



In-Person Meetings: Effective March 1, 2023, all City of Oakland boards and commissions will conduct in-person meetings. Please check www.oaklandca.gov for the latest news and important information about the City's [return to in-person meetings](#).

Public Comment: A member of the public may speak on any item appearing on the agenda. All speakers will be allotted a maximum of three minutes unless the Chair allocates additional time.

Members of the public may also submit written comments in advance of the meeting to EthicsPublicComment@oaklandca.gov. Please indicate the agenda item # you are commenting on in the subject line of the email.

Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Suzanne Doran, Program Manager; Simon Russell, Enforcement Chief; and Alex Van Buskirk, Ethics Analyst.

Legal Counsel: Farrah Hussein, Deputy City Attorney

PUBLIC ETHICS COMMISSION SPECIAL MEETING AGENDA

PRELIMINARY ITEMS

1. **Roll Call and Determination of Quorum.**
2. **Staff and Commission Announcements.**
3. **Open Forum.**
 - Please state your name each time you make public comment if you wish it to be included in the meeting minutes.
 - The Commission urges members of the public not to make complaints or ask the Commission to investigate alleged legal violations at public meetings since public disclosure of such complaints or requests may undermine any subsequent investigation undertaken. Contact staff at ethicscommission@oaklandca.gov for assistance filing a complaint.

ACTION ITEM

4. **Approval of Commission Meeting Draft Minutes.**
 - a. July 10, 2024, Regular Meeting Minutes. ([Meeting Minutes](#))



- b. August 14, 2024, Special Meeting Minutes. ([Meeting Minutes](#))

ACTION ITEMS

5. **Proposal to Increase Contribution Limits.** Pursuant to Charter Section 603(h), the Commission will review and provide comment on a proposal by Councilmember Ramachandran and Councilmember Jenkins to temporarily raise campaign contribution limits for City and OUSD elections. ([Staff Report; Councilmembers Ramachandran and Jenkins Memo and Draft Proposal Language; PEC Survey; Measure W Ballot Materials](#))

INFORMATION ITEMS

6. **Disclosure and Engagement.** Commission staff provides a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting. ([Disclosure Report](#))
7. **Democracy Dollars Implementation.** Commission staff provides a summary of significant developments in the implementation of the Democracy Dollars Public Financing Program, which will be used in the 2026 election. ([Democracy Dollars Report](#))
8. **Enforcement Program.** Enforcement Chief Simon Russell provides a summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals. ([Enforcement Report](#))
9. **Executive Director's Report.** Executive Director Nicolas Heidorn reports on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports. ([Executive Director's Report; Matrix; Mediation](#))

ACTION ITEMS

10. **Proposed Settlement Agreement: In the Matter of Oaklanders For Responsible Leadership, et al. (PEC # 22-09).** In 2022, the PEC opened an investigation into allegations that a campaign committee called "Oaklanders For Responsible Leadership" had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled committees, including the



contribution limit and the prohibition on receiving contributions from City contractors at certain times; as well as allegations that this and another committee called “OAKPAC, Oakland Metropolitan Chamber of Commerce” failed to accurately report intermediary contributions. Respondents have agreed to settle this matter. Enforcement staff recommends that the Commission approve the proposed settlement agreement in the amount of \$153,518. ([Proposed Settlement Agreement](#))

11. **Proposed Settlement Agreement: In the Matter of Committee For An Affordable East Bay, et al. (PEC # 20-41.1).** On February 22, 2021, the PEC opened an investigation into allegations that a campaign committee called “Committee For An Affordable East Bay” had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled committees, including the contribution limit and the prohibition on receiving contributions from City contractors at certain times; as well as allegations that it coordinated an expenditure with another candidate-controlled committee, “Derreck Johnson For City Council 2020,” using polling data contributed to the latter from the Oakland Police Officers Association without proper disclosure. Respondents have agreed to settle this matter with or without admitting to liability on certain counts. Enforcement staff recommends that the Commission approve the proposed settlement agreement in the amount of \$267,140 ([Proposed Settlement Agreement](#))

12. **Proposed Settlement Agreement: In the Matter of William Witte (PEC # 20-41.3).** On February 22, 2021, the PEC opened an investigation into allegations that a campaign committee called “The Committee For An Affordable East Bay” had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled committees, including the prohibition on receiving contributions from City contractors at certain times. Respondent was a City contractor who made a contribution to The Committee For An Affordable East Bay. Respondent has agreed to settle this matter with regard to his own alleged actions, without admitting liability. Enforcement staff recommends that the Commission approve the settlement agreement in the amount of \$2,500. ([Proposed Settlement Agreement](#))

13. **Proposed Settlement Agreement: In Matter of Oakland Fund For Measure AA, et al. (PEC # 19-01.1).** On April 2, 2020, the PEC opened an investigation into allegations that a ballot measure committee called “The Oakland Fund For Measure AA” had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled ballot measure committees, including the prohibition on receiving contributions from City contractors at certain times.



Respondents have agreed to settle this matter without admitting liability. Enforcement staff recommends that the Commission approve the settlement agreement in the amount of \$9,500. ([Proposed Settlement Agreement](#))

- 14. Proposed Settlement Agreement: In the Matter of Julian Orton (PEC # 19-18).** On April 2, 2020, the PEC opened an investigation into allegations that a ballot measure committee called “The Oakland Fund For Measure AA” had been a candidate-controlled committee and failed to comply with all of the necessary laws concerning candidate-controlled ballot measure committees, including the prohibition on receiving contributions from City contractors at certain times. Respondent, a City contractor who made a contribution to the committee, has agreed to settle this matter with regard to his own alleged actions, without admitting liability. Enforcement staff recommends that the Commission approve the settlement agreement in the amount of \$5,000. ([Proposed Settlement Agreement](#))

DISCUSSION ITEMS

- 15. Reports on Subcommittees and Commissioner Assignments.** Commissioners may discuss subcommittee assignments, create a new subcommittee, or report on work done in subcommittees since the Commission’s last regular meeting. Commissioners may also discuss assignments, efforts, and initiatives they undertake to support the Commission’s work.

a. Commissioner Recruitment and Selection of Finalists for Interviews Subcommittee. (ad hoc, created July 10, 2024) – Ryan Micik (Chair), Alea Gage, and Karun Tilak.

b. Charter Review Subcommittee (ad hoc, created December 13, 2023) - Ryan Micik (Chair), Charlotte Hill, and Karun Tilak.

INFORMATION ITEM

- 16. Future Meeting Business.** Commissioners and staff may propose topics for action or discussion at future Commission meetings.

The meeting will adjourn upon the completion of the Commission’s business.

The following options for public viewing are available:

- **Television: KTOP channel 10 on Xfinity (Comcast) or ATT Channel 99, locate City of**
09-16-2024 PEC Special Meeting Packet - 4

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Hearing Room 2
Monday, September 16, 2024
6:30 p.m.



Oakland KTOP – Channel 10

- **Livestream online:** Go to the City of Oakland’s KTOP livestream page here: <https://www.oaklandca.gov/services/ktop-tv10-program-schedule> click on “View”
Online video teleconference (via ZOOM): Click on the link to join the webinar: <https://uso2web.zoom.us/j/89169308829>. Please note: the Zoom link and access number are to view/listen to the meetings only. Public comment via Zoom is not supported at this time.
- **Telephone:** Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 669 444 9171 or +1 719 359 4580 or +1 253 205 0468 or +1 253 215 8782 or +1 346 248 7799 or +1 360 209 5623 or +1 386 347 5053 or +1 507 473 4847 or +1 564 217 2000 or +1 646 931 3860 or +1 689 278 1000 or +1 929 205 6099 or +1 301 715 8592 or +1 305 224 1968 or +1 309 205 3325 or +1 312 626 6799 Webinar ID: 891 6930 8829
- **International numbers available:** <https://uso2web.zoom.us/j/89169308829>

Should you have questions or concerns regarding this agenda, or wish to review any agenda-related materials, please contact the Public Ethics Commission at ethicscommission@oaklandca.gov or visit our webpage at www.oaklandca.gov/pec.

Nicolas Heidorn

9/6/24

Approved for Distribution

Date

CITY OF OAKLAND
PUBLIC ETHICS COMMISSION
One Frank Ogawa Plaza (City Hall)
Special Commission Meeting
Hearing Room 2
Monday, September 16, 2024
6:30 p.m.



This meeting location is wheelchair accessible. Do you need an ASL, Cantonese, Mandarin or Spanish interpreter or other assistance to participate? Please email ethicscommission@oaklandca.gov or call (510) 238-3593 Or 711 (for Relay Service) five business days in advance.

¿Necesita un intérprete en español, cantonés o mandarín, u otra ayuda para participar? Por favor envíe un correo electrónico a ethicscommission@oaklandca.gov o llame al (510) 238-3593 al 711 para servicio de retransmisión (Relay service) por lo menos cinco días antes de la reunión. Gracias.

你需要手語, 西班牙語, 粵語或國語翻譯服務嗎? 請在會議五天前電

郵 ethicscommission@oaklandca.gov or 或致電 (510) 238-3593 或711 (電話傳達服務)。

Quý vị cần một thông dịch viên Ngôn ngữ Ký hiệu Mỹ (American Sign Language, ASL), tiếng Quảng Đông, tiếng Quan Thoại hay tiếng Tây Ban Nha hoặc bất kỳ sự hỗ trợ nào khác để tham gia hay không? Xin vui lòng gửi email đến địa chỉ ethicscommission@oaklandca.gov or hoặc gọi đến số (510) 238-3593 hoặc 711 (với Dịch vụ Tiếp âm) trước đó năm ngày.



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Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director; Simon Russell, Enforcement Chief; and Alex Van Buskirk, Ethics Analyst.

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

PRELIMINARY ITEMS

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:31 p.m.

Members present: Chair Micik, Vice Chair Upton IV, Gage, and Tilak.

Members absent: Steele.

Staff present: Nicolas Heidorn, Simon Russell, Alex Van Buskirk.

Legal Counsel: Christina Cameron.

2. Staff and Commission Announcements.

There were no announcements.

Public Comment: None.

3. Open Forum.

Public Comment: Ralph Kanz, Gene Hazzard.

Written public comment from Ralph Kanz was received prior to the meeting.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec. Written public comments are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.



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ACTION ITEM

4. Approval of Commission Meeting Draft Minutes.

a. June 12, 2024, Regular Meeting Minutes.

Tilak moved, seconded by Gage, to approve the June 12, 2024, Public Ethics Commission Regular Meeting Minutes.

Ayes: Micik, Upton IV, Gage, Tilak.

Noes: None.

Vote: 4-0.

Public Comment: None.

INFORMATION ITEMS

5. (Small) Money Talks: Strategies to Implement the Democracy Dollars Program in the City of Oakland.

UC Berkeley Goldman School of Public Policy graduate, Trishia Claudine Lim, presented on, and Commissioners discussed, a summary of her research and recommendations for conducting Democracy Dollars program outreach and education to reach communities with historically low rates of political giving.

Public Comment: Gene Hazzard, Ralph Kanz.

Written public comment from Scott Law was received prior to the meeting.

6. Disclosure and Engagement.

Lead Analyst Alex Van Buskirk provided, and Commissioners discussed, a summary of compliance with disclosure requirements, education and advice, general outreach, and data illumination activities since the last regular Commission meeting.

Public Comment: None.



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7. Enforcement Program.

Enforcement Chief Simon Russell provided, and Commissioners discussed, a summary of the Commission's enforcement process, caseload, enforcement-related litigation, and case closures or dismissals.

Commissioner Tilak requested the Enforcement Chief include any public documents filed with the Court during case closures in future Enforcement Reports.

Public Comment: Gene Hazzard.

8. Executive Director's Report.

Executive Director Nicolas Heidorn reported, and Commissioners discussed, on overall priorities and PEC activities, such as budget, staffing, and PEC legislative and policy initiatives not covered in other staff reports.

Commissioners discussed filling the vacancy created by the resignation of Commissioner Hill. Chair Micik suggested reaching out to past candidates and utilizing the previous search process to streamline the recruitment process and fill the vacancy.

Commissioner Gage requested the Commission review its priorities and goals for Measure W based on conversations in early 2023.

Chair Micik requested staff investigate the possibility of sending reminder messages to City agencies involved in Mediation cases in an effort to lead to increased document production.

Public Comment: Gene Hazzard, Ralph Kanz.

9. Limited Public Financing (LPF) Act Status Update and Guide.

Staff provided, and Commissioners discussed, a status update on the LPF for the November 2024 election, including the revised Guide for this election cycle.

Public Comment: Gene Hazzard.

ACTION ITEMS

10. Selecting a Hearing Officer for In the Matter of Michael Dabney (PEC # 23-28).



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At its June 12, 2024, regular meeting, the Commission voted to find that probable cause exists in the Matter of Michael Dabney. The Commission considered and directed Staff on the selection of a Hearing Officer for this matter.

Chair Micik moved, seconded by Vice Chair Upton, to authorize the Executive Director of the Public Ethics Commission to select a hearing officer for the Matter of Michael Dabney from a list of former PEC Commissioners. If the Executive Director is unable to appoint a hearing officer within a reasonable period of time, Commissioner Tilak will serve as hearing officer.

Ayes: Micik, Upton IV, Gage, Tilak.

Noes: None.

Vote: 4-0.

Public Comment: None.

11. Case Closure Recommendation: In the Matter of Manuel Altamirano (PEC # 20-04).

On February 19, 2020, the PEC opened an investigation into allegations that City employee Manuel Altamirano attempted to bribe fellow Parking Control staffers in order to waive a pair of tickets that had been issued to his wife. Enforcement staff recommended the matter be closed in the interest of justice. Commissioners discussed the matter and potential closure.

Vice Chair Upton moved, seconded by Tilak, to follow staff recommendations and to close the Matter of Manuel Altamirano (PEC # 20-04).

Ayes: Micik, Upton IV, Gage, Tilak.

Noes: None.

Vote: 4-0.

Public Comment: None.



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DISCUSSION ITEMS

12. Reports on Subcommittees and Commissioner Assignments.

a. Public Outreach 2023 Commissioner Recruitment, Enforcement Resources, Ethics Complaints, and Campaign Finance Subcommittee.

Commissioners discussed outreach events, including National Night Out taking place August 6, 2024. In addition, Commissioners discussed creating talking points and a calendar to encourage Commissioners to speak about the PEC at events.

In addition, Commissioners noted the Outreach Subcommittee was formed August 25, 2023, and will sunset August 25, 2024.

Commissioners formed the Commissioner Recruitment and Selection of Finalists for Interviews Subcommittee composed of Chair Micik, Gage, and Tilak. Membership will be finalized prior to the first meeting of the Subcommittee.

Public Comment: None.

b. Charter Review Subcommittee.

The Charter Review Subcommittee had not met since the last PEC Meeting. Charter update recommendations adopted by the Commission at the Special Meeting on May 22, 2024 were previously sent to the City Council, and the Council has voted to put an amended version of those recommendations on the November ballot. The Subcommittee will not be dissolved immediately, but instead will meet in the future to discuss putting recommendations on the PEC's website. Commissioner Gage asked the future closing statement of the Subcommittee lists which provisions were ultimately included in the ballot measure and which weren't.

Vice Chair Upton suggested codifying rules regarding subcommittee minutes and statements.

Public Comment: None.

INFORMATION ITEM



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13. Future Meeting Business.

Commissioner Tilak suggested revisiting the Commission's complaint procedures to clarify and make procedures explicit.

Public Comment: None.

The meeting adjourned at 9:09 p.m.



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Commissioners: Ryan Micik (Chair), Francis Upton IV (Vice-Chair), Alea Gage, Vincent Steele, and Karun Tilak.

Commission Staff to attend: Nicolas Heidorn, Executive Director.

Legal Counsel: Christina Cameron, Partner, Devaney Pate Morris & Cameron, LLP

PUBLIC ETHICS COMMISSION REGULAR MEETING MINUTES

PRELIMINARY ITEMS

1. Roll Call and Determination of Quorum.

The meeting was called to order at 6:30 p.m.

Members present: Chair Micik, Vice Chair Upton IV, Gage, and Steele.

Members absent: Tilak.

Staff present: Nicolas Heidorn.

Legal Counsel: Christina Cameron.

2. Staff and Commission Announcements.

There were no announcements.

Public Comment: None.

3. Open Forum.

Public Comment: Gene Hazzard.

A written public comment from Sandy McCabe, Scott Law, and Kathy Law was received prior to the meeting.

A full recording of public comments is available in the meeting video. Video recordings are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec. Written public comments are posted on the meeting webpage, which may be found at www.oaklandca.gov/pec.



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ACTION ITEM

4. Limited Public Financing Act Program 2024.

The Commission reviewed and discussed the available funds for the Limited Public Financing Program and how to distribute funds to candidates running for City Council district office in the November 2024 election.

Public Comment: Gene Hazzard.

Upton moved, seconded by Gage, to approve the staff recommendations for distribution of Limited Public Financing funds.

Ayes: Micik, Upton IV, Gage, Steele.

Noes: None.

Vote: 4-0.

INFORMATION ITEMS

5. PEC Vacancy Update.

The Commission currently has two vacancies on its seven-member board for a Mayor-appointed seat and a Commission-appointed seat. Commission staff updated the Commission on, and Commissioners discussed, the recruitment and next steps in the application and selection process for the Commission-appointed seat.

Public Comment: None.

INFORMATION ITEM

6. Future Meeting Business.

Chair Micik reviewed the meeting schedule noting a regular meeting is taking place in September and the PEC Retreat will take place later this year.

Public Comment: Gene Hazzard.

The meeting adjourned at 7:06p.m.



Item 05 - Proposal to Increase Contribution Limits

Ryan Meek, Chair
Francis Upton IV, Vice Chair
Alea Gage
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director;
Alex Van Buskirk, Lead Analyst, Compliance and Disclosure
DATE: September 5, 2024
RE: Councilmembers Ramachandran and Jenkins's Proposal to Amend OCRA

Summary

In 2022, Oakland voters passed Measure W, which, among other provisions, established the Democracy Dollars public financing program administered by the Public Ethics Commission (Commission or PEC) and reduced campaign contribution limits for most Oakland City and School District candidates from \$900 to \$600 for general contributors and from \$1,800 to \$1,200 for “broad-based political committees.” While Measure W’s contribution limits took effect in 2023, and are the limits for the November 2024 election, implementation of the Democracy Dollars Program was postponed for this election cycle. (At the PEC’s recommendation, the City Council instead restored the City’s Limited Public Financing Program, the City’s predecessor public financing program.)

Councilmember Janani Ramachandran and Councilmember Kevin Jenkins are proposing an ordinance (attached) to amend the Oakland Campaign Reform Act (OCRA) to increase campaign contribution limits back to \$900 as to most contributors and back to \$1,800 for broad-based political committees. The increased contribution limits would be effective immediately for the November 2024 election and would stay in place through January 1, 2027, at which point the limits would revert to the original Measure W limits of \$600 and \$1,200, with adjustments for inflation. However, if the City implements the Democracy Dollars Program in 2026 in full or as a pilot affecting only certain offices, and the PEC projects it has sufficient funding so that all certified candidates could redeem at least \$25,000 in vouchers, the contribution limits would be lowered back to the Measure W limits (\$600/\$1,200) beginning on January 1, 2026, for offices where sufficient Democracy Dollars are available. The authors stated purpose of this proposal is to ensure candidates can raise sufficient funds to run a competitive campaign while the Democracy Dollars Program is postponed.

Under Charter Section 603(h), the City Council is generally required to submit proposed amendments to the laws that the PEC enforces to the Commission for review and comment before adoption. This memo provides additional information to supplement the Commission’s review of this proposal, which will occur at the Commission’s September 16, 2024, meeting. At that meeting, the Commission may vote to support, oppose, or remain neutral on the proposal, suggest amendments, or provide other comments to the sponsors and City Council.

Item 05 - Proposal to Increase Contribution Limits

Staff recommends that the Commission respectfully oppose this proposal. Last-minute changes to the campaign finance system should be avoided absent extremely compelling reasons. This proposal would significantly change, in the last month of an election, the campaign finance rules that all candidates, on an equal basis, have operated under for almost two years. The proposal would likely advantage candidates connected to networks of wealth over community-supported candidates, in possible conflict with Measure W's purposes, and may introduce confusion or legal uncertainty as to the actual limits. In addition, the proposal will require the PEC to divert staff resources to educate candidates on the new rules and ensure compliance at a period of peak demand for PEC services (candidate advice, filing deadline assistance, and processing LPF reimbursements). Consideration of changes to contribution limits for the 2026 election could be postponed until after the adoption of the FY 2025-26 budget, when the funding status of the Democracy Dollars Program as to all races will also be clearer.

