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Staff Analysis of Proposed
Oakland Campaign Reform Act Amendments

Summary

Under existing law, the Public Ethics Commission (PEC or Commission) is established in City Charter section 603, as amended by voters in 2014, and is tasked with the duty to ensure compliance with the Oakland Campaign Reform Act (OCRA), among other laws. [City Charter Sec. 603(b)(1)(ii)]. City Charter section 603 further assigns the Commission with the responsibility to perform other functions and duties as prescribed by City ordinance. [City Charter Sec. 603(b)(8)].

The Oakland Campaign Finance Act (O.M.C. Chapter 3.12) is a City ordinance passed by Council in 1994 to limit campaign contributions and expenditures, reduce the pressure on candidates to raise campaign funds, and ensure that all individuals have a fair and equal opportunity to participate in elective and governmental processes. OCRA has been amended several times over the years but has not undergone a comprehensive review to update the law in alignment with the California Political Reform Act, which has been amended repeatedly over the years, or to bring it on par with the campaign finance laws of other local ethics commissions. In addition, in recent years, the Commission has identified areas where the law is unclear or where enforcement provisions are weak compared with other jurisdictions.

The proposed amendments to the Oakland Campaign Reform Act would align OCRA with the 2014 City Charter amendment and the California Political Reform Act, strengthen the Commission's enforcement authority to parallel the Oakland Government Ethics Act, and clarify and expand definitions and substantive provisions to ensure OCRA is clear and enforceable.

Specifically, the proposed amendments make the following changes:

- **3.12.020 Findings and declarations** – Replaces all references to “officeholders” with the term, “elected City officials” because “officeholder” is not defined in OCRA and “City official” is a term used in other sections of OCRA; adds a clause to expressly state that OCRA shall be liberally construed and vigorously enforced to ensure its purposes are fulfilled, akin to the language of the California Political Reform Act.
- **3.12.040 Interpretation of this Act** – Clarifies the reference to the California Political Reform Act and limits the scope of the reference to the code sections cited; amends or adds definitions for the terms “Candidate,” “City,” “City Office,” “City Official,” “Entity,” and “Local Committee” in order to clarify these terms and in some cases, align the terms with those used in the California Political Reform Act; deletes the definition of “Redevelopment Agency” since the agency no longer exists.
- **3.12.050 Limitations on contributions from persons** – makes clarifying changes that include adding a notation that contribution limits are adjusted annually to alert the reader to refer to a later section that requires limits to be adjusted annually; deletes the provision that exempts candidates from liability for contribution limit violations; transfers the duty

to adjust contribution limits from the City Clerk's office to the Public Ethics Commission; removes irrelevant language for clean-up purposes.¹

- **3.12.060 Limitations on contributions from broad-based political committees** – makes clarifying changes that include adding a notation that contribution limits are adjusted annually to alert the reader to refer to a later section that requires limits to be adjusted annually; deletes the provision that exempts candidates from liability for contribution limit violations; transfers the duty to adjust contribution limits from the City Clerk's office to the Public Ethics Commission; removes irrelevant language for clean-up purposes.
- **3.12.065 Contributions made under legal name** – aligns OCRA with the California Political Reform Act which requires that contributions must be made in one's own legal name.
- **3.12.070 Return of contributions** – increases time to return contributions by an additional 5 days.
- **3.12.080 Aggregation of contributions** – simplifies and moves subsection A to become subsection A(5) and renumbers this part of the section, resulting in language that is more clear and concise to cover situations where one entity finances, maintains, or controls another entity's contributions. Subsection B is substantively amended and renumbered to include B, C, and D to align OCRA with the contribution aggregation rules under the California Political Reform Act and related regulations to expand the aggregation rule to the following situations in which individual contributions are aggregated with those of another entity:
 1. Contributions of all entities in which a person owns more than a majority interest.
 2. Contributions of a person and all entities whose contributions the person directs and controls.
 3. Contributions of multiple entities whose contributions are directed and controlled by the same individual or group of individuals.

