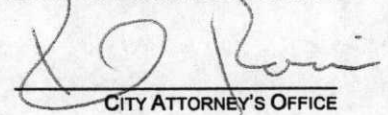
Patricia Kernighan

Oakland City Council President
District 2 Councilmember

FILED
OFFICE OF THE CITY CLERK
OAKLAND

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

INTRODUCED BY COUNCIL PRESIDENT PATRICIA KERNIGHAN

OAKLAND CITY COUNCIL

ORDINANCE NO. _____ C.M.S.

ORDINANCE AMENDING THE OAKLAND CAMPAIGN REFORM ACT, OAKLAND MUNICIPAL CODE CHAPTER 3.12, TO PROHIBIT THE USE OR TRANSFER OF FUNDS FROM BALLOT MEASURE COMMITTEES CONTROLLED BY CANDIDATES FOR CITY OFFICE OR CITY OFFICEHOLDERS TO SUPPORT THE CANDIDATE'S OR OFFICEHOLDER'S ELECTION TO CITY OFFICE

WHEREAS, in 1999, the City of Oakland passed the Oakland Campaign Reform Act (OCRA) in order to curb the growing influence of campaign contributions on Oakland city races; and

WHEREAS, to prevent corruption, existing language in the OCRA limits contributions to candidates seeking local office as follows:

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;

and

WHEREAS, diversions of campaign funds from ballot measure committees to candidate committees are prohibited by the State of California in FPPC Regulation 18521.5 as explained by Campaign Disclosure Manual 3, "Information for Committees Primarily Formed to Support or Oppose a Ballot Measure," p. 1-7 (2007) which states: "A candidate may control a ballot measure committee as long as the committee's funds are not used to support the candidate's election or to support or oppose other candidates;" and

WHEREAS, this proposed amendment to the Oakland Campaign Reform Act would ensure consistency with California law and prevent circumvention of the City's contribution limits by prohibiting the diversion of monies from ballot measure committees to city candidate and officeholder committees;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:

SECTION 1. Oakland's Campaign Reform Act, codified in Oakland Municipal Code Chapter 3.12, is hereby amended to add a new section 3.12.115 (new language underscored), and amend section 3.12.040 as follows:

3.12.115 Ballot Measure Committees Controlled by Candidates for City Office or City Officeholders.

A candidate for City office or City officeholder who controls a ballot measure committee may not directly or indirectly use or influence the use of ballot measure committee funds to support the candidate's or officeholder's election or re-election to City office or to support or oppose other candidates for City office, and may not transfer such funds to another committee supporting the candidate's or officeholder's election or re-election to City office, or supporting or opposing other candidates for City office. The foregoing notwithstanding, the prohibitions of this section shall not apply to a committee created to oppose or support the qualification of a recall measure and/or the recall election of the controlling candidate for City office or controlling City officeholder.

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 amended they appear in 1998, shall govern the interpretation of this Act.

.....

SECTION 2. Severability. If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each section, subsection, clause or phrase thereof irrespective of the fact that one or more other sections, subsections, clauses or phrases may be declared invalid or unconstitutional.

SECTION 3. Effective Date. This Ordinance shall become effective immediately on final adoption if it receives six or more affirmative votes; otherwise it shall become effective upon the seventh day after final adoption.

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IN COUNCIL, OAKLAND, CALIFORNIA, _____, 2014

PASSED BY THE FOLLOWING VOTE:

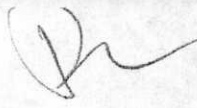
AYES -BROOKS, GALLO, GIBSON MCELHANEY, KALB, KAPLAN, REID, SCHAAF AND
PRESIDENT KERNIGHAN

NOES -

ABSENT -

ABSTENTION -

ATTEST: _____
LATONDA SIMMONS
City Clerk and Clerk of the Council
of the City of Oakland, California



**ORDINANCE AMENDING THE OAKLAND CAMPAIGN REFORM ACT,
OAKLAND MUNICIPAL CODE CHAPTER 3.12, TO PROHIBIT THE
USE OR TRANSFER OF FUNDS FROM BALLOT MEASURE
COMMITTEES CONTROLLED BY CANDIDATES FOR CITY OFFICE
OR CITY OFFICEHOLDERS TO SUPPORT THE CANDIDATE'S OR
OFFICEHOLDER'S ELECTION TO CITY OFFICE**

NOTICE AND DIGEST

This Ordinance amends the Oakland Campaign Reform Act codified in Chapter 3.12 of the Oakland Municipal Code, to prohibit the use of funds from ballot measure committees controlled by candidates for city office or city officeholders to support the candidate's or officeholder's election to city office or to support or oppose other candidates for City office, and to prohibit the transfer of such funds to another committee supporting the candidate's or officeholder's election or re-election to City office, or supporting or opposing other candidates for City office.