Background: Contribution Limits in Oakland and other Cities

Oakland Contribution Limits Prior to Measure W

Prior to the 2024 election cycle, Oakland had variable contribution limits depending on whether or not a candidate accepted expenditure limits (i.e., agreed to cap their total campaign spending). Oakland also had a generally-applicable contribution limit (e.g., for individuals or businesses) and a higher limit for "broad-based political committees," which is defined as "a committee of persons which has been in existence for more than six (6) months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five (5) or more candidates." (OMC 3.12.040(A).) These limits were periodically adjusted for inflation.

For example, for the 2022 election cycle, the general contribution limits to candidates who did not accept expenditure limits was \$200, whereas the limit for candidates that *did* accept expenditure limits was \$900. For contributions from broad-based political committees that cycle, the limits were \$400 for candidates not accepting expenditure limits and \$1,800 for candidates accepting them. Historically, most competitive candidates in Oakland elections have accepted expenditure limits and thus were subject to the higher of the two contribution limits.

Council *district* candidates who accepted expenditure limits, among other criteria, were also eligible to participate in the City's Limited Public Financing Program (LPF). Under this Program, which was re-authorized with minor changes for the 2024 election, participating candidates could have qualifying campaign expenses reimbursed in a total amount not to exceed 30% of the expenditure limits (or a lesser amount if the number of participating candidates made full-funding impossible.) The LPF provided participating candidates with a maximum potential reimbursement of \$35,400 in 2022 and \$21,857 in 2020. (The Council has

appropriated \$155,000 for this Program in 2024, but the maximum amount available to participating candidates has not yet been finally determined for 2024.)

Measure W Contribution Limits

In 2022, Oakland voters adopted Measure W, which, among other things, replaced Oakland’s Limited Public Financing Program (LPF) with a more robust form of campaign public financing called the Democracy Dollars Program, and also changed campaign contribution limits.

Under the Democracy Dollars Program, the City will send \$100 in Democracy Dollar vouchers to eligible Oakland residents who can then assign the Dollars to the candidate of their choice. Unlike the LPF, which applies only to candidates running for Council District office (7 offices), the Democracy Dollars Program applies to candidates running for all City or OUSD office (18 offices), including: Mayor, City Attorney, City Auditor, City Council At-Large, City Council District, and School Board District. Unless the City is facing an extreme fiscal necessity, Measure W requires the City to appropriate \$4 million for the Democracy Dollar vouchers over a two-year budget cycle. The Democracy Dollars Program was supposed to be implemented for the 2024 election cycle; however, due to City’s fiscal situation, the Council did not provide funding for vouchers and the Program was postponed this cycle.

Measure W also changed campaign contribution limits by establishing a uniform general limit of \$600 and a \$1,200 limit for broad-based political committees, which adjust every two years for inflation. The new limits do not distinguish between whether or not a candidate accepts or does not accept expenditure limits. As a result, the change may be described as an *increase* to the limits for candidates not accepting expenditure limits (up from \$200 generally and \$400 for broad-based political committees in 2022), and a *decrease* as to candidates accepting expenditure limits (down from \$900 and \$1800, respectively, in 2022). However, as mentioned previously, in practice most competitive candidates accepted expenditure limits, so as to most competitive candidates this change was a reduction in the maximum amount that could be contributed to their campaigns.

Overview of Recent Oakland Contribution Limits
 (Not Accepting / Accepting Expenditure Limits)

Election Year	General Contributors (Not Accepting / Accepting Limits)	Broad-Based Political Committees (Not Accepting / Accepting Limits)
2018	\$200 / \$800	\$400 / \$1,600
2020	\$200 / \$900	\$400 / \$1,700
2022	\$200 / \$900	\$400 / \$1,800
2024*	\$600	\$1,200

*Contribution limits after Measure W do not vary based on whether a candidate accepts expenditure limits or not.

The Ramachandran/Jenkins proposal would somewhat return Oakland to its pre-Measure W contribution limits in effect for the 2022 election, but not entirely. Pre-Measure W, to be

eligible to receive the higher contribution limits, candidates *had* to accept expenditure limits, which nearly all competitive candidates did. Under this proposal, all candidates would be able to receive contributions at the higher 2022 contribution limits but *without* needing to accept expenditure limits that would have been required previously.

Other Cities

Oakland’s contribution limits can be compared to other California cities in a number of ways. Under California law, if a City does not adopt its own campaign contribution limits, city elections are required to follow the state contribution limits by default, which are presently set at \$5,500. According to a 2024 report by California Common Cause, 124 cities in California have adopted contribution limits lower than the state default. Of those, the average contribution limit was \$711, a little higher than Oakland’s current limits. For cities with populations over 100,000, the average was \$899, almost identical to the Ramachandran/Jenkins proposal.¹

Of the ten biggest cities in California, including Oakland, the report lists a median contribution limit of \$700 for City Council and \$1,400 for Mayor, although there is a degree of variability between cities. Oakland’s *City Council* candidate contribution limits are higher than or similar to (+/- \$100) San Diego, San Francisco, Long Beach, and San Jose, but lower than Los Angeles, Fresno, Sacramento, and Anaheim. Oakland has the second lowest mayoral contribution limits after San Francisco. However, unlike in Oakland under the LPF, candidates for Mayor in San Francisco are eligible to receive public financing.

Contribution Limits in the 10 Largest California Cities

City	Population	Donor Limits to City Council	Donor Limits to Mayor	Public Financing?
Los Angeles	3,898,747	\$800	\$1,500	Yes
San Diego	1,386,932	\$650	\$1,200	No
San Jose	1,013,240	\$700	\$1,400	No
San Francisco	873,965	\$500	Same	Yes
Fresno	542,107	\$4,900	Same	No
Sacramento	524,943	\$1,800	\$3,600	Yes*
Long Beach	466,742	\$400	\$900	Yes
Oakland	440,646	\$600	Same	Yes
Anaheim	346,824	\$2,200	Same	No

Source: California Common Cause

* Not funded

¹ California Common Cause, “Local Dollars and Local Democracy” (Mar. 2024), <https://www.commoncause.org/california/wp-content/uploads/2024/04/CA-Municipal-Index-Reportv3-Final.pdf>.

Item 05 - Proposal to Increase Contribution Limits

Overall, this analysis suggests Oakland’s contribution limits are similar to or in some cases stricter than peer jurisdictions.

Councilmembers Ramachandran and Jenkins’s Proposal

In greater detail, this proposal would:

- Change contribution limits for candidates who are not participating in the Democracy Dollars Program from \$600 to \$900 as to general contributors and from \$1,200 to \$1,800 as to broad-based political committees, effective immediately upon the adoption of the ordinance. (I.e., if this proposal is adopted in October, it would take effect for the November 2024 election.)
- Provide that, for candidates participating in the Democracy Dollars Program, the higher \$900/\$1,800 limits would also apply if the PEC projects there will be less than \$25,000 per certified candidate available in voucher funding.
- In elections for a covered office where over \$25,000 in Democracy Dollars voucher funding per certified candidate is projected by the PEC to be available, the contribution limits would revert back to Measure W’s \$600/\$1,200 limits as of January 1 of the year of the election (i.e., 2026).
 - *E.g., if the City provides some but not full funding for the Democracy Dollars Program, and the PEC opts to do a pilot applying only to Council District offices where the projected funding exceeds \$25,000 per certified candidate, then contribution limits as to all candidates running for Council District would be prospectively reduced to \$600/\$1,200 on January 1, 2026. Candidates running for an office not covered by the Democracy Dollars pilot would continue to be subject to the higher contribution limits.*
- Sunset these contribution limit increases on January 1, 2027, so that contribution limits revert back to the \$600/\$1,200 limits established by Measure W, as adjusted for inflation, regardless of whether or not Democracy Dollars voucher funding is available.
- Specify that contributions received prior to the effective date of the Ordinance will still be subject to the limits in effect at the time the contribution was made.
 - *E.g., if this proposal passes and the limits are increased on October 1, 2024, but a candidate had received an individual contribution of \$800 on September 1, that contribution would still be a violation of OCRA as the limits at the time of the contribution were \$600.*

According to Councilmembers Ramachandran and Jenkins:

“The goal of this ordinance is to bridge the gap in potential funding sources for candidates due to the present unavailability of Democracy Dollars Program, and severely curtailed funding for the Limited Public Financing Program.

Item 05 - Proposal to Increase Contribution Limits

“This ordinance is in line with the spirit of voter-passed initiatives including Measure W. While Measure W reduced candidate contribution limits, it did so with the hope that a fully-funded Democracy Dollars program would be implemented. Unfortunately, this is not what we have at the moment for 2024 elections, which is why this amendment increasing the ability for candidates to fundraise independently, without reliance on powerful independent expenditures, is consistent with the measure.

“We are proposing an amendment that operates under similar logic of the temporary change in Limited Public Financing enacted earlier this year: although Measure W expressly rescinded the Limited Public Financing Program, the Public Ethics Commission and City Council agreed that it was not simply just acceptable, but specifically fair and just to candidates to reinstate a 2024 version of the Limited Public Financing Program in order to bridge the gap in funding for 2024 candidates, who could not take advantage of Democracy Dollars. This ordinance to increase contribution limits serves as a similar bridge while candidates wait for full funding of Democracy Dollars to take place.”

The language of the proposal, as well as a memo in support by the Councilmembers, is attached to this memo.

According to Councilmember Ramachandran, this proposal is expected to be introduced at the Rules Committee on September 12 and will be heard by the City Council for first reading on September 17. The proposal will need to be passed by the City Council a second time (second reading) to become law, which could occur on October 1.

Amending OCRA to Further its Purposes

The Ramachandran/Jenkins proposal would amend OCRA, which the PEC enforces. OMC 3.12.370, which was added by the voters with the adoption of Measure W, provides that, as to OCRA, the “City Council may make any amendments to this Act that are consistent with its purpose.” In addition, Charter Section 603(h) also provides that:

“Prior to enacting any amendments to laws that the Commission has the power to enforce, *the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance or program in question and provide specifics substantiating the finding.* Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to laws that the Commission has the power to enforce and proposed ballot measures that would amend such laws *shall be submitted to the Commission for review and comment, prior to passage of the amendments* or approval of the proposed measures for the ballot by the City Council.” (Emphasis added.)

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The requirement for PEC review and comment will be met with the Commission's consideration of the proposal at its September 16 meeting. Whether the amendments further the purposes of OCRA may be a closer question that the Commission may wish to consider and provide comment on.

The City Attorney's Office has provided the following view as to the legality of this proposal:

“A proposed amendment that temporarily returns the contribution limits to the pre-Measure W 2022 limits until the Democracy Dollars program is fully funded is properly within the discretion of the Council to determine that the amendment furthers the purpose of the OCRA.”

Councilmembers Ramachandran and Jenkins argue that Measure W paired increased public financing with reduced contribution limits, so that candidates would still be able to fundraise independently, and not be reliant on independent expenditures to get out their message. Since the increased public financing portion of Measure W (Democracy Dollars) is not being implemented this cycle, it furthers the purposes of the Act, they argue, to revert back to higher limits until that funding is available to candidates in a substantial amount.

The purposes of a law added by ballot measure may be discerned from its findings, statement of purpose, context, and ballot measure materials. (*See Howard Jarvis Taxpayers Assn. v. Newsom*, 39 Cal. App. 5th 158 (2019).) In this case, many of the official findings of Measure W, as well as ballot arguments presented in support, indicate that a goal of the measure was to reduce the disproportionate influence of large donors in Oakland elections. For example:

- The Council Resolution placing Measure W on the ballot noted, in the Resolution's findings, that the proposed amendments to OCRA furthered “the purposes of that ordinance, including reducing the influence of large contributors.”
- The proponents of Measure W argued in the ballot pamphlet that “The Act lowers the maximum campaign contribution amount to reduce the risk of corruption. Stricter limits means more assurance that our local leaders are fighting for all of us.”
- OCRA's formal findings, codified at OMC 3.12.20, indicate that:
 - “B. The rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups ... This has caused the public perception that votes are being improperly influenced by monetary contributions. ...”
 - “F. Based on existing circumstances in Oakland, including those enumerated in the Oakland Fair Elections Act, the contribution limits established by this Act

will not prevent candidates from raising the resources necessary to run an effective campaign.”²

- OCRA’s formal purposes, codified at OMC 3.12.030, include:
 - “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.”
 - “G. To curb corruption and the appearance of corruption by providing reasonable limits on contributions to candidates and their campaign committees and requiring disclosure of the sources of money spent to influence elections in Oakland.”

If a Court concludes that an independent purpose of Measure W/OCRA was to lower prior contribution limits to reduce the disproportionate influence of large donors, temporarily reinstating the old, higher limits may be contrary to this purpose, and at-risk of being struck down as an illegal amendment to OCRA if challenged.

Likely Campaign Effects of this Proposal

The likely campaign effects of this proposal can be summarized as follows:

- Candidates will raise more money for their campaigns overall and proportionally more of their campaign funds will come from large donors, many of whom will max-out at the new higher limits.
- Candidates who are more reliant on large donors to fund their campaigns will be advantaged over candidates who rely on a broader base of contributions from small donors, as raising the limits will enable many currently maxed-out large donors to contribute more, whereas small donor giving will likely be unaffected.
- Total independent expenditure (IE) spending will likely be unaffected by a change in limits, but with higher limits candidates can raise more funds and so the proportion of candidate-to-IE spending may be higher.

Increased Fundraising and More Reliance on Large Donors

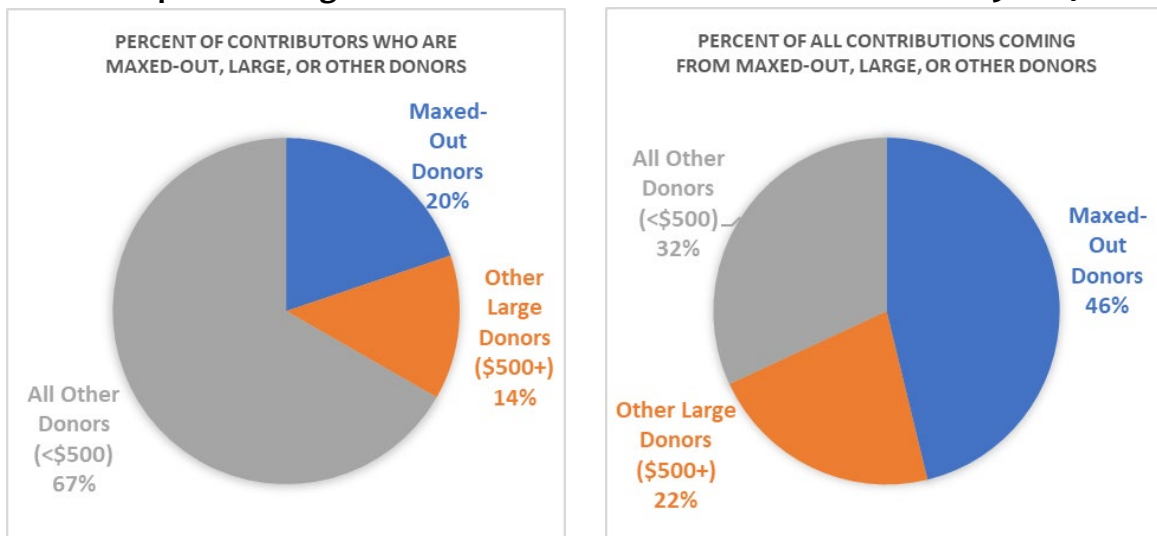
² This section of OCRA, which was added by Measure W, likely also incorporates by reference into OCRA the findings of the Oakland Fair Elections Act (OFEA), which creates Oakland’s Democracy Dollars Program. OMC 3.12.020(F). OFEA’s findings include further statements about the problems of “[c]andidates’ reliance on large contributions from a limited number of wealthy contributors.” See OMC 3.13.020(F) & (G). See also OMC 3.13.020(C).

Increasing contribution limits will increase the amount of money candidates can raise, a goal of this proposal, but also further candidates' reliance on large donors – contributors giving \$500 or more to a candidate³ – to fund their campaigns.

To examine the role of large donors in Oakland elections, and the subset of large donors who provide the maximum legal contribution, staff reviewed 18,387 reported campaign contributions to Oakland City (Mayor, City Attorney, City Auditor, and City Council) and OUSD candidates between January 1, 2019, and July 31, 2024 (the most recent semiannual reporting deadline).

The data shows that, for the past three election cycles, more than half of the money in Oakland campaigns comes from large donors. From 2019 through July 2024, candidates for Oakland or OUSD office raised a total of \$5.2 million. While large donors accounted for only 33.3% of all itemized contributors to campaigns,⁴ they accounted for 68.1% of the *total amount contributed*. Most large donors max-out to their candidate of choice. Maxed-out donors alone accounted for nearly half (46.2%) of all campaign funds over three election cycles, despite representing only 19.8% of all itemized contributors.

Comparison: Large and Maxed-Out Donors vs All Donors from 2019-2024



For the 2024 election cycle through July 31, \$500+ contributors account for a smaller share of the total amount contributed (2023-24: 57.5%) than in the prior two election cycles (2019-20:

³ Measure W implicitly defines a large contributor as someone contributing \$500 or more to a candidate. See OMC 3.15.020(C). This threshold for defining a large donor in a local election has also been used by academics. See, e.g., Heerwig, Jennifer, and Brian J. McCabe, “High-dollar donors and donor-rich neighborhoods: Representational distortion in financing a municipal election in Seattle,” *Urban Affairs Review* 55 (2019).

⁴ Candidates only need to report the identity of contributors who give \$100 or more. Contributions from contributors giving \$100 or less are lumped together as “unitemized” contributions. The number of unitemized contributors is not reported.

66.4%; 2021-22: 71.6%), which may be due in part to lower contribution limits decreasing the amount maxed-out donors can contribute.

AMOUNT RAISED:	2019-20	2021-22	2023-24*
Total	\$2,014,505	\$2,626,850	\$594,610
From Large Donors (\$500+)	66.4%	71.6%	57.5%
From Other Itemized Donors (<\$500)	22.9%	23.0%	39.1%
From Unitemized Donors	10.6%	5.4%	3.4%

**Partial, through July 31, 2024, only*

Under this proposal, if contribution limits are raised for the end of the 2024 election cycle (and for the 2026 election cycle), it is likely that most currently maxed-out contributors at the \$600/\$1,200 level would increase their contributions to the new maximum level of \$900/\$1,800. (This assumption seems reasonable because, in 2022, half of all candidate campaign contributions were attributable to maxed-out contributions at the \$900/\$1,800 level this proposal would return to.) Increasing contribution limits by 50% will likely result in candidates increasing their reliance on large donors to finance their campaigns and raising more money overall. For example, if contribution limits were increased for the 2024 election, and 75% of current maxed-out donors increase their contribution to the new limit but other contribution patterns remain the same, total funds raised would increase by 18%, and the proportion of total campaign funds raised from large donors would increase by about 7 percentage points, from around 57.5% of all funds raised to around 64.2%.

Advantaging Candidates Who Rely Most on Large Contributors

While Oakland candidates overall rely heavily on maxed-out contributions, this can vary significantly for individual candidates. For example, in a 2020 Council District election, one candidate received 58 maxed-out contributions, accounting for 73% of the total amount the candidate raised, whereas their closest challenger received only 3 maxed-out contributions, accounting for just 15% of their contributions raised. As the chart below comparing incumbent and challenger fundraising demonstrates, candidates will often have a 2:1 advantage in raising maxed-out contributions over their nearest competitor. Increasing contribution limits will therefore provide the greatest advantage to candidates who already have access to networks of wealthy individuals or businesses who can afford to donate \$900, compared with candidates who raise most of their funds from small contributors, whose giving would not be affected by raising the maximum limits.

Some literature also suggests that incumbents are most likely to benefit from high or no contribution limits as a result of developing relationships with interest groups or businesses

more capable of making large contributions.⁵ However, this is not always the case. In staff’s review of 5 City Council elections between 2020-2022 that featured an incumbent, the incumbent received more maxed-out contributions than their nearest challenger in 3 of those races.