Recent changes amended the title from "payments" to "contributions" for clarity, added hyphens to compound adjectives ("majority-owned"), changed A(2) from "two or more officers" to "three or more, or a majority of, officers" which more more narrowly tailors the provision, and deletes "individual" to replace with "person" for consistency.

- **3.12.100 Family contributions** – deletes a reference to contributions by a husband and wife, which is duplicative of the California Political Reform Act. The reference was added back in with language that is in line with the modern definition of "marriage."
- **3.12.110 One campaign committee and one checking account per candidate** – deletes obsolete words, "for city office."
- **3.12.115 Ballot measure committees controlled by candidates or elected City Officials** – makes clarifying changes to conform to revised definitions ("elected City Official" and "candidate").

¹ Note: Highlighted explanations reflect changes the PEC made on October 3, 2016.

- **3.12.120 Money received by elected City Officials and candidates treated as contributions, income or gifts** – makes clarifying changes to terms and the reference to the California Political Reform Act.
- **3.12.130 Contributor Identification and Restriction on Use of Cash** – adds subsections B, C, and D to incorporate rules from the California Political Reform Act limiting the use of cash for contributions and expenditures; amends the title to reflect the new content of the section.
- **3.12.140 Contractors doing business with the City or the Oakland Unified School District prohibited from making contributions** – adds leases to the types of contracts that trigger the prohibition; makes clarifying changes to terms and clauses to conform to revised definitions and City titles; deletes obsolete references to the Redevelopment Agency since the agency no longer exists; adds a subsection (C) to expressly state which individuals of an entity are subject to the prohibition of section 3.12.140; deletes undefined terms such as “elected or appointed City officer” and replaces them with terms that are consistent and defined in OCRA.
- **3.12.150 Officeholder fund** – amends terms to conform with revised definitions from section 3.12.040; deletes another term (“employee”) to conform with revised definitions.
- **3.12.160 Allowance for donation of office space** – amends terms to conform with revised definitions.
- **3.12.170 Legal expense funds** – amends terms to conform with revised definitions.
- **3.12.190 Expenditure ceilings** – corrects a typographical error in the existing language that references other sections; replaces the word “accepting” with “receiving” as it relates to contributions in order to align the language with the California Political Reform Act and allow a candidate or committee to return a contribution pursuant to section 3.12.070; replaces “City Clerk” with “Public Ethics Commission” as the filing officer for the form required by candidates to voluntarily adopt expenditure ceilings (OCRA Form 301).
- **3.12.200 Amount of expenditure ceilings** – transfers the duty to adjust expenditure ceiling amounts from the City Clerk’s office to the Public Ethics Commission; amends the date to accurately reflect the commencement of the Commission’s duty to adjust the ceiling.
- **3.12.220 Expenditure ceilings lifted** – clarifies the language of this section by changing the reference to “independent expenditure committee,” which is not defined by OCRA or the California Political Reform Act, to a person who “makes one or more independent expenditures totaling” more than the specified amount that triggers the expenditure ceiling lift; corrects a typographical error in the existing language that references other sections.
- **3.12.230 Independent expenditures for mass mailings, slate mailings or other campaign materials** – adds a requirement that an independent expenditure mass mailing and television advertisement include disclosure of the top two donors to the committee paying for the independent expenditure.
- **3.12.240 Electronic filing of campaign statements** – moves the language of the electronic filing section from the end of OCRA to a section that precedes the enforcement

provisions, which apply to all the preceding sections; replaces “City Clerk” with “Public Ethics Commission” as the filing officer for campaign statements pursuant to the City Charter amendment of 2014.