**Reliance on Maxed-Out Contributions
 by City Council Incumbents and Nearest Challengers**

Council Contest	Filer	# of Unique Contributors	# of Maxed Contributions	% of \$ Amount from Maxed
Race 1 (2022)	Incumbent	358	60	44.5%
	Challenger	98	19	51.50%
Race 2 (2020)	Incumbent	322	60	39%
	Challenger	650	135	49.5%
Race 3 (2020)	Incumbent	420	50	33.6%
	Challenger	442	65	38.7%
Race 4 (2020)	Incumbent	403	98	49.6%
	Challenger	660	77	36.7%
Race 5 (2020)	Incumbent	124	58	73.2%
	Challenger	98	3	14.58%

IE Spending Unlikely to Change, but Candidates would Raise Proportionally More Money

While OCRA limits how much people can contribute to candidate campaign committees, U.S. Supreme Court precedent prevents the government from limiting the amount of money political committees can independently raise and spend to support or oppose candidates. In several Oakland elections over the past few election cycles, including the 2022 mayoral election and recent school board races, there has been substantial independent expenditure (IE) spending. For example, in the 2020 election, one analysis found there was \$2.4 million in independent expenditures supporting or opposing Oakland candidates, compared with \$2.6 million in direct candidate fundraising.⁶

Raising contribution limits by \$300/\$600 is unlikely to affect the total amount of IE spending in Oakland, because the increase is too small for significant independent spending – which is often in the tens of thousands of dollars – to be converted into direct contributions. However, as discussed above, because candidates will likely raise more money from large contributors

⁵ Some academic literature finds that lower contribution limits evens the fundraising playing field between incumbents and challengers. See Thomas Stratmann, “How Close is Fundraising in Contested Elections in States with Low Contribution Limits?” (May 7, 2009), available at <https://ssrn.com/abstract=1400789>.

⁶ MapLight, “MapLight Report on Oakland Campaign Funding” (Mar. 2, 2022), <https://www.maplight.org/post/new-maplight-report-finds-oakland-elections-dominated-by-big-donors-and-outside-money>.

under this proposal, the candidate proportion of total campaign spending will be higher than would be the case with tighter limits.

PEC Administrative Impact

The Commission's current bare minimum staffing, with each Commission program area filled by one staffer, makes it challenging to implement major policy changes to compliance programs within the brief timeframes of this proposal. Amending contribution limits that have been in place since January 1, 2023, in the last month of an election will require the diversion of substantial staff resources to quickly educate filers, amend recently published campaign finance training materials including print and online content, and ensure compliance with the new limits. Staff will need to make sure all 2024 and 2026 candidates understand the new contribution limits during a period of peak demand for staff assistance and advice, compliance monitoring, and administration of the Limited Public Financing program. Different contribution limits in effect for portions of the same filing period will increase the complexity of the PEC's compliance review of campaign filings, and likely increases the chances of candidates making inadvertent fundraising errors that will require correction.

The temporary nature and increased complexity of the proposed contribution limits, which may apply differently for 2026 candidates depending on the elective office if the Democracy Dollars Program is piloted, will require Commission staff resources to again educate filers, amend campaign finance training materials as well as print and online content, and do compliance reviews. They will also increase requests for staff to provide advice to candidates and to engage with filers to cure minor violations, which may require a significant amount of staff time, based on PEC experience implementing new campaign and lobbyist disclosure requirements in 2023. In addition, if the rule change results in more violations of OCRA, this may lead to more enforcement referrals, further increasing the PEC's already overburdened caseload.

Public Comment Survey Results

To solicit greater public and candidate comment on this item, the PEC designed and created an online survey asking respondents their opinion on Oakland's current contribution limits and this proposal. The survey ran from August 22 to August 27, 2024, and was distributed to the PEC email subscriber list and campaign filer contact list and posted to social media.

The PEC received 48 responses to its survey. Because this was not a randomized sample of Oaklanders, as with traditional oral public comment at government meetings, the responses to this survey are not necessarily representative of the views of all Oaklanders. (In fact, the results strongly suggest that there was an organized response to the PEC's poll, which occurs

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with public comment as well.⁷) Of all respondents, 64.6% supported the proposal, 27.1% opposed the proposal, and 2.1% had no opinion. When asked if the proposal should go into effect for the November 2024 election or later, 54.2% favored the proposal going into effect immediately, 41.7% favored the proposal going into effect in future elections, and 4.2% had no opinion. Overall, 22.9% of respondents felt Oakland’s current \$600 general contribution limits are “about right,” compared with 12.5% who felt they are “too high,” and 60.4% who felt they are too low. Of respondents who felt contribution limits should be changed, the median proposed limit was \$1,000.

Four respondents anonymously self-identifying as candidates responded to the PEC’s survey. Of those candidate respondents, 2 strongly supported the proposal, 1 somewhat supported the proposal, and 1 was neutral. If the proposal is adopted, 2 felt it should be implemented for the 2024 election and 2 felt it should be implemented for subsequent elections.

The full results of the survey, as well as respondents’ written public comments explaining their support or opposition to a general description of the proposal submitted, are attached to this memo.

Staff Concerns

Staff has a number of concerns with this proposal:

First, the proposal represents an 11th hour change to Oakland’s campaign finance laws. Candidates who are running for office and qualified for the November 2024 ballot did so with an understanding of the campaign finance rules, which have been in effect since January 1, 2023. Significantly changing the rules at the last minute sets a bad precedent and may cause confusion for some candidates, possibly leading to more filing errors. The rule change may unfairly disadvantage some candidates who chose to run in reliance on the City’s existing campaign finance rules and may also undermine public confidence in the City’s campaign finance rules if the change is perceived as being made to help certain candidates or political factions over others. Administratively, the change will likely require the diversion of significant PEC staff resources to provide education about, and ensure compliance with, the new rules during a period of peak demand for PEC services. In addition, if a candidate challenged the legality of the proposal, regardless of outcome, this could create further confusion as to what are Oakland’s true contribution limits in the last few weeks before the November 2024 election.

⁷ When the PEC first sent out its survey, respondents were about evenly divided between supporting (44%) and opposing (39%) the proposal. However, after sending out a reminder about the survey, subsequent respondents were much more in favor (74%) and opposition had dropped significantly (19%). In addition to the sudden change in opinion, aspects of the second batch of responses, such as near-identical survey responses being submitted minutes apart and the majority of supportive respondents proposing \$900 to \$1,000 as the ideal contribution limit, suggests someone may have coordinated others to respond to the PEC’s survey in a particular way.

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Second, the proposal may be contrary to OCRA’s purposes by advantaging candidates or incumbents who have more large donor support. One of the purposes of OCRA is to “reduce the influence of large contributors with a specific financial stake in matters under consideration by the City.” This proposal is likely to increase the influence of large contributors, as a greater proportion of candidate funds will come from large contributors. Candidates who are not connected to networks of wealth, and rely primarily on small donations to fund their campaigns, may be comparatively disadvantaged as a result.

Additionally, the potential lowering of contribution limits on January 1, 2026, if a sufficient Democracy Dollars Pilot is implemented, will advantage candidates (and likely incumbents) who get into a race before the contribution limits are lowered, and can thus raise more funds at a higher limit threshold for longer. Candidates who enter a race after January 1, 2026, would be restricted to just the lower limits. An alternative to this proposal, which avoids this potential unfairness, would be if limits are kept at the lower amount for 2025, but could instead be increased to the higher limits as of January 1, 2026, in contests where Democracy Dollars are not available.

Finally, the proposal may disincentivize a Democracy Dollars pilot implementation. Under this proposal, a two-tier system of contribution and spending limits is created unless the full Democracy Dollars program is implemented for all races. Candidates in races designated for a limited pilot program may feel disadvantaged by lower contribution and spending limits while adapting to a new public financing program. In contrast, candidates in races without Democracy Dollars could raise money at higher contribution limits without having to agree to limit their total campaign spending. The sunset to this proposal, however, positively ensures such disincentive would only be for the 2026 cycle.

*For the foregoing reasons, staff recommends that the Commission respectfully **oppose** this proposal and urge the Council, if it wishes to reconsider the proposal for future elections, to do so after July 1, 2025, when the funding status of the Democracy Dollars Program is known.*

Additional Attachments:

- Councilmembers Ramachandran and Jenkins Memo and Draft Proposal Language;
- Summary of PEC Survey Results and Comment; and
- Measure W Text and Ballot Pamphlet Information

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TO:	Members of the Oakland Public Ethics Commission	FROM:	Councilmember Janani Ramachandran, District 4
			Councilmember Kevin Jenkins, District 6
SUBJECT:	Temporary Increases in Contribution Limits	DATE:	September 5, 2024

RECOMMENDATION:

We respectfully recommend that the Oakland Public Ethics Commission City Council support our proposed ordinance to amend the Oakland Campaign Reform Act, OMC 3.12.050 and 3.12.060, to Temporarily Raise Limitations on Contributions to Candidates.

SUMMARY OF CHANGES AND RATIONALE

Rationale

Our proposed amendment seeks to *temporarily* raise individual contribution limits back to the 2022 levels of \$900, and the broad-based committee contribution limits to \$1800 for any individual election until Democracy Dollars is implemented for that respective election. This temporary increase of contribution limits will sunset – regardless of whether or not Democracy Dollars is implemented, after the 2026 election cycle. The goal of this ordinance is to bridge the gap in potential funding sources for candidates due to the present unavailability of Democracy Dollars Program, and severely curtailed funding for the Limited Public Financing Program.

This ordinance is in line with the spirit of voter-passed initiatives including Measure W. While Measure W reduced candidate contribution limits, it did so with the hope that a fully-funded Democracy Dollars program would be implemented. Unfortunately, this is not what we have at the moment for 2024 elections, which is why this amendment increasing the ability for candidates to fundraise independently, without reliance on powerful independent expenditures, is consistent with the measure.

We are proposing an amendment that operates under similar logic of the temporary change in Limited Public Financing enacted earlier this year: although Measure W expressly rescinded the Limited Public Financing Program, the Public Ethics Commission and City Council agreed that it was not simply just acceptable, but specifically fair and just to candidates to reinstate a 2024 version of the Limited Public Financing Program in order to bridge the gap in funding for 2024 candidates, who could not take advantage of Democracy Dollars. This ordinance to increase contribution limits serves as a similar bridge while candidates wait for full funding of Democracy Dollars to take place.

We wanted to address the concerns that increased contribution limits may be implemented in just a few short weeks before the election date. In our personal experiences in election fundraising, as well as those shared by the vast majority of candidates in local races, the highest rate of contributions typically comes in the final month of campaigns, and continues even after ballots have already been mailed. This will make a substantial difference to candidates seeking to close

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gaps in critical fundraising efforts and be able to send out mailers, pay for bilingual canvassers, and conduct targeted outreach to low-propensity voters.

Partial Funding Scenarios

We recognize that Democracy Dollars may be implemented for certain races and not others in 2026 as the program ramps up based on available funding through the upcoming biennial budget. This amendment ensures that any individual race in which there is implementation of the Democracy Dollars program, at least with partial funding, applies the lower contribution limits, defined by Measure W. The legislation defines what partial funding for individual races will be to trigger the lower contribution limits articulated by Measure W: at least \$25,000 in vouchers available per candidate in that race (understanding that given the Democracy Dollars model of voter choice, not all candidates will be able to receive this entire amount).

The PEC is already statutorily required to publish its projections for Democracy Dollars by the end of the 2025, and will be able to determine by then if it will have the financial ability to fund Democracy Dollars for certain races. Thus, by January 1, 2026, there will be a public notice of which, if any, races have been selected for Democracy Dollars funding by the PEC, and those races will immediately revert to the lowered contribution limits defined by Measure W.

This legislation establishes a clear sunset of this temporary contribution limit increase after the 2026 election cycle of January 1, 2027, regardless of whether or not Democracy Dollars is implemented for respective races by then.

Commitment to Implementing Measure W

We remain committed to the ensuring the full implementation of Measure W, including the establishment of the Democracy Dollars Program. However, we recognize that given our budget situation and forecasts for the next few years, it may not practically be implemented by 2026 as currently intended given the numerous start-up costs and staffing needs that have not been fully funded in the 2023-2024 budget, and the \$4,000,000 minimum required amount to be committed to the program in implementation years. Not only was there a very steep budget deficit that the City struggled to close in order to maintain a fully balanced budget over the past two years– but there are also projections from the City’s Finance Department that the next five years will continue to be strained in terms of generating revenue from a variety of sources, factoring in the realities, in which Oakland is not alone, of rebounding from the pandemic with a slower tourism and sales industry, dealing with a difficult real estate market due to high interest rates and corresponding declines in real estate transfer taxes, among other factors.

While we fully hope that the program can be implemented as soon as possible, we want to ensure that the overarching goals of ensuring that all candidates – especially those from marginalized and historically under-represented economic, racial, and other societal backgrounds – are fully supported in their abilities to adequately raise funds to run a successful campaign. We recognize the realities that lowered contribution limits – absent public funding from the Democracy Dollars program, and a reduced Limited Public Financing Program – will severely impact candidates’ abilities to run successful campaigns and instead amplify the voices of those candidates with access to the backing of high-sum independent expenditures.

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Conclusion

In conclusion, our proposed amendment seeks to *temporarily* raise individual contribution limits back to the 2022 levels of \$900, and the broad-based committee contribution limits to \$1800 until Democracy Dollars is implemented – in order to further the voter-approved goals of ensuring that diverse candidates are supported financially to have viable campaigns.

PROPOSED LANGUAGE

SECTION 1. Title 3, Municipal Elections, Article II, Sections 3.12.050 and 3.12.060 of the Oakland Municipal Code are hereby amended to read as follows (additions are shown in underline; deletions are shown as strikethrough):

3.12.050 – Limitations on contributions from persons.

- A. No person shall make to any candidate and the controlled committee of such a candidate, and no candidate and the candidate's controlled committee shall receive from any such person, a contribution or contributions totaling more than ~~six-nine~~ hundred dollars (~~\$6900.00~~), adjusted bi-annually pursuant to Subsection (D), for each election except as stated in Subsection (B) of this Section.
- B. For candidates who qualify as an applicant or certified candidates as defined in Section 3.15.040 of the Oakland Fair Elections Act, no person shall make to a candidate and the controlled committee of such candidate, and no such candidate and the controlled committee of such candidate shall receive contributions totaling more than six hundred dollars (\$600.00), adjusted bi-annually pursuant to Subsection (D), for each election. A Democracy Dollar assigned by an eligible resident pursuant to Section 3.15.110 of the Oakland Fair Elections Act and any public funds disbursed to participating candidates pursuant to Section 3.15.120 of the Oakland Fair Elections Act shall not be considered a contribution under this Act.
- C. 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.
- D. Beginning in January of 2025~~7~~ and in January of every odd-numbered year thereafter, the Commission shall increase the contribution limitation amounts by the percent increase, if any, in the Consumer Price Index for the preceding two (2) years, rounding to the nearest fifty-dollar (\$50.00) value. The Commission shall use the Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as published by the United States Department of Labor, Bureau of Statistics, or if such an index is discontinued, then the most similar successor index. The Commission shall publish the adjusted contribution limits no later than the 1st of February of the year in which the adjustment occurs.

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3.12.060 - Limitations on contributions from broad-based political committees.

- A. No broad-based political committee shall make to any candidate and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee receive from a broad-based political committee, a contribution or contributions totaling more than one thousand ~~two~~ eight hundred dollars (\$1,~~2800.00~~), adjusted bi-annually pursuant to Subsection (D), for each election except as stated in Subsection B. of this Section.
- B. For candidates who qualify as applicant or certified candidates as defined in Section 3.15.040 of the Oakland Fair Elections Act, no broad-based political committee shall make to any candidate and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee receive from a broad-based political committee, a contribution or contributions totaling more than one thousand two hundred dollars (\$1,200.00), adjusted bi-annually pursuant to Subsection D., for each election.
- C. 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.
- D. Beginning in January of 202~~5~~7 and in January of every odd-numbered year thereafter, the Public Ethics Commission shall increase the contribution limitation amounts by the percent increase, if any, in the Consumer Price Index for the preceding two years, rounding to the nearest fifty-dollar (\$50.00) value. The Commission shall use the Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as published by the United States Department of Labor, Bureau of Statistics, or if such an index is discontinued, then the most similar successor index. The Commission shall publish the adjusted contribution limits no later than February 1 of the year in which the adjustment occurs.

SECTION 2. Sunset Clause. The contributions limits in sections 3.12.050(A) and 3.12.060(A) will automatically adjust January 1, 2027 as follows: the contributions limits in sections 3.12.050(A) and 3.12.060(A) shall be equal to the then-current, CPI-adjusted limits in sections 3.12.050(B) and 3.12.060(B), and thereafter shall be increased in accordance with sections 3.12.050(D) and 3.12.060(D), respectively. While this Ordinance is in effect, for candidates who qualify as applicant or certified candidates as defined in Section 3.15.040 of the Oakland Fair Elections Act, the limits set forth in 3.12.050(B) and 3.12.060(B) shall adjust to the temporary higher limits of 3.12.050(A) and 3.12.060(A), respectively, whenever the Commission projects, pursuant to 3.15.070(C) and (E), that the amount of Democracy Dollars proceeds available for that office for that election will be less than \$25,000 per certified candidate.

If the Commission projects, pursuant to 3.15.070(C) and (E), that the amount of Democracy Dollars proceeds available for a covered municipal office is at least \$25,000 per certified candidate, the lower limits set forth in 3.12.050(B) and 3.12.060(B) shall apply to all candidates for that office and their controlled committees beginning on January 1 of the year in which the election for the covered municipal office occurs. Contributions received prior to the effective date of this Ordinance shall be subject to the limits in effect at the time the contribution was made.

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Appendix – Campaign
Contribution Limit Survey

APPENDIX: PEC Survey on Campaign Contribution Limits

Between August 22 and August 27, the PEC conducted an online survey of respondents’ opinions concerning Oakland campaign contribution limits and a proposal by Councilmembers Ramachandran and Jenkins to increase these limits. A total of 48 people responded. The responses, by question, are indicated below, as well as any written comment provided by respondents.

1. Are you an Oakland resident?

Yes	43 (89.6%)
No	4 (8.3%)
[No answer]	1 (2.1%)

2. Which of the following best describes you:

[Candidate:] I am a candidate for a City of Oakland or Oakland Unified School District (OUSD) elected office	4 (8.3%)
[Consultant/Staff:] I am a campaign staffer or paid consultant for an Oakland campaign	1 (2.1%)
[Volunteer:] I am volunteering for an Oakland campaign	3 (6.3%)
[Other:] I am not a candidate, campaign staffer, or campaign volunteer	40 (83.3%)

3. Oakland has campaign contribution limits, which limit how much money a single campaign donor can contribute to a candidate. With a few exceptions, most donors (like individuals and businesses) cannot give more than \$600 to a candidate running for Oakland City office (including for Mayor, City Council, City Attorney, and City Auditor) or for School Board of the Oakland Unified School District (OUSD).

Does Oakland’s \$600-per-donor contribution limit to candidates for City and OUSD office seem too high, too low, or about right to you?

Too High	6 (12.5%)
About Right	11 (22.9%)
Too Low	29 (60.4%)
Not Sure	2 (4.2%)

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4. *If you think Oakland’s per-donor contribution limit should be changed, what dollar limit per donor do you think is right? _____*

Amount	# of Responses
\$2,000	2
\$1,500	3
\$1,200	1
\$1,000	10
\$900	9
\$750	1
\$500	1
\$300	2
\$250	1
\$50	1

Other responses:

\$900 (amount worked for previous elections)
I don't believe in limits, as it's applied unevenly. We should have public financing.
No limit due to Citizens United.

5. *Previously, the per-donor contribution limit in Oakland and OUSD elections was \$900 for most donors. In 2022, Oakland voters passed Measure W, which created a public campaign financing system called Democracy Dollars and lowered the contribution limit to \$600. However, implementation of Democracy Dollars has been delayed.*

Would you support or oppose raising contribution limits in Oakland and OUSD elections back to \$900 until the Democracy Dollars program is implemented?

ALL Support	31 (64.6%)
Strongly Support	25 (52.1%)
Somewhat Support	6 (12.5%)
Neutral	3 (6.3%)
ALL Oppose	13 (27.1%)
Somewhat Oppose	6 (12.5%)
Strongly Oppose	7 (14.6%)
Don't Know	1 (2.1%)

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6. If Oakland passes a law to increase contribution limits in October 2024, should that change apply immediately to candidates currently running for office in the November 2024 election, or only to candidates running for office in elections after November 2024?

Effective <u>for</u> the November 2024 Election	26 (54.2%)
Effective for elections <u>after</u> November 2024	20 (41.7%)
No Opinion	1 (2.1%)
Don't Know	1 (2.1%)

Written Comments

7. Please share why you support or oppose raising contribution limits from \$600 to \$900: (Optional)

Candidate – Support Raising Limits:

<i>Because interest group spending is virtually unlimited</i>
<i>The rationale for lowering the limit has not been realized, so the limit should be raised. However, the increase should not apply to this year's elections.</i>

Candidate – Neutral on Raising Limits

<i>Unions and other organizations should stop funding local candidates to ensure that elected officials prioritize the interests of the community over those of special interest groups. When organizations fund candidates, it can create a sense of obligation or influence, potentially leading to policies that favor the funders rather than the broader public. This can undermine democracy by skewing representation and reducing transparency, as candidates might feel pressured to cater to the needs of their financial backers instead of making decisions based solely on what's best for their constituents. Removing organizational funding can help ensure that local elections are driven by community needs and grassroots support, leading to more accountable and independent leadership. Eliminating organization and PAC donations would allow local elections to focus more on public financing and encourage greater individual contributions. This shift could help level the playing field, reducing the influence of large organizations and special interests while empowering everyday citizens to have a more significant impact on the electoral process. With public financing, cities could provide matching funds for small donations, amplifying the voices of individual voters and encouraging broader participation. This approach would promote a more democratic and transparent system, where candidates are less beholden to powerful groups and more responsive to the needs and concerns of their constituents. Increasing individual contribution limits could further incentivize personal involvement, fostering a stronger connection between candidates and the communities they aim to serve.</i>
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Campaign Consultant/Staff – Neutral on Raising Limits

I think it should be raised to \$1000, but only after the November election. Raising the limit now would cause issues with remits that have already been printed, websites, etc. and add unnecessary additional costs to the campaign

Campaign Volunteer – Support Raising Limits

postage rates were increased again recently, food for volunteers has also increased substantially. Pretty much all costs for campaigning is more expensive, even those that are heavily volunteer driven. A 2024 candidate should spend time meeting with constituents, attending community events, sponsoring townhalls and not spending the majority of their time fundraising - the additional funding allowance per person can assist candidates to provide additional information to voters.

Oakland Resident – Support Raising Limits

An ongoing problem with Oakland's campaign finance program is that the \$\$ never get to School Board candidates, in my experience (I ran successfully in 2008, 2012, and 2016. Every time I agreed to the campaign rules so I could receive matching funds, and they never materialized. I was told it's because the City Council controls who gets those funds and they never prioritized including School Board candidates.)

If the justification in lowering the limit was because there would be Democracy Dollars available and those funds have not become available to candidates, then the status quo/prior limit should be restored until Democracy Dollars is implemented and available to candidates. It is very costly to run campaigns for office, and for a large city like Oakland, there are a lot of voters to reach. Campaign staff and print materials/mailers for voter outreach and online ads are all very costly and not free/available by volunteers. I support contribution limits being reasonable, and even potentially being adjusted annually or with each election cycle as well to adjust for inflation like State/FPPC contribution limits are.

Raising money is hard. The lower the limit, the more time some candidates will have to dedicate to fundraising.

*Independent expenditure committees spend unlimited money. The limit on candidate contributions makes the IECs much too powerful. - **Michael Ubell***

*No limit due to Citizens United. - **Ralph Kanz***

Lower the contribution limit for Oakland residents puts too much power in the hands of third party interests who do IEs that have no contribution limits.

*individual contributions can help offset pacs and business/union donations - **Scott Law***

It puts less power into the hands of outside expenditure groups

Anything we can do to blunt the impact of IE's, PAC's, and other orgs not subject to the \$600 limit must be implemented

The limit was lowered on a promise that City funding would be available. The City hasn't met that promise, which gives an advantage to incumbents and independent expenditure committees. If Oakland can't fulfill its promise it shouldn't impose new restrictions.

I don't believe in limits, as it's applied unevenly. We should have public financing.

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<i>Exacerbates the ability to entrenched groups to outspend and makes it hard for new entrants to compete - Vivek R</i>
<i>Takes away jobs and economic growth generated by campaigns</i>
<i>Lowering the limit has taken power away from individuals and increased it for monied organizations like PACs and IECs. It was a bad idea to begin with.</i>
<i>Candidates need more money to be successful and \$900 is honestly still a very low limit!</i>
<i>It increases the impact of individual donors</i>
<i>The lower amount makes it harder for candidates without large organizations behind them</i>
<i>postage rates were increased again recently, food for volunteers has also increased substantially. Pretty much all costs for campaigning is more expensive, even those that are heavily volunteer driven.</i>
<i>A 2024 candidate should spend time meeting with constituents, attending community events, sponsoring townhalls and not spending the majority of their time fundraising - the additional funding allowance per person can assist candidates to provide additional information to voters.</i>

Oakland Resident – Oppose Raising Limits

<i>Oppose both. People can't afford to fund elections that lead to corruption. - Carol Wyatt</i>
<i>I'm not at all clear as to what this is meant to accomplish. I opted for the status quo because it is late in the campaign season but I am not even sure what the status quo is from this survey.</i>
<i>Oakland seems like a place that has a very long and embedded history of corruption and graft in different forms. Higher limits invite too much influence from groups with more power than normal people.</i>
<i>I don't think that who gets to serve in Oakland elected office should be determined by who has enough friends who can afford to give \$900 to a local campaign.</i>
<i>The average person can't afford to give more than \$600. We shouldn't allow income inequality to shape our politics. We should check the power of wealth and not let the affluent give their favored candidates an unfair advantage. Candidates should be incentivized to work harder while campaigning and rely less on expensive ad buys and fancy consultants.</i>
<i>Because many Oakland citizens can't afford to support candidates at that level and therefore it preferences wealthier residents' voice</i>
<i>Money can't buy votes. Organized networks deliver votes.</i>
<i>To advance the interest of voters over special interests high contribution donors, lowering campaign contributions is critical. This is one the most substantive mechanisms to increase the power of the vote. It's also inconceivable that a measure co-written and edited by an elected official is not seen as a glaring conflict of interest.</i>

Oakland Resident – Neutral on Raising Limits

<i>\$750 is a good compromise for the next few years.</i>

Non-Oakland Respondent – Support Raising Limits

<i>Campaigning is expensive and \$1000 is not a extreme contribution.</i>

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Non-Oakland Respondent – Oppose Raising Limits


It is either publicly financed or it's privately financed. If Oakland lowered the limit to \$600 delay in implementation of a program due to an unknown reason isn't a logical reason to change the limit back to 900.

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APPROVED AS TO FORM AND LEGALITY


CITY ATTORNEY'S OFFICE

OAKLAND CITY COUNCIL

RESOLUTION NO. 89316 C.M.S.

INTRODUCED BY COUNCILMEMBER DAN KALB, COUNCIL PRESIDENT NIKKI FORTUNATO BAS, AND COUNCILMEMBER CARROLL FIFE

RESOLUTION ON THE CITY COUNCIL'S OWN MOTION SUBMITTING TO THE VOTERS AT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION A MEASURE THAT WOULD ESTABLISH PUBLIC FINANCING FOR ELECTIONS OF CITY AND SCHOOL BOARD OFFICIALS, INCREASE TRANSPARENCY REGARDING INDEPENDENT SPENDING ON CITY ELECTIONS, AND FURTHER RESTRICT THE ABILITY OF FORMER CITY OFFICIALS AND DIRECTORS TO ACT AS LOBBYISTS BY:

(1) REPEALING THE LIMITED PUBLIC FINANCING ACT AND ADOPTING THE FAIR ELECTIONS ACT TO ENABLE RESIDENT ALLOCATION OF PUBLIC FINANCING FOR ELECTIVE OFFICE CAMPAIGNS;

(2) AMENDING THE CAMPAIGN REFORM ACT AND LOBBYIST REGISTRATION ACT; AND

3) AMENDING SECTION 603 OF THE CHARTER OF THE CITY OF OAKLAND TO FUND PUBLIC ETHICS COMMISSION STAFF TO IMPLEMENT THE FAIR ELECTIONS ACT;

AND DIRECTING THE CITY CLERK TO FIX THE DATE FOR SUBMISSION OF ARGUMENTS AND PROVIDE FOR NOTICE AND PUBLICATION, AND TAKE ANY AND ALL ACTIONS NECESSARY UNDER LAW TO PREPARE FOR AND CONDUCT THE NOVEMBER 8, 2022, GENERAL MUNICIPAL ELECTION

WHEREAS, the City of Oakland has a history of supporting campaign finance and governmental ethics laws in order to improve transparency, reduce the appearance of corruption, and increase opportunities for people to run for local office. These laws include the Limited Public Financing Act, the Oakland Campaign Reform Act, Oakland's Lobbyists Registration

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law, and Section 603 of the Charter, which lays the structure, authority and independence of the Oakland Public Ethics Commission; and

WHEREAS, In November of 2015, voters in Seattle, WA passed campaign finance reform that included democracy vouchers to Seattle residents, and studies have shown increased geographic and economic diversity of political donors in that city. Studies also revealed an 86% increase in the number of candidates and a decrease in incumbent electoral success.¹ Moreover, a 2021 study found that first-time eligible voters who used at least one Democracy Dollars voucher in Seattle’s 2017 municipal elections was 11.75 times more likely to vote than a similarly situated person who did not,² and low-propensity voters who used at least one voucher in Seattle’s 2017 municipal elections were 7.4 times more likely to vote than a low-propensity voter who did not;³ and

WHEREAS, In September 2020, the Oakland Public Ethics Commission issued a report, *Race for Power: How Money in Oakland Politics Creates and Perpetuates Disparities Across Income and Race*, that reviewed outcomes from Oakland’s existing public financing program and overall campaign finance system and recommended a new approach for Oakland to expand and diversify participation and influence in the campaign process, particularly with regard to how some Oaklanders lack political power in the campaign finance process, which relies on those with money to make contributions to political campaigns. The Commission explored best practices in other jurisdictions, including other public financing models, and concluded that a Democracy Dollars program “shows the most promise for bringing equity to the campaign finance process since it equips all voters with campaign ‘cash’ to contribute to campaigns, thereby incentivizing candidates to engage across demographics regardless of wealth and history of prior engagement;” and

WHEREAS, gaps in existing municipal law deprive Oakland voters of access to information about how big independent spenders are spending money to influence their votes; and

WHEREAS, existing municipal restrictions on lobbying by city officials immediately after they leave government service are inadequate to ensure that city government is free from corruption and the appearance of corruption. Extending the lobbying ban from one year to two years after a city official leaves government service is a necessary safeguard to curb corruption, including quid pro quo corruption, and the appearance of corruption, and will thereby better protect the integrity of city government; and

WHEREAS, the City Council wishes to amplify the voices of Oakland residents in Oakland elections by replacing the current Limited Public Financing Act with a program establishing resident allocation of public financing of candidate election campaigns, increasing funding and staffing for the Public Ethics Commission in order to implement such a “Democracy

¹University of Washington, “Seattle Democracy Vouchers Increase Donations, Number of Candidates in City Elections,” May 26, 2022. Available at: <https://www.newswise.com/politics/seattle-democracy-vouchers-increase-donations-number-of-candidates-in-city-elections>

² Win Win Network, “Honest Elections Seattle Initiative: Democracy Voucher Usage and Low-Turnout Voter Engagement Evaluation in 2017 and 2019,” Aug. 14, 2021. Available at: <https://drive.google.com/file/d/1mkMHu6rajpOLu2lkBxayv0H-Ucrpr-JC/view>.

³ Id.

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Dollars” program, enhancing transparency regarding independent spending on Oakland elections, and increasing the current one year limit on former city elected officials, department heads, and budget directors from being able to act as local government lobbyists; and

WHEREAS, the City Council finds that amendments to the Oakland Campaign Reform Act further the purposes of that ordinance, including reducing the influence of large contributors, limiting expenditures by ensuring their thorough public disclosure, encouraging competition for elective office, and promoting public discussion of important issues in political campaigns, as well as furthering new purposes as proposed for addition to the Act; and

WHEREAS, the City Council finds that amendments to the Lobbyist Registration Act further the purposes of that ordinance, by strengthening the existing limit on former city elected officials, department heads, and budget directors acting as lobbyists; now, therefore, be it

RESOLVED: That the Oakland City Council finds and determines the forgoing recitals are true and correct and adopts and incorporates them into this Resolution; and be it

FURTHER RESOLVED: That the Oakland City Council submits to the qualified voters of the City, at the November 8, 2022 election, a proposal to (1) repeal the Limited Public Financing Act, Chapter 3.13 of the Oakland Municipal Code (“O.M.C.”), and replace it with the addition of a new ordinance, O.M.C. Chapter 3.15, entitled the Fair Elections Act, (2) amend O.M.C. Chapter 3.12 (Campaign Reform Act), (3) amend O.M.C. Section 3.20.190 and add an Article VII (Miscellaneous) header and Section 3.20.250 within Chapter 3.20 (Lobbyist Registration Act), and (4) amend Section 603 of the City Charter, as set forth below. Added text is shown as underscored type; deleted text is shown as ~~strikethrough~~ type; portions of the provisions not cited or not shown in underscoring or strikethrough type are not changed.

The people of the City of Oakland do ordain as follows:

SECTION 1. Repeal of Oakland Municipal Code Chapter 3.13. Oakland Municipal Code Chapter 3.13, *Limited Public Financing Act*, is hereby repealed in its entirety.

~~Chapter 3.13—LIMITED PUBLIC FINANCING ACT~~

~~Article I.—Findings and Purpose.~~

~~3.13.010—Title.~~

~~This chapter shall be known as the “Limited Public Financing Act of the City of Oakland.”~~

~~3.13.020—Findings and declarations.~~

~~The findings of this Act are as follows:~~

- ~~A. 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~~

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~~stake in matters under consideration by city government. This has caused the public perception that votes are being improperly influenced by monetary contributions.~~

- ~~C. 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.~~

~~3.13.030 Purpose of this Act.~~

~~The purpose of this Act is to accomplish the objectives stated in Oakland's Campaign Reform Act as follows:~~

- ~~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 reduce the pressure on candidates to raise large campaign war chests for defensive purposes, beyond the amount necessary to communicate reasonably with voters.~~
- ~~D. To encourage competition for elective office.~~
- ~~E. To allow candidates and office holders 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 important issues involved in political campaigns.~~
- ~~G. To help preserve public trust in governmental and electoral institutions.~~

~~Article II. Definitions~~

~~3.13.040 Interpretation of this Act.~~

~~Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in Chapter 3.12 of this Code and in Government Code Sections 81000 et seq. as amended govern the interpretation of this Act.~~

~~For purposes of this Act, "principal residence" shall mean the place in which a person's habitation is fixed, wherein the person has the intention of remaining, and to which, whenever he or she is absent, the person has the intention of returning.~~

~~For purposes of this Act, "primary place of doing business" shall mean the street address of a corporation's or association's principal executive office as filed with the California Secretary of State or the street address of an unincorporated association's principal office as filed with the California Secretary of State.~~

~~Article III. Election Campaign Fund~~

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~~3.13.050—Election campaign fund.~~

~~There is hereby established an account within a special revenue fund of the city to be known as the "Election Campaign Fund."~~

~~3.13.060—Appropriation of funds.~~

- ~~A. The city council shall appropriate to the election campaign fund, under the city's current two-year budget cycle, an amount sufficient to fund all candidates eligible to receive public financing for the office of district city councilmember.~~
- ~~B. The city public ethics commission shall provide in the form and at the time directed by the mayor and city administrator a written estimate of the amount necessary to be appropriated for any two-year budget cycle according to the provisions of this Act for all eligible candidates. The amount of funds to be allocated to the election campaign fund shall be based on a consideration of anticipated campaign activity, anticipated administrative costs, and existing unspent funds within the account. The amount of funds to be allocated to the election campaign fund shall not exceed \$500,000.00 for any two-year budget cycle.~~
- ~~C. The election campaign fund shall be established as an interest bearing account. Unspent funds in the election campaign fund at the end of a two-year budget cycle shall remain in the fund and accrue for disbursement to candidates eligible for public financing in future elections and for administrative costs.~~
- ~~D. Up to seven and one-half percent of the amount allocated to the election campaign fund pursuant to Subsections 3.13.060(a) and (b) may be utilized by the public ethics commission to cover the anticipated cost of administering the provisions of this Act.~~

~~3.13.065—Allocation of election campaign fund.~~

~~No later than seven days after the city clerk has certified the names of all candidates to appear on the ballot, the public ethics commission shall determine at a publicly noticed meeting whether, based on the number of potentially eligible candidates, the amount of money in the election campaign fund is adequate to provide the maximum amount to potentially eligible candidates. If the commission determines that the election campaign fund will not be adequate to provide the maximum amount of funds to potentially eligible candidates, the commission shall order the disbursement of available funds on a pro-rata or other equitable basis. The commission may at any time revise the disbursement plan consistent with these rules and prevailing law.~~

~~Article IV.—Eligibility for Public Financing.~~

~~3.13.070—Application and withdrawal procedures.~~

- ~~A. Each candidate for district city council shall file a statement with the city clerk on a form approved for such purpose indicating acceptance or rejection of the voluntary spending ceilings pursuant to Section 3.12.190.~~
- ~~B. Each candidate for district city council shall file with the public ethics commission a statement of acceptance or rejection of public financing on a form approved by the public ethics commission no later than 14 calendar days after the date the city clerk has certified the names of candidates to appear on the ballot for the election in which public financing~~

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~~will be sought. The statement of acceptance or rejection of public financing shall advise and require that the candidate's decision to reject public financing is irrevocable for the election in which his or her name appears on the ballot. The failure to timely file a statement of acceptance or rejection of public financing shall constitute a rejection of public financing.~~

~~C. If a candidate declines to accept the voluntary expenditure ceilings prescribed in Section 3.12.200, the candidate shall be subject to the contribution limits of Subsections 3.12.050(a) and 3.12.060(a) and shall not be eligible for public financing.~~

~~D. If a candidate agrees to accept the voluntary expenditure ceilings prescribed in Section 3.12.200, the candidate shall be subject to the contribution limits of Subsections 3.12.050(b) and 3.12.060(b) as adjusted pursuant to Subsections 3.12.050(g) and 3.12.060(g), and shall be eligible for public financing upon meeting the qualification requirements as provided in this Act.~~

~~E. In the event expenditure ceilings are lifted pursuant to Section 3.12.200, a candidate who accepted expenditure ceilings shall be permitted to receive public financing but shall no longer be subject to expenditure ceilings.~~

~~3.13.080—Qualification procedures.~~

~~A candidate shall be approved to receive public financing if the candidate meets all of the following requirements:~~

~~A. The candidate has filed a timely statement of acceptance of the voluntary spending ceilings and acceptance of public financing.~~

~~B. The candidate is certified to appear on the ballot for the election for which public financing is sought.~~

~~C. The candidate has (1) received contributions in an aggregate amount of at least five percent of the expenditure ceiling for the office being sought from contributors whose principal residence or whose primary place of doing business is located within the city and which residence or business address appears on the written instrument used to make the contribution, and (2) made qualified campaign expenditures in an aggregate amount of at least five percent of the expenditure ceiling for the office being sought. Contributions from the candidate's own funds shall not be counted towards meeting this five percent requirement. The candidate shall provide copies of the contribution checks received and records of payments made to meet the five percent eligibility requirements.~~

~~D. The candidate is opposed by another candidate for the same office.~~

~~E. The candidate agrees to all conditions and requirements of this Act and to submit to any reasonable audit deemed appropriate by the public ethics commission or other civil authorities.~~

~~F. The candidate or his or her campaign treasurer or designee attends a training program conducted or sponsored by the public ethics commission.~~

~~G. The candidate has filed, and completely and accurately executed, all pre-election campaign statements that are due at the time public financing is payable. All candidates~~

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~~receiving public financing shall timely file, and completely and accurately execute, all post-election campaign statements for each election in which they received public financing.~~

~~3.13.090— Use of personal funds.~~

~~A candidate who accepts public financing shall not receive contributions or loans from the candidate's own funds which aggregate total exceeds ten percent of the voluntary expenditure ceiling for the office being sought. If the voluntary expenditure ceilings for the office being sought are lifted, this provision shall not apply.~~

~~Article V.— Disbursement of Public Financing~~

~~3.13.100— Duties of the public ethics commission and office of the city auditor.~~

~~A. The public ethics commission shall develop any and all forms necessary to carry out the provisions of the Act. The public ethics commission may, in its discretion, require any document or form to be filed in an electronic format that is provided by the public ethics commission to the candidates free of charge.~~

~~B. The public ethics commission shall review records submitted to determine a candidate's eligibility to receive public financing and requests for reimbursement promptly. For any candidate determined not to be eligible for public financing, the commission or its designee shall inform the candidate of the reasons why the candidate is not eligible and what actions, if any, the candidate may take to correct any insufficiencies.~~

~~C. The city auditor may conduct a discretionary audit of the Public Ethics Commission's disbursement of public financing funds to candidates or may conduct discretionary audits of the campaign committee of any candidate who receives public financing. The audit report shall be a public record and provided to the public ethics commission. The city auditor shall conduct all audits in accordance with generally accepted government auditing standards.~~

~~3.13.110— Requests for public financing.~~

~~A. Public financing pursuant to this Act shall be provided solely by reimbursing eligible candidates for certain qualified campaign expenditures lawfully made by the candidate and his or her campaign committee.~~

~~B. The qualified campaign expenditures eligible for reimbursement are:~~

- ~~1. Candidate filing and ballot fees;~~
- ~~2. Printed campaign literature and production costs;~~
- ~~3. Postage;~~
- ~~4. Print advertisements;~~
- ~~5. Radio airtime and production costs;~~
- ~~6. Television or cable airtime and production costs; and~~

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~~7. Website design and maintenance costs.~~