- **3.12.245 Recordkeeping requirements** – adds new language from the California Political Reform Act and LA Campaign Finance Ordinance section 49.1.17(C) to give the Commission enforcement authority over existing state recordkeeping requirements

In addition to the above changes, the Enforcement section of OCRA is significantly amended to strengthen the Commission’s authority to enforce compliance, akin to the enforcement provisions of the Oakland Government Ethics Act of 2014. Specifically, the new enforcement section includes the following changes:

- **3.12.250 Violations Related to Enforcement** – adds a section to prohibit the filing of false or fraudulent or misleading complaints, evidence, documents, or information to the Public Ethics Commission or District Attorney or misrepresent a material fact, or conceal any evidence or information relevant to an investigation; adds a duty to cooperate and assist with an investigation.
- **Prior section 3.12.250 Duties of the City Clerk** – this section is deleted, in accordance with the transfer of the filing officer duties to the Commission pursuant to the City Charter amendment of 2014; recent changes added this section back in to require the City Clerk to provide an advisory sheet to candidates to guide them to the Public Ethics Commission for information about campaign finance filing requirements.
- **3.12.260 Public Ethics Commission Role and Responsibilities** – adds the duty to serve as filing officer for campaign statements to the Public Ethics Commission pursuant to the City Charter amendment of 2014, which transferred these duties from the City Clerk’s office to the Commission; restates the Commission’s authority to adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of OCRA, pursuant to O.M.C. section 2.24.070.
- **Prior section 3.12.260 Public Ethics Commission as enforcing body** – the language of this prior section is deleted as unnecessary due to the new and more precise language in 3.12.260 and section 3.12.270.
- **Prior section 3.12.270 Criminal misdemeanor actions** – the language of this prior section is deleted and is replaced with the new enforcement language in section 3.12.270 that is more specific and detailed.
- **3.12.270 Penalties** – adds new language similar to the enforcement provisions of the Oakland Government Ethics Act of 2014 and the California Political Reform Act to provide clear explanation of the criminal, civil, and administrative penalties available as well as a maximum fine amount of \$5,000 per violation or three times the unlawful amount, whichever is greater; requires a vote of five (out of seven) Commissioners in order to bring a civil action by the PEC. To establish a balanced enforcement program, the Commission adopted new Penalty Guidelines in 2015, required by the City Charter amendment of 2014, to guide the Commission in assessing penalties in a manner that is fair, consistent, and proportional to the seriousness of each violation. The Penalty Guidelines outline lower fine amounts for common violations and higher fine amounts

for more serious violations. The proposed increased maximum penalty would apply in the latter situations. For more information about the PEC's Penalty Guidelines, see the Commission's "Enforcement" webpage, accessible through www.oaklandnet.com/pec.

- **3.12.280 Injunctive relief** – adds an injunctive relief remedy for the Commission or an Oakland resident to enjoin violations or compel compliance with the provisions of the Act; adds language similar to the Oakland Government Ethics Act and the California Political Reform Act to allow an individual to file a civil action for injunctive relief to enjoin violations or compel compliance with OCRA in the event the PEC fails to take administrative or civil action; this section establishes a process for notification to the Commission as a precursor to individual action.
- **3.12.290 Forfeiture** – adds language to allow the PEC to require a person to disgorge contributions or financial benefits received in violation of OCRA.
- **Prior section 3.12.290 Injunctive Relief** – the language of this prior section was incorporated into new section 3.12.280.
- **3.12.300 Costs of Litigation** – adds a provision to allow the recovery of attorney's fees and costs for a person (other than the City) who prevails in a civil action under OCRA.
- **Prior section 3.12.300 Cost of Litigation** – the language of this section is deleted and substituted with the new language described above to limit recovery of attorney's fees and costs to persons other than the City.
- **3.12.310 Limitation of Actions** – expands the statute of limitations from two years to four years for criminal actions and to five years for civil or administrative action, as is provided by the California Political Reform Act; clarifies the commencement of the statute of limitations.
- **3.12.320 Liability** – adds language that provides more detailed explanation of joint and several liability and adds a rebuttable presumption that certain individuals are agents of a committee.
- **3.12.330 Disqualification** – this section is renumbered as a result of the provisions added above it; amends a term to conform with revised definitions.
- **3.12.340 Applicability of other laws** – renumbered from 3.12.320.
- **3.12.350 References to other laws** – adds a section to state that all references to other laws in this Act refer to those laws as amended.
- **3.12.360 Severability** – renumbered from 3.12.330.
- **Prior section 3.12.340 Electronic filing of campaign statements** – this section was renumbered to section 3.12.240 (see explanation above).