~~C. The following conditions and restrictions shall apply to any request for reimbursement:~~

~~1. All requests for reimbursement shall be made on a form authorized by the public ethics commission and shall include: (a) a copy of the billing invoice for which reimbursement is sought; (b) a copy of the check(s) by which the candidate's campaign committee made payment on the billing invoice; and (c) a copy, when applicable, of the campaign literature, advertisement, radio or television script, or website configuration.~~

~~2. All requests for reimbursement shall include a sworn declaration by the candidate and his or her campaign treasurer that (a) the check(s) used to make payment on the billing invoice represents payment in full of the billing invoice submitted for reimbursement and that sufficient funds exist in the campaign account to provide payment, and (b) any money received from the election campaign fund has not been previously earmarked or specifically encumbered to pay or to secure payment of any loan, return of contribution or of any expenditure other than the one for which reimbursement was sought.~~

~~D. Any decision made by the executive director to deny a request for reimbursement may be appealed to the commission whose decision shall be final. A request to agendize an appeal of the executive director's decision shall be made in writing and delivered to the office of the public ethics commission no more than ten calendar days after receiving written notice of the executive director's decision.~~

~~E. The total amount of public financing allocated to each candidate shall not exceed 30 percent of the voluntary expenditure ceiling per election for the office being sought.~~

~~3.13.120 Disbursement and deposit of public financing.~~

~~A. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement to the public ethics commission in minimum increments of \$1,000.00 or more.~~

~~B. A candidate or candidate's controlled committee, certified as eligible to receive public financing, shall submit requests for reimbursement in minimum increments of \$500.00 or more ten calendar days before the election.~~

~~C. The public ethics commission or its designee shall have ten calendar days to cause the review and approval or denial of the request for reimbursement and disburse funds from the election campaign fund to the candidate or candidate's controlled committee.~~

~~D. All funds disbursed from the election campaign fund shall be made payable to the candidate's controlled committee and shall be deposited directly into the candidate's campaign checking account within thirty calendar days of receipt.~~

~~3.13.150 Return of surplus funds.~~

~~A. Surplus campaign funds remaining at the end of the post election reporting period following the election for which public financing was received shall be returned to the election campaign fund no later than 31 calendar days from the last day of the semi-~~

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~~annual reporting period following the election in an amount specified by this section. A candidate shall not be required to return any surplus funds in an amount greater than the amount of public financing received. The amount of surplus campaign funds to be returned to the election campaign fund shall be calculated by multiplying the amount of surplus campaign funds by the percentage that total public financing received represents of total monetary contributions received for the election period.~~

~~B. For purposes of this Act, campaign funds shall be considered "surplus" campaign funds to the extent that the total amount of contributions (excluding the receipt of public financing) exceed the total financial obligations of the candidate's campaign committee (excluding unlawful or non-qualified campaign expenditures) as of the last day of the semi-annual reporting period following the election. A financial obligation includes (1) accounts payable billed, or (2) accounts payable for which bills may be expected, for goods or services received during the election.~~

~~C. Public financing shall not be disbursed to the certified candidate from the election campaign fund following the day of the election or the candidate's withdrawal from the election, whichever occurs first, except that public financing may be disbursed to a certified candidate after the date of the election or withdrawal provided that the candidate submitted a properly documented request for reimbursement before the date of the election or the date of withdrawal from the election.~~

~~3.13.170 – Public debates.~~

~~While not a condition for receiving public financing, candidates receiving public financing are strongly encouraged to participate in one or more nonpartisan candidate debates for each election.~~

~~3.13.180 – Enforcement.~~

~~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.~~

~~3.13.190 – Criminal misdemeanor actions.~~

~~Any person who knowingly or willfully (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is guilty of a misdemeanor. Prosecution shall be commenced within four years after the date on which the violation occurred.~~

~~3.13.200 – Enforcement actions.~~

~~A. Any person who intentionally or negligently (1) misrepresents his or her eligibility for public financing, (2) makes a material misrepresentation in connection with a request for reimbursement, or (3) causes, aids or abets any other person to violate the provisions of this Act, is subject to enforcement proceedings before the public ethics commission pursuant to the public ethics commission general rules of procedure.~~

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- ~~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 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 public ethics commission shall review, investigate and make determinations regarding any alleged violation consistent with the public ethics commission's general complaint procedures.~~
- ~~D. The commission has full authority to settle any action involving public financing in the interest of justice.~~
- ~~E. If the commission determines a violation has occurred, the commission is hereby authorized to administer appropriate penalties and fines not to exceed \$1,000.00 per violation and to order the repayment of public financing received or expended in violation of law.~~
- ~~F. The public ethics commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Act.~~
- ~~G. No complaint alleging a violation of any provision of this Act shall be filed more than four years after the date the violation occurred.~~

~~3.13.220 Construction.~~

~~The Act shall be liberally construed to accomplish its purposes.~~

~~3.13.240 Applicability of other laws.~~

~~Nothing in this Act shall exempt any person from applicable provisions of any other laws of the city, state or other appropriate jurisdiction.~~

~~3.13.260 Severability.~~

~~If any provision of this Act, or the application of such provision to any person or circumstance, 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.~~

SECTION 2. Adoption of Oakland Municipal Code Chapter 3.15. Oakland Municipal Code Chapter 3.15, Oakland's Fair Elections Act, is hereby adopted as follows:

Article I. - Findings and Purpose.

3.15.010 – Title.

This Chapter shall be known as the “Oakland Fair Elections Act,” hereinafter referred to as the “Act.”

3.15.020 – Findings and Declarations.

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The Findings of this Act are as follows:

- A. Residents of Oakland have a right to participate in Oakland's elections, and the voices of residents of Oakland should matter.
- B. Spending in Oakland elections has increased significantly, reaching nearly \$5 million in candidate contributions and independent expenditures in the 2020 election.
- C. Oakland candidates rely primarily on large contributions. In the 2020 election, only 6% of contributions to candidates came from donors who gave \$100 or less. By contrast, 45% of contributions to candidates came from donors who gave \$500 or more.
- D. Candidate contributions in Oakland elections come disproportionately from Oakland's wealthiest neighborhoods. In 2020, Oakland zip codes with a median household income greater than \$75,000 were responsible for 66% of candidate contributions while comprising only 40% of Oakland's population. The six Oakland zip codes with median household incomes below \$60,000 provided merely a quarter of candidate contributions while comprising nearly half of Oakland's population.
- E. The rapidly increasing costs of political campaigns are forcing officeholders to spend more time on fundraising and less time on the public's business. Because of these increasing costs and the need to fundraise, officeholders increasingly rely on large contributions from interest groups and donors with specific financial stakes in matters under consideration by the city government.
- F. Candidates' reliance on large contributions from a limited number of powerful contributors creates the opportunity for and appearance of corruption in city government. This undermines the integrity of the governmental process and participation in campaigns by Oakland residents.
- G. Candidates' reliance on large contributions from a limited number of wealthy contributors also gives incumbents an advantage over potential challengers and inhibits potential candidates for elected office who lack existing networks of wealthy contributors from running for office, thereby decreasing the competitiveness of elections in Oakland.
- H. Meaningful participation in financing the campaigns of candidates for elected office in Oakland should not be limited to people and entities with significant wealth that are able to make large contributions.
- I. Based on existing circumstances in Oakland, including those enumerated above, the programs and reforms in this Act will curb corruption, including quid pro quo corruption, and its appearance in Oakland elections and government. The programs and reforms in this Act will also ensure the right of Oakland residents to participate in democratic self-governance through effective participation in Oakland elections and government and their right to elected officials who are responsive to constituents.
- J. The Democracy Dollars Program created by this Act additionally will enlarge public discussion and participation in elections by amplifying the voices of Oakland residents in elections through their participation in the Democracy Dollars program. The Democracy Dollars Program will also support candidates for elected office who lack networks of wealthy contributors, and will encourage candidates across the political spectrum and from

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different backgrounds to seek elected office, thereby resulting in a pool of candidates that is more reflective of the diversity of Oakland residents and resulting in more competitive elections.

3.15.030 – Purpose.

- A. The purpose of this Chapter is to build fair elections in the City of Oakland, expand public participation in the local democratic process and empower all Oakland residents with an opportunity to engage meaningfully in the campaign process, and prevent corruption and its appearance by:
1. Ensuring all Oakland residents have an opportunity to participate in local elective and governmental processes and to have their voices heard in their local democracy;
 2. Ensuring candidates for office are free to focus on communicating with all Oakland residents and considering policy issues rather than devoting excessive time to fundraising;
 3. Ensuring that access to networks of wealthy contributors is not a prerequisite for candidates to run competitive campaigns for elected office;
 4. Ensuring a fair elections process that holds local elected leaders accountable to the people of Oakland by strengthening residents' engagement with the City of Oakland's government;
 5. Ensuring candidates who receive public financing participate in public debates to assist residents with making an informed decision about each candidate and understand each candidate's stance on the issues affecting the City;
 6. Placing reasonable limits on the amount individuals may contribute to political campaigns in municipal elections;
 7. Ensuring that 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;
 8. Ensuring that local officials and high-ranking staff are responsive to the needs of their constituencies and do not unfairly use the contacts and status earned in public service to lobby for private industries that have financial stakes in the matters under consideration by the City;
 9. Tightening prohibitions on lobbying by former elected officials (the “revolving door” problem) to ensure that local officials are responsive to all of the residents of Oakland instead of wealthy special interests;
 10. Providing full and fair enforcement of all the provisions in this Chapter; and
 11. Creating a Democracy Dollars public finance program to expand the pool of candidates and donors for City of Oakland offices and to safeguard the people's control of the elections process in the City of Oakland.

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- B. This Chapter shall be liberally construed and vigorously enforced to ensure its purposes are fulfilled.

Article II. - Definitions

3.15.040 – Definitions.

- A. Unless the term is specifically defined in this Act or the contrary is stated or clearly appears from the text, the definitions set forth in the City of Oakland Campaign Reform Act (Chapter 3.12 of the Oakland Municipal Code) and in the California Political Reform Act (Government Code Sections 81000 et seq.), as amended, govern the interpretation of this Act.
- B. For purposes of this Act:
1. “Democracy Dollars” means the four Democracy Dollar Vouchers, each worth twenty-five dollars (\$25.00), of campaign money from the Fund, that are to be distributed to eligible residents under section 3.15.090 of this Act.
 2. “Applicant candidate” means a candidate for a covered office who has filed a notice of intent to apply for certification in the Program under Section 3.15.080(A).
 3. “Certified candidate” means a candidate who has received certification in the Program under Section 3.15.080.
 4. “Commission” means the Oakland Public Ethics Commission.
 5. “Contested election” means an election for a covered office in which an applicant or certified candidate is opposed by:
 - a. Another certified candidate for the same covered office; or
 - b. Another candidate for the same covered office who has received contributions or made expenditures that, in the aggregate, equal or exceed ten thousand dollars (\$10,000). “Covered office” means the office of Mayor, City Attorney, City Auditor, City Council, or School Board of Directors.
 6. “Executive Director” means the Executive Director of the Oakland Public Ethics Commission.
 7. “Eligible resident” means a natural person who satisfies all of the following conditions:
 - a. Is at least 18 years old on the date of the election for which the Democracy Dollars are distributed;
 - b. Currently resides in the City and has resided in the City for more than 30 days;
 - c. Is not prohibited from making a contribution under 52 U.S.C. 30121.

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8. “Fund” means the Oakland Democracy Dollars Fund created under Section 3.15.060. This definition does not apply to “funds” or any use of “fund” preceded by an adjective, such as “General Fund.”
 9. “Nomination period” means the period in which candidates for City office must file their nomination documents with the City Clerk pursuant to Section 3.08.040 of the Oakland Municipal Code.
 10. “Program” means the Democracy Dollars Program established by this Act.
 11. “Qualifying contribution” means a monetary contribution, excluding a loan, made by an eligible resident to an applicant candidate in an amount of at least ten dollars (\$10) and not more than the contribution limit under Section 3.12.050(B) of the Oakland Municipal Code.
 12. “Qualifying period” means the period beginning January 1 in the year of an election and ending fourteen (14) days after the close of the nomination period for the election.
 13. “Uncontested election” means an election for a covered office that is not a contested election.
- C. For purposes of this Act, any reference to a candidate includes the candidate’s controlled committee for City office, the treasurer of the candidate’s controlled committee for City office, and any agent of the candidate or the candidate’s controlled committee for City office.

Article III. – Agency Duties

3.15.050 – Duties of the Commission.

- A. The Commission shall implement and administer the Program in accordance with the findings and purposes of this Act.
- B. Following the first election after the effective date of this Act and by an affirmative vote of at least five (5) of its members, the Commission may:
 1. Adjust any of the following if the Commission determines that the adjustment furthers the purposes of this Act:
 - a. The number or value of Democracy Dollar Vouchers to be distributed to each eligible resident, so long as the total value of the Democracy Dollars distributed to each eligible resident for a given election does not exceed the amount of the current contribution limit under Section 3.12.050(B);
 - b. The date by which the initial distribution of Democracy Dollars occurs in an election year, pursuant to Section 3.15.090(A);
 - c. The total number of qualifying contributions that candidates for each covered office must receive for certification in the Program under Section 3.15.080;
 - d. The qualifying period;

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- e. Other conditions of participation in the Program, including limits on use of personal funds under Section 3.15.150, limits on use of campaign funds under Section 3.15.160, and the number of public debates or forums in which candidates must participate under Section 3.15.080(A)(3);
 - f. Other Eligibility requirements as dictated by Section 3.15.080.
- C. In addition to all other functions and duties of the Commission prescribed by this Act, the Commission shall:
- 1. Adopt rules, regulations, and procedures to carry out this Act;
 - 2. Develop all forms and documents necessary to administer the Program;
 - 3. Design a Democracy Dollar voucher that includes all of the following elements:
 - a. The covered election for which the Commission issues the Dollar;
 - b. A means of uniquely identifying the voucher;
 - c. The amount of campaign money that the Democracy Dollar represents;
 - d. Pre-printed information for identification and verification purposes, such as the resident's name, address, or other data as required;
 - e. A place to write the date on which the eligible resident assigns the Democracy Dollar;
 - f. A place to write the name of the candidate to whom the eligible resident assigns the Democracy Dollar;
 - g. A statement, in plain language, that informs each eligible resident of all of the following:
 - i. The eligible resident may not revoke an assignment of the Democracy Dollar;
 - ii. The eligible resident may not transfer the Democracy Dollar;
 - iii. The Democracy Dollar has no monetary value;
 - iv. The eligible resident may assign the Democracy Dollar only as provided under Section 3.15.110;
 - h. A statement that affirms the eligible resident assigns the Democracy Dollars voluntarily, free from duress, and not in exchange for any consideration;
 - i. A signature line;
 - j. Any additional information that the Commission determines is necessary to implement the Democracy Dollars Program.
 - 4. Create a technology system that provides an option for eligible residents to receive and/or redeem Democracy Dollar Vouchers electronically;
 - 5. Educate and inform candidates and the public about the Program as follows:

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- a. Publish informational materials about the Program written in plain language, including guides, manuals, instructions, and brochures, for candidates and the public;
- b. Make informational materials about the Program available in all of the following formats:
 - i. Online, such as the Commission's or another website;
 - ii. In paper form;
 - iii. Translated into any and all languages in which ballots are required to be provided in Alameda County pursuant to Section 203 of the federal Voting Rights Act of 1965 (52 U.S.C. Sec. 10503) and those languages spoken by residents of Oakland who are at least 2% of the adult population and speak English "less than very well," according to the most recent U.S. Census;
- c. Publish a timeline of important dates in the Program;
- d. Develop and conduct trainings about the Program for candidates and treasurers;
- e. Develop a comprehensive citywide outreach plan before each election cycle. This outreach plan shall be coordinated with the City Administration and the Department of Race and Equity and should utilize city resources, including any and all databases that the Commission deem appropriate. In addition, outreach should involve collaboration with chambers of commerce, community-based organizations, neighborhood associations, business improvement districts, and good government organizations. This outreach plan shall describe how the Commission will inform all City residents about the Program and include all of the following:
 - i. A statement of the Commission's outreach goals;
 - ii. An approximate timeline of proposed outreach activities, which may include but are not limited to attending community events, distributing informational materials to community-based organizations, posting informational materials in public places, and placing public announcements in print media, newsletters, social media, websites, radio, or television;
 - iii. A description of those proposed outreach activities that will be used to reach groups or categories of City residents that have been historically underrepresented in the political process or underserved by City government;
 - iv. The approximate cost of proposed outreach activities;
- f. Conduct outreach activities in collaboration with chambers of commerce, community-based organizations, neighborhood organizations, business improvement districts, good government organizations, and other City

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departments and agencies, as informed by the outreach plan described in Subsection (C)(5)(e).

6. Create and maintain a public-facing website that does all of the following:
 - a. Displays the following information for each Democracy Dollar assigned by an eligible resident:
 - i. The full name of the eligible resident;
 - ii. The date on which the eligible resident assigned the Democracy Dollar;
 - iii. The name of and covered office sought by the candidate to whom the Democracy Dollar was assigned;
 - iv. The date the candidate redeemed the Democracy Dollar for proceeds with the Commission, if applicable;
 - v. The unique identifier of the Democracy Dollar;
 - b. Displays the total number of Democracy Dollars assigned to and redeemed by each applicant or certified candidate to date;
 - c. Displays the total number of qualifying contributions received by each applicant candidate to date;
 - d. Provides electronic access to campaign statements and reports filed with the Commission by each applicant or certified candidate;
 - e. Provides a mechanism by which an eligible resident may request a Democracy Dollar pursuant to Section 3.15.090(A)-(B).
7. Conduct audits and investigations of certified candidates as necessary to oversee compliance with this Act;
8. Issue oral advice and formal written opinions, in consultation with the City Attorney when necessary, regarding compliance with this Act;
9. Within six (6) months of after each election, conduct a review of the program in collaboration with the Department of Race and Equity and submit a post-election report to City Council that contains all of the following:
 - a. The number and names of, and covered offices sought by, all certified candidates, and the total amount of contributions received and expenditures made by those candidates, in the last election;
 - b. The number and names of, and covered offices sought by, all applicant candidates who were not certified in the program, and the total amount of contributions received and expenditures made by those candidates, in the last election;
 - c. The number and names of, and covered offices sought by, all candidates who did not seek certification in the program, and the total amount of contributions received and expenditures made by those candidates, in the last election;

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- d. The total number of Democracy Dollars:
 - i. Distributed to eligible residents;
 - ii. Distributed to but not used by eligible residents;
 - iii. Assigned to applicant or certified candidates;
 - iv. Redeemed by certified candidates;
 - e. Total public funding available in the Fund before and after the last election;
 - f. The number and nature of program education and public outreach events conducted by the Commission for the last election, and the approximate number of public attendees at those events;
 - g. Review of the costs of the Program in the last election;
 - h. Projected revenue available in the Fund for each of the next three (3) election cycles;
 - i. Analysis of the Program's impact on the last election, including its equity impacts, as defined under Section 2.29.170.3(B) of the Oakland Municipal Code, and its effects on the sources and amounts of campaign funding and spending, the level of participation by eligible residents in each City Council District, and the number of candidates for covered offices;
 - j. Legislative recommendations for improvements or adjustments to the program;
 - k. Any other information that the Commission determines to be relevant;
- D. In the event of a special election for a covered office, the Commission may reasonably modify conditions, procedures, or deadlines under the Program, as necessary, to make the Program available to candidates in the special election if it would not unduly deplete revenue available in the Fund for regularly scheduled elections.
- E. In the first election cycle following voter approval of this ordinance, the Commission may, by a vote of at least five (5) of its members, delay the implementation of the Program in part or in its entirety if the Commission is not able to meet all of the requirements of the Program as provided by this ordinance. In making this determination, the Commission should consider all possible alternatives to avoid delaying Program implementation in its entirety, including but not limited to partial implementation by issuing only mailed Democracy Dollars, or limiting the Program to only certain races, or changing Program components.

Article IV. – Democracy Dollars

3.15.060 – Oakland Democracy Dollars Fund.

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- A. There is hereby established the dedicated, non-lapsing Oakland Democracy Dollars Fund to be used for disbursing proceeds to certified candidates who redeem Democracy Dollars under Section 3.15.120.

For the two-year budget cycle beginning July 1, 2023 and each subsequent two-year budget cycle beginning on July 1 of odd-numbered years, the City shall appropriate to the Fund no less than \$4,000,000.00 for the purpose of funding the Democracy Dollars Fund. The City shall consider additional appropriations to the Fund as requested by the Commission to ensure sufficient money in the Fund. After July 1, 2023, for every two-year budget cycle beginning on July 1 of odd-numbered years, the required minimum appropriation under this subsection shall be increased by the increase in the consumer price index over the preceding two years.

- B. Additional monies may be deposited into the Fund from these sources:

1. Special Tax.
2. Democracy Dollar proceeds returned by candidates under Section 3.15.170.
3. Voluntary donations made to the Fund.

- C. Any unspent revenue remaining in the Fund after an election shall remain in the Fund and accrue for making future disbursements under Subsection A. Funds remaining in the Democracy Dollars Fund shall not exceed double the amount of the budgeted Fund at any one time. Any excess beyond twice the amount of the \$4,000,000, as adjusted over time for inflation, shall be returned to the General Fund. In addition, after all money has been distributed to candidates in an election cycle, the Commission may use up to twenty (20) percent of the remaining Democracy Dollars Fund for outreach efforts intended to increase candidate and resident participation in the Democracy Dollar Program in future election cycles.

- D. For the two-year budget cycle beginning July 1, 2023 and each subsequent two-year budget cycle beginning on July 1 of odd-numbered years, the City shall appropriate for the Public Ethics Commission no less than \$350,000.00 for the purpose of non-staff costs for administering the Democracy Dollars Program, in addition to staff budgeting required by Oakland City Charter Section 603(g). Upon receiving notice from the Commission under Oakland City Charter Section 603(b)(4), the City shall consider additional appropriations to the Commission to ensure sufficient funds are provided to administer the Democracy Dollars Program. After July 1, 2023, for every two-year budget cycle beginning on July 1 of odd-numbered years, the required minimum appropriations under this subsection shall be increased by the increase in the consumer price index over the preceding two years. For the 2023-24 fiscal year, or earlier, the City shall appropriate an additional amount of no less than \$700,000.00 for the purpose of startup costs associated with initiating the Democracy Dollars Program, with any remaining funds to be carried forward into future fiscal years.

- E. The minimum budget set-aside in this section may be reduced, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution. A reduction may occur only as a part of a general reduction in expenditures across multiple departments.

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3.15.070 – Administration of the Fund.

- A. The Commission shall administer the Fund only for the purposes specified under Section 3.15.060(A).
- B. No later than six (6) months after each election, the Commission shall review use of the Fund in the last election and develop projections of revenue to and disbursements from the Fund for each of the next two (2) election cycles.
- C. Prior to January 1 of the year in which an election occurs, the Commission shall project and publish the amount of money available in the Fund for the next election. In making its projection, the Commission shall reasonably ensure that revenue in the Fund will be sufficient to disburse the Democracy Dollar proceeds up to the maximum amounts under Section 3.15.130(A) to the number of candidates likely to be certified in the Program in the next election.
- D. If at any time the Commission determines that revenue available in the Fund is not or may not be sufficient to disburse the Democracy Dollar proceeds up to the maximum amounts under Section 3.15.130(A) to all certified candidates in the next election, the Commission shall promptly request an appropriation from City Council to account for the deficit in the Fund. In an election year, the City Council may consider such a request if a Democracy Dollar contingency fund was budgeted in a prior year.
- E. If the Commission does not receive an appropriation requested under Subsection D within a reasonable time, the Commission shall do each of the following:
 - 1. Provide notice to the public and to all applicant or certified candidates that the Fund does not have sufficient revenue to disburse the Democracy Dollar proceeds up to the maximum amounts under Section 3.15.130(A);
 - 2. Establish a modified deadline for eligible residents to assign the Democracy Dollars;
 - 3. After the modified deadline under Subsection (E)(2), disburse the Democracy Dollar proceeds to certified candidates on a pro rata or other equitable basis.
- F. The Commission shall coordinate with the appropriate agencies, including the Alameda County Registrar of Voters and the Oakland City Clerk, for all information required for the proper administration of the Program. The Commission shall develop the means by which the information needed to administer the program is stored and received.

3.15.080 – Requirements for Certification in the Program.

- A. To become certified in the Program, a candidate for a covered office must file with the Commission a notice of intent to apply for certification in the Program, signed by the candidate and the candidate's treasurer, during the qualifying period. On the notice of intent, the candidate must attest to all of the following:
 - 1. The candidate will comply with all conditions of the Program, including contribution and expenditure limits, and with other State or local law, as applicable, during the election cycle;
 - 2. The candidate and the candidate's treasurer will attend at least one training for the Program conducted by Commission staff;

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3. Candidates for Mayor will personally participate in at least five (5) public debates or forums; candidates for any office other than Mayor will participate in at least three (3) public debates or forums. Only public debates or forums to which all other applicants or certified candidates for the covered office sought by the candidate are invited to participate shall be counted for the purposes of this section. Within five (5) days of the candidate's participation in each public debate or forum required under this Section, the candidate must notify the Commission, in writing, of their participation in the debate or forum;
 4. If certified in the Program, the candidate will submit to audits by the Commission.
- B. During the qualifying period, an applicant candidate may submit a written application for certification in the Program to the Commission attesting that the candidate satisfies all of the following conditions:
1. The candidate has filed with the Commission a notice of intent to apply for certification in the Program under Subsection A;
 2. The candidate meets the requirements for holding the covered office set forth in the City Charter and state law;
 3. The candidate has qualified or has taken out nomination papers to become qualified to appear on the ballot in the election;
 4. The candidate has filed and will continue to file, completely and accurately, all campaign statements and reports required by State or local law;
 5. The candidate owes no outstanding fine or penalty for a violation of State or local election law;
 6. The candidate has complied with and will continue to comply with all conditions of the Program for the election cycle;
 7. Within the qualifying period, the candidate has received the minimum number of qualifying contributions required for the covered office, as follows:
 - a. For Mayor, at least four hundred (400), including ten (10) qualifying contributions from each City Council district;
 - b. For City Attorney, City Auditor, or at-large City Councilmember, at least one hundred fifty (150), including five (5) qualifying contributions from each City Council district;
 - c. For District Councilmember, at least one hundred twenty-five (125), including twenty-five (25) qualifying contributions from the candidate's Council district;
 - d. For School Board Director, at least seventy-five (75), including twenty (20) qualifying contributions from the candidate's School Board Director district.
- C. As part of an application for certification in the Program, an applicant candidate shall include documentation, as prescribed by the Commission, establishing the validity of each qualifying contribution required under Subsection (B)(7).

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- D. An applicant candidate may not be certified in the Program if the applicant candidate:
1. Has accepted a contribution in excess of the limit under Section 3.12.050(B) or 3.12.060(B) of the Oakland Municipal Code, unless, within ten (10) days of being notified by the Commission, the candidate remits the portion of the contribution that is in excess of the limit under Sections 3.12.050(B) or 3.12.060(B) of the Oakland Municipal Code to the Commission;
 2. Has unpaid fines, penalties, fees or other amounts of money owed to the Commission which are past due;
 3. Has failed to file any campaign statements which remain past due.
- F. No later than fourteen (14) days after an applicant candidate submits an application for certification in the Program, the Executive Director shall determine whether the candidate has met the requirements of Subsection B and do the following:
1. If the requirements are met, certify the candidate in the Program and provide written notice to the candidate of the certification;
 2. If the requirements are not met, provide written notice to the candidate of the denial of certification and provide an opportunity for the candidate to:
 - a. Cure any deficiencies in the application;
 - b. Appeal a denial of certification by the Executive Director to the Commission within fourteen (14) days of the Executive Director's decision to deny.
- F. The Executive Director may revoke a candidate's certification in the Program if the candidate:
1. Fails to qualify to appear on the ballot for the covered office election; or
 2. Withdraws from the election.
- G. A Certified Candidate whose certification in the program is revoked under subsection F may appeal his revocation to the Commission. The Commission shall develop a procedure for a candidate who submits a petition under Subsection F or any other candidate for the same covered office to appeal to the Commission a determination made by the Executive Director under Subsection F. Upon making a final decision on an appeal filed under this Subsection, the Commission shall promptly notify the candidate who submitted the petition and all other candidates for the same covered office of its final decision.
- H. The Commission may revoke a candidate's certification in the Program if the candidate:
1. Fails to meet, misrepresents, or no longer meets the requirements in Subsection B;
 2. Commits any other violation of this Act or a violation of the Oakland Campaign Reform Act resulting in a mainline penalty, as determined by the Commission;
 3. Is assessed a monetary penalty by the Fair Political Practices Commission as the result of a mainline settlement, default judgment, administrative law judge decision, or civil action;

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4. Is convicted of a criminal violation of this Act, the Oakland Campaign Reform Act, or the Political Reform Act, any felony, or a misdemeanor for a crime of moral turpitude.
- I. The Executive Director shall provide a written determination to a candidate whose certification in the Program is revoked under Subsection F or H that includes both of the following:
 1. The specific reason under Subsection F or H for revoking the candidate's certification;
 2. The specific facts found by the Commission that form the basis for revoking the candidate's certification.
- J. A candidate whose certification in the Program is revoked under Subsection F or H shall return to the Commission, for deposit in the Fund, any remaining Democracy Dollar proceeds in the candidate's campaign account in accordance with Section 3.15.170. If the candidate's certification is revoked pursuant to Subsection H, the candidate shall be personally liable for any Democracy Dollar proceeds expended by the candidate, other than the Democracy Dollar proceeds the candidate expended in good faith before receiving notice of the revocation.
- K. A candidate whose certification is revoked under Subsection F or H may appeal the final decision of the Commission to the Alameda County Superior Court on the ground that the decision was arbitrary and capricious or contrary to law.

3.15.090 – Distribution of Democracy Dollars.

- A. Except as provided in Subsection C, the Commission shall mail to each eligible resident who is registered to vote, at the eligible resident's address listed in voter registration records, the number of Democracy Dollar Vouchers allocated to each resident on a date no later than April 1 of the year in which an election occurs. Thereafter, the Commission shall mail to any eligible resident who becomes registered to vote after the initial mailing the same number of Democracy Dollars periodically until October 1. The Commission may then mail to any eligible resident who becomes registered to vote after the initial mailing the same number of Democracy Dollars periodically until at least the election day.
- B. The Commission shall electronically distribute Democracy Dollar Vouchers under Subsection B to an eligible resident who submits a request, via a means developed by the Commission, to receive Democracy Dollars electronically and who attests under penalty of perjury to being an eligible resident or authorized agent of an eligible resident who has not made any other request for Democracy Dollars.
- C. Prior to the last day for assigning a Democracy Dollar under Section 3.15.110(D)(4), an eligible resident who does not receive Democracy Dollars in a mailing under Subsection A, or electronic mailing under Subsection B, may submit a request, via a means developed by the Commission, to receive Democracy Dollars from the Commission. After the Commission verifies that the person submitting the request is an eligible resident and that the provision of Democracy Dollars to the eligible resident is otherwise permitted under this Act, the Commission shall provide the eligible resident the same number of Democracy Dollars mailed to eligible residents under Subsection A.

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- D. An eligible resident may apply to the Commission to replace a Democracy Dollar if the eligible resident submits to the Commission a statement, via a means developed by the Commission, that the Democracy Dollar was lost or stolen.
- E. The Commission shall develop a procedure to determine whether to issue a replacement Democracy Dollar to an eligible resident who submits a statement under Subsection E.
- F. The Commission shall cancel a Democracy Dollar if the Commission determines that it is lost or stolen.

3.15.110 – Assignment of Democracy Dollars.

- A. In order to assign a paper Democracy Dollar Voucher to an applicant or certified candidate, an eligible resident shall do all of the following:
 - 1. Write the name of the candidate on the Democracy Dollar;
 - 2. Sign and date the Democracy Dollar;
 - 3. Submit the Democracy Dollar by doing any of the following:
 - a. Mailing the Democracy Dollar to the Commission. A Democracy Dollar shall be considered properly assigned if it is postmarked no later than 30 days after the day of the election;
 - b. Personally delivering the Democracy Dollar to a candidate or a representative of the candidate who is registered with the Commission for the purpose of receiving a Democracy Dollar on behalf of the candidate;
 - c. Personally delivering the Democracy Dollar to the Commission.
- B. As used in subsection (A)(3)(b), the Commission shall determine the means by which candidates or representatives of candidates shall register with the Commission for the purpose of receiving a Democracy Dollar on behalf of the candidate. Only the following individuals may be registered as a “representative of the candidate” under this section:
 - 1. Unpaid volunteers for the candidate’s campaign; and
 - 2. Members of the candidate’s campaign staff that are regularly employed by the campaign.
- C. In order to assign Democracy Dollar Vouchers distributed electronically, an eligible resident shall use the technology as provided in section 3.15.050(C)(4) and the process developed by the Commission.
- D. An eligible resident may not do any of the following:
 - 1. Change the assignment of a Democracy Dollar after the eligible resident assigns the Democracy Dollar to a candidate;
 - 2. Assign a Democracy Dollar by proxy, power of attorney, or agent, unless necessary to accommodate an eligible resident with a disability;
 - 3. Assign a Democracy Dollar in a manner other than as provided under Subsection A;

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4. Assign a Democracy Dollar later than thirty (30) days after the day of the election.
- E. A Democracy Dollar expires and may not be assigned once the person to whom the Democracy Dollar was distributed no longer qualifies as an eligible resident.

3.15.120 – Redemption and Disbursement of Democracy Dollar Proceeds.

- A. A certified candidate may redeem the Democracy Dollar assigned to the candidate pursuant to Section 3.15.110(A) by mailing or delivering the Democracy Dollars to the Commission up to thirty (30) days after the day of an election.
- B. For each Democracy Dollar assigned to an applicant or certified candidate pursuant to Section 3.15.110(A), the Commission shall disburse Democracy Dollar proceeds from the Fund to the candidate if the Commission verifies all of the following:
 1. The candidate to whom the Democracy Dollar is assigned is a certified candidate at the time the Commission disburses the Democracy Dollar proceeds;
 2. The Democracy Dollar was properly assigned by an eligible resident;
 3. Disbursement of Democracy Dollar proceeds would not cause the candidate to exceed the maximum amount of Democracy Dollar proceeds available under Section 3.15.130(A)
- C. Subject to Subsections D and E, the Commission shall determine and publish, in its timeline under Section 3.15.050(C)(5)(c), all dates on which the Commission will disburse Democracy Dollar proceeds to certified candidates in the year of an election.
- D. Except as provided in Subsection E, the Commission shall disburse Democracy Dollar proceeds to certified candidates no less frequently than twice per month.
- E. During the month immediately preceding the month in which an election occurs and continuing until the election occurs, the Commission shall disburse Democracy Dollar proceeds to certified candidates at least once per week.
- F. Candidates receiving disbursed Democracy Dollar proceeds shall deposit them in their campaign checking account as required by Oakland Municipal Code section 3.12.110.

3.15.130 – Maximum Amounts of Democracy Dollar Proceeds.

- A. In a contested election, the Commission shall not disburse to a certified candidate more than the maximum amount of Democracy Dollar proceeds available for the covered office, which shall be two-thirds (2/3s) of the adjusted limits specified in Section 3.15.140.
- B. Notwithstanding Subsection A, the Commission may not disburse more than ten thousand dollars (\$10,000) in Democracy Dollar proceeds to any certified candidate in an uncontested election, subject to adjustment under Section 3.15.200.
- C. If an uncontested election becomes a contested election, the Commission shall disburse proceeds, on the next published date of disbursement, for all Democracy Dollars properly assigned to a certified candidate to date, up to the amounts specified in Subsection A.

Article V. – Limits and Restrictions

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3.15.140 – Expenditure Limits.

- A. In an election cycle, an applicant or certified candidate may not make qualified campaign expenditures, as defined in Oakland Municipal Code section 3.12.040, in excess of the expenditure limit for the covered office, subject to adjustment under Section 3.15.200, as follows:
1. For Mayor: five hundred thousand dollars (\$500,000);
 2. For City Auditor: two hundred fifty thousand dollars (\$275,000);
 3. For City Attorney: two hundred fifty thousand dollars (\$275,000);
 4. For City Councilmember-at-large: two hundred fifty thousand dollars (\$275,000);
 5. For District City Councilmember: one hundred fifty thousand dollars (\$150,000);
 6. For School Board Director: one hundred thousand dollars (\$100,000).
- B. An applicant or certified candidate may petition the Executive Director, via a means developed by the Commission, to release the candidate from the applicable expenditure limit under Subsection A.
- A. The Executive Director shall release a candidate from the applicable expenditure limit if the evidence demonstrates, and the Director verifies, that the sum of any of the following amounts exceeds the applicable expenditure limit by any amount:
1. The value of all contributions received by another candidate for the same covered office, plus all Democracy Dollar proceeds disbursed to that candidate to date under Section 3.15.120, plus the value of Democracy Dollars assigned to that candidate but not yet disbursed;
 2. The value of independent expenditures opposing the candidate who submitted the petition; and
 3. The value of independent expenditures supporting another candidate for the same covered office.
- B. If the Executive Director determines that release from the applicable expenditure limit is required for an applicant or certified candidate under Subsection C, the Commission shall continue to disburse Democracy Dollar proceeds to the candidate, pursuant to Section 3.15.120, up to an amount that:
1. Does not exceed the maximum amount of Democracy Dollar proceeds available to the candidate under 3.15.130; and
 2. Does not cause the sum of the total Democracy Dollar proceeds disbursed to the candidate plus the value of all monetary or in-kind contributions received by the candidate to exceed the applicable expenditure limit under Subsection A.
- C. Within five (5) business days of the date on which a candidate submits a petition under Subsection B, the Executive Director may do both of the following:
1. Review the petition and determine whether the candidate’s release from the applicable expenditure limit is required under Subsection C;

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2. Notify the candidate who submitted the petition and all other candidates for the same covered office of the Executive Director's determination regarding the petition.
- D. The Executive Director may review statements filed pursuant to State and local law, including Government Code Section 84204, to determine whether an independent expenditure opposes or supports one or more candidates for a covered office.
- E. A candidate who submits a petition under Subsection B or any other candidate for the same covered office may appeal to the Commission a determination made by the Executive Director under Subsection E. Upon making a final decision on an appeal made under this Subsection, the Commission shall promptly notify the candidate who submitted the petition and all other candidates for the same covered office of its final decision.

3.15.150 – Limits on Contributions and Use of Personal Funds.

- A. An applicant or certified candidate may not solicit or receive a contribution that exceeds the limits in Sections 3.12.050(B) and 3.12.060(B) of the Oakland Municipal Code, as applicable.
- B. An applicant or certified candidate may not knowingly solicit contributions for a local committee or any other person or entity that has made or will make independent expenditures to support or oppose a candidate for City office.
- C. An applicant or certified candidate may not make expenditures from or use the candidate's personal funds or property or the funds or property jointly held with the candidate's spouse, domestic partner, or unemancipated children in connection with the candidate's election, except as a contribution to the candidate's campaign committee in an amount that does not exceed 8 percent (8%) of the adjusted limits specified in Section 3.15.140 or \$20,000, whichever is lower.

3.15.160 – Use of Campaign Funds.

- A. An applicant or certified candidate may use campaign funds, including Democracy Dollar proceeds or contributions, only for making qualified campaign expenditures, as defined in the Oakland Municipal Code.
- B. In addition to any other restrictions in State or local law, an applicant or certified candidate may not use campaign funds, including Democracy Dollar proceeds or contributions, for any of the following:
 1. Personal use;
 2. A payment in violation of any law;
 3. A payment of any fine or penalty assessed under State or local law;
 4. A payment in connection with any administrative or judicial proceeding;
 5. Compensation to the candidate or a family member of the candidate, or a payment to a business in which the candidate or an immediate family member of the candidate has a 10% or greater ownership interest;
 6. A contribution or loan to another candidate or committee;

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7. An independent expenditure;
8. A cash payment for any purpose;
9. A gift, except for campaign items of de minimis value such as signs, buttons, or brochures;
10. A payment for goods or services in excess of fair market value;
11. An inaugural expense;
12. A payment to any person to collect Democracy Dollars on behalf of the candidate, except for compensation paid to a regularly employed member of the candidate's campaign staff;
13. Any other use prohibited by the Commission.

3.15.170 – Return of Remaining Funds.

A. A certified candidate shall return to the Commission, for deposit into the Fund, any remaining campaign funds of the candidate up to an amount calculated by multiplying the amount of remaining campaign funds by the percentage that total Democracy Dollars proceeds received by the candidate represents of total monetary contributions and miscellaneous increases to cash received as of the date before the election. Such remaining campaign funds shall be returned to the Commission no later than three (3) months after any of the following:

1. The Executive Director or Commission revokes the candidate's certification in the program under Section 3.15.080(F) or (H);
2. The candidate withdraws from the election or dies;
3. The date of the election.

B. For purposes of Subsection A, remaining campaign funds to be returned shall not exceed either the amount of Democracy Dollar proceeds received by the candidate or the total amount of contributions and miscellaneous increases to cash received before election day less the total expenditures of the candidate's campaign committee made or incurred before or on election day.

3.15.180 – Unlawful Sale, Transfer, or Use of Democracy Dollars.

A person may not do or attempt to do any of the following:

- A. Purchase, sell, or transfer a Democracy Dollar for consideration;
- B. Obtain or control a Democracy Dollar with the intent to deprive an eligible resident of its lawful use;
- C. Transfer a Democracy Dollar obtained or controlled as provided under Subsection B;
- D. Alter or assign a Democracy Dollar distributed to another person;
- E. Collect or receive a Democracy Dollar assigned by another person, except as permitted by Section 3.15.110(A);

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- F. Create and distribute a forged or inauthentic Democracy Dollar with the intent to hold out the Democracy Dollar as authentic;
- G. Any other activity proscribed by rule of the Commission.

Article VI. - Enforcement

3.15.190 - Enforcement.

- A. Any person who violates this Act is subject to criminal, civil and administrative penalties under this section.
 - 1. No civil or administrative action alleging a violation of this Act may be commenced more than five (5) years after the date of the violation. No criminal prosecution alleging a violation of this Act may be commenced more than four (4) years after the date of the violation.
 - 2. Commencement of an administrative action is the date the Commission sends written notification to the respondent of the allegation pursuant to the Commission's Complaint Procedures.
 - 3. The date of the violation means the earliest date when the complainant or the Commission has, or reasonably should have, knowledge of the violation and its cause, and a suspicion of wrongdoing. Suspicion shall be determined from an objective standpoint of what is reasonable for the complainant or Commission to know or suspect under the facts of the situation.
- B. Any person who knowingly or willfully misrepresents their eligibility for financing under this Act, makes a material misrepresentation in connection with a request for redemption of Democracy Dollars, or causes, aids or abets any other person do either of the former is guilty of a misdemeanor.
 - 1. No person convicted of a misdemeanor under this Act shall act as a lobbyist or as a City contractor for a period of four (4) years following the date of the conviction unless the court, as the time of sentencing, specifically determines that this provision shall not be applicable.
 - 2. For purposes of this Section, a plea of nolo contendere shall be deemed a conviction.
- C. Any person who violates this Act, causes another person to violate this Act, or aids and abets another person in violating this Act shall be liable, for each violation of this Act, in a civil action brought by the Commission or the City Attorney for an amount up to five thousand dollars (\$5,000) per violation, or up to three (3) times the amount at issue in the violation, including but not limited to the amount the person unlawfully transferred, received, contributed, expended, gave, used, misrepresented, or failed to return or report properly, whichever is greater.
 - 1. In assessing a civil penalty under this Section, a court may take into account the seriousness of the violation and the degree of culpability of the defendant.

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2. If two (2) or more persons are responsible for a violation of this Act, they shall be jointly and severally liable.
 3. A decision by the Commission to initiate a civil enforcement action under this Act requires an affirmative vote of at least five (5) of its members.
- D. Any person who violates this Act, causes another person to violate this Act, or aids and abets another person in violating this Act shall be liable, for each violation of this Act, in an administrative proceeding before the Commission held pursuant to the Commission's complaint procedures. The Commission may impose administrative penalties in an amount up to five thousand dollars (\$5,000) per violation, or up to three (3) times the amount at issue in the violation, including but not limited to the amount the person unlawfully transferred, received, contributed, expended, gave, used, misrepresented, or failed to return or report properly, whichever is greater. In addition to administrative penalties, the Commission may issue warnings or require other remedial measures.
 1. For knowing and willful violations of this Act, the Commission shall impose administrative penalties in an amount of at least one thousand dollars (\$1,000) per violation.
 2. If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.
- E. The Commission, City Attorney, or any individual residing within the City may sue for injunctive relief to enjoin violations or to compel compliance under this Act. Any person, other than the Commission or City Attorney, before filing a civil action under this subsection shall first file with the Commission and City Attorney a written request for the Commission and/or City Attorney to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Commission and City Attorney shall each respond in writing within ninety (90) days after receipt of the request indicating whether they intend to file an action for injunctive relief. If either indicates in the affirmative and files an action within sixty (60) days thereafter, no other action may be brought unless the action brought by the Commission or City Attorney is dismissed without prejudice. If the Commission needs additional time to determine whether to file an action or needs additional time to file the action, the Commission may, by resolution indicating evidence of good cause and notice thereof to the requestor, extend the ninety day time period by another sixty (60) days. If both the Commission and City Attorney indicate they will not pursue the matter, or if neither entity files an action within the sixty (60) day period following their affirmative response to the requestor, the requestor may file suit for injunctive relief. No resident may bring an action under this subsection if the Commission commenced administrative action arising out of the same facts, resulting in either the imposition of or stipulation to remedial measures to prevent reoccurrence of the violation or compel compliance.
- F. Any person who receives a financial benefit as a result of a violation of this Act by any person shall be liable for disgorging to the City's General Fund up to the amount of the financial benefit received, including Democracy Dollars, as a result of the violation.
- G. The Commission shall develop guidelines for imposing penalties and exercising enforcement discretion under this Act. In addition to civil and administrative penalties, the Commission may issue warnings or impose other remedial measures to enforce and oversee compliance with this Act.

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Article VII. – Miscellaneous

3.15.200 – Adjustments for Inflation.

- A. Beginning in January of 2025 and in January of every odd-numbered year thereafter, the Commission shall increase all of the following:
1. The maximum amount of Democracy Dollar proceeds under Section 3.15.130(B) by the percent increase, if any, in the Consumer Price Index, rounding to the nearest five hundred dollar (\$500) value;
 2. The expenditure limits under Section 3.15.140(A) by the percent increase, if any, in the Consumer Price Index, rounding to the nearest five hundred dollar (\$500) value.
- B. For the purpose of this section, the Commission shall use the Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as published by the United States Department of Labor, Bureau of Statistics, or if such an index is discontinued, then the most similar successor index.
- C. The Commission shall publish the adjusted amounts under Subsection A no later than the 1st of February of the year in which the adjustment occurs.
- D. If the Commission makes a finding that the percent increase in the Consumer Price Index is very high, the increases required in subsection (A) shall be limited to three (3) percent, rounding to the nearest five hundred dollar (\$500) value.

3.15.210 – Initial Applicability.

This Act shall first apply to elections in 2024 and in election cycles thereafter.

3.15.220 – Severability.

If a provision of this Act or its application to any person or circumstances is held invalid, the invalidity shall not affect any other provisions or applications of this Act that can be given effect without the invalid provision or application.

3.15.230 – City Council Amendments.

The City Council may make any amendments to this Act that: (1) are consistent with its purpose and approved by a two-thirds vote of the Councilmembers, provided that the Commission has first approved specific findings and recommendations by a two-thirds vote of the Commissioners that the City Council amend the Act; or (2) the Council determines are required by law.

SECTION 3. Repeal and Reenactment of Oakland Municipal Code Chapter 3.12. Oakland Municipal Code Chapter 3.12, *Oakland Campaign Reform Act*, is hereby repealed and reenacted as follows with deleted text shown as ~~struck through~~ and new text underscored:

Article I. - Findings and Purpose.

3.12.010 - Title.

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This Chapter 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 the 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 elected City Officials to spend more time on fundraising and less time on the public's business. The constant pressure to raise contributions is distracting elected City Officials from urgent governmental matters.
- E. Elected City Officials 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. Based on existing circumstances in Oakland, including those enumerated in the Oakland Fair Elections Act, the contribution limits established by this Act will not prevent candidates from raising the resources necessary to run an effective campaign.
- G. Disclosure of donors who have financial interests with the City of Oakland and also of City Officials who solicit contributions safeguards against potential conflicts of interest.
- ~~H~~. For transparency, and to protect our democracy, including from the risk of secretive big money, it is important that the public have a right to know who is paying for, and who is sending, advocacy and campaign communications.
- I. The enhanced transparency requirements established by this Act will ensure the right of Oakland residents to know who is spending big money to influence their vote by requiring disclosure for big independent spenders and by requiring ads run by political committees to identify additional top donors. This additional transparency will enable voters to better evaluate the sources and credibility of the electoral advertising they are receiving.
- ~~H~~J. The integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing.

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~~K.~~ This Act shall be liberally construed and vigorously enforced to ensure its purposes are fulfilled.

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 elected City Officials 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 curb corruption and the appearance of corruption by providing reasonable limits on contributions to candidates and their campaign committees and requiring disclosure of the sources of money spent to influence elections in Oakland.
- H. To ensure that residents of Oakland have more information about the sources of funds that are used to influence their vote by enhancing the public disclosure of independent spending and requiring additional information in on-ad disclaimers by political committees.
- I. To help restore public trust in governmental and electoral institutions.

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 the California Political Reform Act (California Government Code Sections 81000 through 91014), as amended, and California Fair Political Practices Commission Regulations (Title, Section 18110, et seq., of the California Code of Regulations), as amended, shall govern the interpretation of this Act.

- A. "Broad-based political committee" means a committee of persons which has been in existence for more than six (6) months, receives contributions from one hundred (100) or more persons, and acting in concert makes contributions to five (5) or more candidates.

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- B. "Candidate" means any candidate, as defined by the California Political Reform Act, for City Office.
- C. "City" means the City of Oakland.
- D. "City Office" includes, but is not limited to, City of Oakland Mayor (Mayor), City of Oakland City Attorney (City Attorney), City of Oakland City Auditor (City Auditor), City of Oakland City Councilmembers (Councilmembers), and Oakland School Board Directors (School Board Directors).
- E. "City Official" means any person holding a City Office, any member of a City board or commission, and any City employee.
- F. "Election" means any election for City Office.
- G. "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.
- H. "Entity" means any person, other than an individual.
- I. "Local committee" means any committee, as defined in the California Political Reform Act, that is required by the California Political Reform Act to file campaign statements with the City.
- J. "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.
- K. "Qualified campaign expenditure" for candidates means and includes all of the following:
 - 1. Any expenditure made by a candidate, elected City Official or committee controlled by the candidate or elected City Official, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any candidate.
 - 2. A non monetary contribution provided at the request of or with the approval of the candidate, elected City Official or committee controlled by the candidate or elected City Official.

"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.

Article III. - Contribution Limitations

3.12.050 - Limitations on contributions from persons.

- A. No person shall make to any candidate and the controlled committee of such a candidate, and no candidate and the candidate's controlled committee shall receive from any such person, a contribution or contributions totaling more than ~~one hundred dollars (\$100.00)~~ six hundred dollars (\$600.00), adjusted bi-annually pursuant to Subsection (FD), for each election except as stated in Subsection (B) of this Section.

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~~B. For candidates who adopt the expenditure ceilings as defined in Article IV of this Act For candidates who qualify as an applicant or certified candidates as defined in Section 3.15.040 of the Oakland Fair Elections Act, no person shall make to a candidate and the controlled committee of such candidate, and no such candidate and the controlled committee of such candidate shall receive contributions totaling more than ~~five~~six hundred dollars (\$~~500~~600.00), adjusted bi-annually pursuant to Subsection (~~F~~D), ~~from any person~~ for each election. A Democracy Dollar assigned by an eligible resident pursuant to Section 3.15.110 of the Oakland Fair Elections Act and any public funds disbursed to participating candidates pursuant to Section 3.15.120 of the Oakland Fair Elections Act shall not be considered a contribution under this Act.~~

~~C. Any person who makes independent expenditures supporting or opposing a candidate shall not receive any contribution for the purpose of influencing elections for City Office in excess of the amounts stated in Subsection A.~~

~~D.C. 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. Persons making independent expenditures supporting or opposing a candidate 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.~~

~~F.D. Beginning January 1, 2017, the Public Ethics Commission 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 Public Ethics Commission shall publish the contribution limitation amounts no later than February 1st of each year. Beginning in January of 2025 and in January of every odd-numbered year thereafter, the Commission shall increase the contribution limitation amounts by the percent increase, if any, in the Consumer Price Index for the preceding two years, rounding to the nearest fifty dollar (\$50) value. The Commission shall use the Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as published by the United States Department of Labor, Bureau of Statistics, or if such an index is discontinued, then the most similar successor index. The Commission shall publish the adjusted contribution limits no later than the 1st of February of the year in which the adjustment occurs.~~

3.12.060 - Limitations on contributions from broad-based political committees.

A. No broad-based political committee shall make to any candidate and the controlled committee of such a candidate, nor shall a candidate and the candidate's controlled committee receive from a broad-based political committee, a contribution or

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contributions totaling more than ~~two hundred fifty dollars (\$250.00)~~ one thousand two hundred dollars (\$1,200.00), adjusted ~~bi-annually~~ pursuant to Subsection (~~FD~~), 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~~ For candidates who qualify as applicant or certified candidates as defined in Section 3.15.040 of the Oakland Fair Elections Act, no broad-based political committee shall make to any candidate and the controlled committee of such candidate, nor shall a candidate and the candidate's controlled committee receive from a broad-based political committee, a contribution or contributions totaling more than one thousand two hundred dollars (\$1,0200.00), adjusted ~~bi-annually~~ pursuant to Subsection (~~FD~~), for each election.

~~C. Any broad based political committee that makes independent expenditures supporting or opposing a candidate shall not receive any contribution for the purpose of influencing elections for City office in excess of the amounts stated in Subsection A. of this Section.~~

~~D.C.~~ 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. A broad based political committee making independent expenditures supporting or opposing a candidate 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.~~

~~FD.~~ Beginning January 1, 2017, the Public Ethics Commission 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 Public Ethics Commission shall publish the contribution limitation amounts no later than February 1st of each year. Beginning in January of 2025 and in January of every odd-numbered year thereafter, the Public Ethics Commission shall increase the contribution limitation amounts by the percent increase, if any, in the Consumer Price Index for the preceding two years, rounding to the nearest fifty dollar (\$50) value. The Commission shall use the Consumer Price Index for all Urban Consumers in the San Francisco-Oakland-San Jose, CA metropolitan statistical area, as published by the United States Department of Labor, Bureau of Statistics, or if such an index is discontinued, then the most similar successor index. The Commission shall publish the adjusted contribution limits no later than February 1 of the year in which the adjustment occurs.

3.12.065 - Contributions made under legal name.

No contributions shall be made, directly or indirectly, by any person in a name other than the name by which such person is identified for legal purposes.

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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 no later than five (5) business days after 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.

3.12.080 - Aggregation of Contributions.

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

A. Two (2) or more entities' contributions shall be aggregated when any of the following circumstances apply.

1. The entities share the majority of members of their boards of directors.
2. The entities share three (3) or more, or a majority of, officers.
3. The entities are owned or controlled by the same majority shareholder or shareholders.
4. The entities are in a parent-subsidary relationship.
5. One entity finances, maintains, or controls the other entity's contributions or expenditures.
6. Contributions made by entities that are majority-owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority-owned by that person, unless those entities act independently in their decision to make contributions.
7. The contributions of an entity whose contributions are directed and controlled by any person shall be aggregated with contributions made by that person and any other entity whose contributions are directed and controlled by that same person.
8. If two (2) or more entities make contributions that are directed and controlled by a majority of the same persons, the contributions of those entities shall be aggregated.

B. No committee and no broad-based political committee which supports or opposes a candidate 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.

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.

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~~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.B. 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.~~

~~D.C. 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.~~

3.12.100 - Family contributions.

- A. Contributions by two (2) individuals married to each other 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 or legal guardian and attributed proportionately to each parent (one-half (½) to each parent or the total amount to a single custodial parent or legal guardian).

3.12.110 - One campaign committee and one checking account per candidate.

A candidate shall have no more than one campaign committee and one checking account for the City office being sought, into which all contributions shall be deposited and 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.

3.12.115 - Ballot measure committees controlled by candidates or elected City Officials.

A candidate or elected City Official 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 elected City Officials' election or to support or oppose other candidates, and may not transfer such funds to another committee supporting the candidate's or elected City Officials' election, or supporting or opposing other candidates. 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 or controlling elected City Official.

3.12.116 - Disclosure of principal officers of all non-candidate controlled committees, including ballot measure and independent expenditure committees.

All non-candidate controlled recipient committees, including ballot measure committees and general purpose committees, required to file campaign statements in the City of Oakland, must disclose the principal officers of the committee. Such disclosure must include the full name, street address, e-mail address, and telephone number of at least one (1) principal officer, as well as all principal officers up to a total of three (3). This disclosure shall be made on the statement of organization (FPPC Form 410) by the filing deadlines required by the California Political

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Reform Act statute and regulations, or, if no Form 410 is required for that committee, the next required campaign statement. Such information shall be filed with the Public Ethics Commission and made available to the public.

3.12.117 - Reporting by City Officials who solicit campaign contributions from persons contracting or proposing to contract with the City.

A. Any public servant, as defined by Section 2.25.030(D), who is required to file a statement of economic interests (Form 700) and who successfully solicits a contribution of five thousand dollars (\$5,000.00) or more per calendar year to any committee from any person who contracts or proposes to contract with the official's department during the contractor prohibition time period specified in Section 3.12.140, must disclose such solicitation within thirty (30) days of the solicitation to the Public Ethics Commission using a process provided by the Public Ethics Commission.

1. Mayor, Members of the Council, and their Senior Staff Members. For purposes of this section, the "department" of the Mayor, member of the Council, or Senior Staff Member to either the Mayor or member of Council shall be the City, and the disclosure requirement shall apply when the solicitation is made to a person contracting or proposing to contract with the City.

a. For purposes of this section, a "senior staff member" to either the Mayor or a member of the Council means an individual employed in any of the following positions: Chief of Staff, Deputy Chief of Staff, Communications or other Director, Legislative or Policy Aide, or any other position in the Mayor's or Council Member's office who is required to file a Form 700.

3.12.120 - Money received by elected City Officials and candidates treated as contributions, income or gifts.

Any funds received by any elected City Official, candidate, or committee controlled by an elected City 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 California Political Reform Act. This section shall not apply to Democracy Dollars received by candidates for Oakland offices pursuant to the Fair Elections Act.

3.12.130 - Contributor identification and restriction on use of cash.

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

B. No person shall make, and no candidate or local committee shall receive, a contribution of one hundred dollars (\$100.00) or more in cash.

C. No candidate or local committee shall make an expenditure of one hundred dollars (\$100.00) or more in cash.

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- D. No person shall make a contribution of one hundred dollars (\$100.00) or more other than an in-kind contribution unless in the form of a written instrument containing the name of the donor and the name of the payee and drawn from the account of the donor or the intermediary, as defined in Government Code Section 84302.

3.12.140 - Contractors doing business with the City or the Oakland Unified School District prohibited from making contributions.

- A. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, for selling or leasing any land or building to the City, or for purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council shall make any contribution to the Mayor, a candidate for Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such elected City Official or candidate at any time between commencement of negotiations and one hundred eighty (180) days after the completion or the termination of negotiations for such contract.
- B. No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the Oakland School District, for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the School District, for selling or leasing any land or building to the School District, or for purchasing or leasing any land or building from the School District, whenever the value of such transaction would require approval by the School Board, shall make any contribution to a School Board member, candidate for School Board Directors or committee controlled by such elected City Official or candidate at any time between commencement of negotiations and one hundred eighty (180) days after the completion or termination of negotiations for such contract.
- C. If a person is an entity, the restrictions of Subsections A. and B. also apply to all of the entity's principals, including, but not limited to, the following:
 - 1. The entity's board chair, president, chief executive officer, chief operating officer, chief financial officer, and any individual who serves in the functional equivalent of one or more of those positions;
 - 2. Any individual who owns an ownership interest in the entity of twenty (20) percent or more; and
 - 3. An individual employee, independent contractor, or agent of the entity, that represents or is authorized to represent the entity before the City in regards to the contract or proposal contract.
- D. "Services" means and includes labor, professional services, consulting services, or a combination of services and materials, supplies, commodities and equipment which shall include public works projects.
- E. For contributions to elected City Officials other than School Board Directors, transactions that require approval by the City Council include but are not limited to:

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1. Contracts for the procurement of services that are professional or consulting services exceeding fifteen thousand dollars (\$15,000.00).
 2. Contracts for the procurement of services exceeding fifty thousand dollars (\$50,000.00), other than contracts for professional or consulting services.
 3. Contracts for the furnishing of any materials, supplies, commodities or equipment exceeding fifty thousand dollars (\$50,000.00).
 4. Contracts for the sale or lease of any building or land to or from the City.
 5. Amendments to contracts described in Subsections E.1., 2., 3., and 4. of this Section.
- F. For contributions to School Board Directors, transactions that require approval by the School Board include but are not limited to:
1. Professional services and consulting contracts exceeding twenty-five thousand dollars (\$25,000.00), including personal service agreements.
 2. Contracts requiring School Board approval under Public Contract Code Section 20111.
 3. Construction contracts exceeding twenty-five thousand dollars (\$25,000.00) whether or not they are subject to the provisions of the Public Contract Code.
 4. Contracts for the sale or lease of any building or land to or from the School District.
 5. Amendments to contracts described in Subsections F.1., 2., 3., and 4. of this Section.
- G. "Commencement of negotiations" for City contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any City Official or when a City Official formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.
- H. Reserved.
- I. "Commencement of negotiations" for Oakland School District contracts occurs when a contractor or contractor's agent formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed School District officer or employee or when any elected or appointed School District officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment from a contractor or contractor's agent.
- J. "Commencement of negotiations" does not include unsolicited receipt of proposal or contract information or documents related to them, requests to be placed on mailing lists or routine inquiries for information about a particular contract, request for proposal or any information or documents relating to them or attendance at an informational meeting.
- K. "Completion of negotiations" occurs when the City or the School District executes the contract or amendment.

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- L. "Termination of negotiations" occurs when the contract or amendment is not awarded to the contractor or when the contractor files a written withdrawal from the negotiations, which is accepted by a City Official or an appointed or elected School District officer or employee.
- M. The Oakland City Administrator shall be responsible for implementing procedures for City contracts to ensure contractor compliance with this Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.

Business Name _____

Date _____

Signature _____

The signed and dated statement must be ~~received and filed by~~ submitted to the Public Ethics Commission City Clerk, in a manner proscribed by the Commission, at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. ~~The City Clerk shall keep an updated list of current contractors available for inspection.~~

- N. The Oakland Superintendent of Schools shall be responsible for implementing procedures for Oakland School District contracts to ensure contractor compliance with the Oakland Campaign Reform Act. A proposed or current contractor must sign and date the following statement at the time the contractor formally submits a bid, proposal, qualifications or contract amendment:

The Oakland Campaign Reform Act limits campaign contributions and prohibits contributions from contractors doing business with the City of Oakland or the Oakland Unified School District during specified time periods. Violators are subject to civil and criminal penalties.

I have read Oakland Municipal Code Chapter 3.12, including section 3.12.140, the contractor provisions of the Oakland Campaign Reform Act, and certify that I/we have not knowingly, nor will I/we make contributions prohibited by the Act.

Business Name _____

Date _____

Signature _____

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The signed and dated statement must be received and filed with the School District at the same time the proposal is submitted. Contracts may not be awarded to any contractors who have not signed this certification. The School District shall keep an updated list of current contractors available for inspection.

- O. A person who contracts with the City or the School District for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City or the School District, or for selling any land or building to the City or the School District or for purchasing any land or building from the City or the School District, or for leasing any land to or from the School District, whenever the value of such transaction would require approval by the City Council or the School Board, and who violates Subsection A. of this Section, shall be subject to the enforcement provisions of Article IX of this Act.
- P. Candidates and their controlled committees shall include a notice on all campaign fundraising materials equivalent to eight-point roman boldface type, which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

The Oakland Campaign Reform Act limits campaign contributions by all persons (OMC §§ 3.12.050 and 3.12.060) and prohibits contributions during specified time periods from contractors doing business with the City of Oakland or the Oakland Unified School District (OMC § 3.12.140).

3.12.150 - Officeholder fund.

- A. Every elected City Official 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 Official. 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.
- 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;

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4. Expenditures for salaries of part-time or full-time staff employed by the elected City Official 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 elected City Official; (2) a member of the elected City Officials' staff; or (3) such other person designated by the elected City Official 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 elected City Official, (2) a member of the elected City Officials' staff, (3) such other person designated by the elected City Official who is authorized to perform such government duties, or a member of such person's household accompanying the person on such travel;
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 elected City Official or a member of the elected City Officials 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 elected City Official communicates in his or her official capacity;

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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;
5. Any expenditure that would violate the provisions of the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519.

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

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

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

3.12.160 - Allowance for donation of office space.

A. Donation of office space for use by elected City Officials 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, 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 ~~Commission~~City Clerk.

B. Use of office space donated pursuant to this Section by an elected City Official shall not be considered a "qualified campaign expenditure" pursuant to Section 3.12.040 of this Act.

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3.12.170 - Legal expense funds.

- A. An elected City Official or candidate 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 elected City Officials' 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 elected City Officials' 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. 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. ~~All funds contributed to an elected City Official or candidate for legal expense fund must be deposited into the elected City Official'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.~~
- 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.

3.12.180 - Volunteer services exemption.

Volunteer personal services, and payments made by an individual for ~~their~~^{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.

~~Article IV. — Expenditure Ceilings~~

~~3.12.190 — Expenditure ceilings.~~

~~All candidates who adopt campaign expenditure ceilings as defined below are permitted the higher contribution limit as defined in Subsections 3.12.050.B. and 3.12.060.B. of this Act. Before receiving any contributions at the higher contribution limit, candidates who adopt voluntary expenditure ceilings must first file a statement with the Public Ethics Commission 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.~~

~~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 (\$0.70) 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 (\$0.50) 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~~

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~~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.~~

~~Beginning on January 1, 2017, the Public Ethics Commission 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.~~

~~3.12.210—Reserved.~~

~~3.12.220—Expenditure ceilings lifted.~~

~~If a candidate declines to accept expenditure ceilings and receives contributions or makes qualified campaign expenditures equal to fifty (50) percent or more of the expenditure ceiling, or if any person makes one or more independent expenditures totaling 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 Subsections 3.12.050.B. and 3.12.060.B. 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 3.12.200 of this Chapter.~~

~~Article IV. - Independent Expenditures~~Political Communications

~~3.12.2300 - Independent expenditures for mass mailings, slate mailings or other campaign materials~~Disclaimers.

- A. Any person who makes independent expenditures required to be disclosed by Section 3.12.210 ~~for a mass mailing, slate mailing or other campaign materials which support or oppose any candidate~~ shall incorporate ~~place~~ the following statements on the mailing in typeface of no smaller than fourteen (14) points:

Notice to Voters

(Required by the City of Oakland)

1. “This mailing is nNot authorized by or coordinated with ~~approved by~~ any City candidate, committee controlled by a candidate, or election official.” This statement is not required if the independent expenditure supports or opposes only a City ballot measure.

2. It is p“Paid for by” immediately followed by the person’s name, address, and city, and, if the person is a committee, the committee identification number provide by the

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California Fair Political Practices Commission. If an acronym is used to specify a committee name, the full name of the sponsoring committee shall also be included.

3. "Major funding provided by [names of the three contributors who gave the most to the committee in the six months prior to the date of the payment for the independent expenditure communication], in the amount of [the total amount of contributions made by those contributors in the same six-month period]."

a. The amount of the contributions is not required in an audio communication.

b. If the committee had only one contributor of at least \$5,000 in the six months prior to the date of the payment for the independent expenditure communication, the statement may refer only to that contributor.

c. This statement is not required if the person did not have any contributors of at least \$5,000 in the six months prior to the date of the payment for the independent expenditure.

by (name) _____

_____ (address, city, state)

4. "Funding details are available on the Oakland Public Ethics Commission's website. Total cost of this communication mailing is:" (amount) immediately followed by the cost amount.

B. A person shall incorporate the following statements in a campaign, officeholder, or legal defense communication:

1. "Paid for by" immediately followed by the name, address, and city of that candidate or committee, and the committee identification number provided by the California Fair Political Practices Commission, if a committee. The address and city are not required in an audio communication.

a. If the communication is made by a controlled committee, the name of the person controlling the committee shall also be included.

b. If an acronym is used to specify a committee name, the full name of any sponsoring organization of the committee shall also be included.

2. "Funding details are available on the Oakland Public Ethics Commission's website."

C. A committee must disclose the names of persons from whom the committee received its two (2) highest cumulative contributions of five thousand dollars (\$5,000.00) or more in the same manner as required by California Political Reform Act Section 84506 on all mass mailings and television advertisements that are independent expenditures supporting or opposing a candidate or measure being voted upon only in the City. All

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disclaimers shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. Minimum requirements are specified below:

1. For written communications up to 24 inches by 36 inches, disclaimers shall be printed using a bold, sans serif typeface that is easily legible to an average reader and is not less than 14-point type in a color that contrasts with the background on which it appears.
 2. For written communications larger than 24 inches by 36 inches, the total height of the disclaimer shall constitute at least five percent of the total height of the communication, be printed using a bold, sans serif typeface that is easily legible to an average reader, and be printed in a color that contrasts with the background on which it appears.
 3. For video communications, the disclaimer shall be written in a bold, sans serif typeface that is easily legible to an average reader, in a color that contrasts with the background on which it appears, and shall appear for at least four seconds at either the beginning or the end of the communication. A spoken disclaimer is also required if the written disclaimer does not appear for at least five seconds of a communication that is 30 seconds or less or for at least ten seconds of a communication that is longer than 30 seconds. A spoken disclaimer shall be clearly audible and spoken at the same speed and volume as the rest of the communication.
 4. For audio communications, disclaimers shall be spoken in a clearly audible manner at either the beginning or end of the communication. The disclaimers shall be spoken at the same speed and volume as the rest of the communication and shall last at least five seconds.
- D. The disclaimers required by this section shall not be required for slate mailers, wearing apparel, small promotional items, such as pens, pencils, mugs, and potholders, and other items on which a disclaimer cannot be displayed in easily legible typeface.
- E. When the size limitations of an electronic communication render it impractical to include the full disclaimer, the disclaimer must state, at a minimum, "Paid for by" immediately followed by the committee identification number provided by the California Fair Political Practices Commission, or, if the person is not a committee, the person's name. In addition, when a user interacts with the communication, the interaction must provide the user with the full disclaimer in a format that is easily legible and identifiable, such as through a rollover or pop-up on the landing page or a linked website or application.

3.12.210 – Disclosure of Independent Expenditure Communications.

- A. A person required by state law to file a “24-hour” or “10-day” Independent Expenditure Report via California Fair Political Practices Commission Form 496 or any successor form with the Commission shall also submit a supplemental notification to the Commission as follows:
1. The notification is due at the same time as the corresponding Form 496.

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2. The notification shall be submitted in a manner as prescribed by the Commission.
- B. The notification shall include a declaration under penalty of perjury signed by the person and, if applicable, the committee treasurer, specifying the following:
1. That the communication was not behested by any of the candidates who benefited from it;
 2. The dates the communication was distributed or displayed, if applicable;
 3. The name and address of the payee, if applicable, and any vendor or subvendor that provided service for the communication;
 4. Contributions of \$100 or more that the person made in the current calendar year to City candidates, City controlled committees, City ballot measure committees, City recall committees, committees primarily formed to support or oppose City candidates or measures, and City general purpose recipient committees;
 5. Any other information required by the Commission in furtherance of this Section.
- C. The notification shall include a copy of the communication distributed, displayed, or sent to voters.
1. If the communication is of a video, audio or verbal nature, a copy of the script and recording shall be provided.
 2. The Commission, upon request from any member of the public, shall send to that member of the public a copy of each requested independent expenditure communication.
 3. The Commission may not judge, edit or comment on the content of any independent expenditure communication, except for non-compliance with any required disclaimer on each communication.

3.12.220 – Social Media Accounts.

- A. A candidate for elected City office, a City controlled committee, a City recall committee, a City ballot measure committee, a City general purpose committee, a committee primarily formed to support or oppose City candidates or ballot measures, or a person who makes independent expenditure communications in City elections that qualifies as a committee under the Political Reform Act and elects to use social media accounts to disseminate political communications subject to the requirements of Section 3.12.200 shall include the following statement on each account's home page: "This account is being used for campaign purposes by [name of candidate or committee]."
1. The statement shall be prominent, in a typeface that is easily legible to an average reader and in a color that contrasts with the background on which it appears.

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2. The statement shall be displayed from the time the candidate or committee first begins to use the account for campaign purposes until the election for which it is used is over.
- B. An elected City officer may not use a social media account or Web site for campaign purposes if the account or site is paid for, sponsored by, or hosted by the City. If an elected City officer communicates about campaign activity or City business using a social media account or Web site that is not City sponsored, the home page for the account or site shall include the following statement: "This [account or site] is not paid for, sponsored by, or hosted by the City." The statement shall be prominent, in a typeface that is easily legible to an average reader and in a color that contrasts with the background on which it appears.
- C. The Commission may modify the disclosure statement requirements of this section by adoption of regulations.

Article VI. - Electronic Filing and Recordkeeping Requirements

3.12.240 - Electronic filing of campaign statements.

- A. **Electronic Filing of Campaign Statements.** Any person required by State or local law to file a campaign statement or report with the local filing officer, shall file the statement or report in an electronic format with the Public Ethics Commission provided that the Public Ethics Commission has prescribed the format at least sixty (60) days before the statement or report is due to be filed.
- B. **Continuous Filing of Electronic Statements.** Once a committee is subject to the electronic filing requirements imposed by this Section, the committee shall remain subject to the electronic filing requirements, regardless of the amount of contributions received or expenditures made during each reporting period, until the committee terminates pursuant to this Act and the California Political Reform Act.
- C. **Late Filing Fees.** If any person files an original statement or report after the deadline imposed by State or local law, ~~that person~~ ~~he or she~~ shall, in addition to any other penalties or remedies established by this Act or State law, be liable in the amount of ten dollars (\$10.00) per day after the deadline until the statement or report is filed, to the Public Ethics Commission. No liability under this Subsection shall exceed the cumulative amount stated in the late statement or report, or one hundred dollars (\$100.00), whichever is greater. The Public Ethics Commission shall deposit any funds received under this Section into the City's General Fund.
- D. **Adoption of General Law.** Except as otherwise provided in, or inconsistent with, this Act or other provisions of local law, the provisions of the California Political Reform Act relating to local elections including any subsequent amendments are hereby incorporated as part of this article.

3.12.245 - Recordkeeping requirements.

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Every person required by State or local law to file a campaign statement or report with the City shall prepare and retain detailed records (including bills, receipts, and other documents) needed to comply with the filing requirement. The records shall be retained for at least four (4) years following the date the campaign statement or report was filed with the Public Ethics Commission.

Article VII. - Violations Related to Enforcement

3.12.250 - Violations Related to Enforcement.

False Charges and Information. A person shall not knowingly furnish false, fraudulent, or misleading complaints, evidence, documents, or information to the Public Ethics Commission, or District Attorney, or knowingly misrepresent any material fact, or conceal any evidence, documents, or information relevant to an investigation by the Public Ethics Commission or District Attorney of an alleged violation of this Act.

Article VIII. - Agency Responsibility and Authority

3.12.260 - Public Ethics Commission Role and Responsibilities.

The Public Ethics Commission shall:

- A. Oversee compliance with the Act.
- B. Serve as the local filing officer for campaign statements and reports pursuant to the California Political Reform Act.
- C. Adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of this Act, subject to Section 2.24.070 of the Oakland Municipal Code.

3.12.265 - Duties of the City Clerk.

The City Clerk shall provide the Public Ethics Commission with all election-related information necessary for the Public Ethics Commission to notify persons and committees of their campaign reporting obligations and availability of public funds, if applicable, and to determine campaign reporting requirements and filing deadlines, including:

- A. Providing a copy of any Candidate Intention Statement (California Form 501) received by the City Clerk's office;
- B. Providing the list of candidates qualified for the ballot immediately upon qualification;
- C. Providing materials about campaign reporting requirements and public financing as requested by the Public Ethics Commission with the nomination packets given to candidates;
- D. Providing materials about campaign reporting requirements designated by the Public Ethics Commission with information given to individuals seeking to place a measure on the ballot;
- E. Notifying the Public Ethics Commission when petitions are issued to qualify a measure for an upcoming ballot;

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- F. Notifying the Public Ethics Commission when a measure qualifies for an upcoming ballot immediately upon qualification; and
- G. Notifying the Public Ethics Commission of the dates when a Special Election is scheduled.

Article VIIIX. - Enforcement

3.12.270 - Penalties.

Any person who violates this Act is subject to criminal, civil, administrative, and other penalties provided for in this Section. In the event criminal violations of this Act come to the attention of the Public Ethics Commission, it may forward the information to the appropriate law enforcement agency.

- A. Criminal Penalties. Any person who knowingly or willfully violates any provision of this Act is guilty of a misdemeanor. Any person who knowingly or willfully causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of any provision of this Act, shall be liable under the provisions of this Act.
 - 1. No person convicted of a misdemeanor under this Act shall act as a lobbyist or as a City contractor for a period of four (4) years following the date of the conviction unless a court, at the time of sentencing, specifically determines that this provision shall not be applicable.
 - 2. For the purposes of this Section, a plea of nolo contendere shall be deemed a conviction.
- B. Civil Penalties. Any person who violates any provision of this Act shall be liable in a civil action for an amount up to five thousand dollars (\$5,000.00) per violation, or up to three (3) times the amount the person failed to report properly or unlawfully contributed expended, gave or received, whichever is greater. A decision by the Public Ethics Commission to bring a civil action requires an affirmative vote of at least five (5) of its members.
 - 1. If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.
 - 2. In determining the amount of liability, a court may take into account the seriousness of the violation and the degree of culpability of the defendant.
- C. Administrative Penalties. Any person who violates any provision of this Act, who causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of any provision of this Act, shall be liable in an administrative proceeding before the Public Ethics Commission held pursuant to the Public Ethics Commission's Complaint Procedures. The Public Ethics Commission may impose administrative penalties in an amount up to five thousand dollars (\$5,000.00) per violation, or up to three (3) times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater. In addition to administrative penalties, the Public Ethics Commission may issue warnings or require other remedial measures.

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1. If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable.

3.12.280 - Injunctive relief.

- A. The Public Ethics Commission may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of Articles III, IV, V, VI, and VII of this Act.
- B. Any individual residing within the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of Articles III, IV, V, and VI of this Act.
- C. Any individual, other than the Public Ethics Commission, before filing a civil action pursuant to this Section, shall first file with the Public Ethics Commission a written request for the Public Ethics Commission to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The Public Ethics Commission shall respond in writing within ninety (90) days after receipt of the request indicating whether they intend to file an administrative or civil action. If the Public Ethics Commission indicates in the affirmative and brings an administrative or civil action within sixty (60) days thereafter, no other action may be brought unless the action brought by the Public Ethics Commission is dismissed without prejudice.
- D. If the Public Ethics Commission needs additional time to determine whether to bring an action or needs additional time to bring an action, it may, by resolution indicating evidence of good cause and notice thereof to the requestor, extend the ninety (90) day time period by another sixty (60) days. If the Public Ethics Commission indicates they will not pursue the matter, or if it does not pursue an administrative or civil action within the sixty (60) day period following their affirmative response to the requestor, the requestor may file suit pursuant to this Section. No resident may bring an action pursuant to this Section if the Public Ethics Commission has commenced an administrative action or a law enforcement agency has commenced criminal action arising out of the same facts.

3.12.290 - Forfeiture.

Any person who receives a financial benefit as a result of a violation of this Act by any person shall be liable for disgorging to the City's general fund up to the amount of the financial benefit received as a result of the violation.

3.12.300 - Costs of litigation.

The court may award to a party, other than the City or any of its commissions, boards, departments or agencies, who prevails in any civil action authorized by this Act, his or her costs of litigation, including reasonable attorneys' fees.

3.12.310 - Limitation of actions.

- A. A criminal action alleging a violation of this Act may only be commenced by the Alameda County District Attorney or the California Attorney General and no more than four (4) years after the date of the violation.
- B. A civil action alleging a violation of this Act may only be commenced by the Public Ethics Commission or an individual residing in the City and no more than five (5) years after the date of the violation.

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- C. An administrative action alleging a violation of this Act may only be commenced by the Public Ethics Commission and no more than five (5) years after the date of the violation.
- D. Commencement of an administrative action is the date the Public Ethics Commission sends written notification to the respondent of the allegation pursuant to the Commission's Complaint Procedures.
- E. Unless otherwise prescribed by applicable law, the date of the violation means the earliest date when the complainant, the Public Ethics Commission, or other prosecuting authority has, or reasonably should have, knowledge of the violation and its cause, and a suspicion of wrongdoing. Suspicion shall be determined from an objective standpoint of what is reasonable for the complainant, the Public Ethics Commission, or other prosecuting authority to know or suspect under the facts of the situation.

3.12.320 - Liability.

- A. In addition to a committee itself, persons who qualify under the California Political Reform Act as principal officers of the committee are jointly and severally liable for violations by the committee. For committees controlled by a candidate, the candidate and the committee's treasurers are deemed to be principal officers.
- B. In addition to a person whose conduct is required or prohibited under this Act, an agent acting on behalf of that person is jointly and severally liable for a violation that arises out of the agent's actions. There is a rebuttable presumption that the following persons are agents of a committee:
 - a. A current or former officer of the committee;
 - b. An employee of the committee;
 - c. A person who has received compensation or reimbursement from the committee; and
 - d. A person who holds or has held a position within the committee organization that reasonably appears to be able to authorize expenditures for committee activities.
- C. This Section does not limit potential liability for persons who cause another person to violate this Act or who aids and abets another person in a violation.

3.12.330 - Disqualification.

In addition to any other penalties prescribed by law, if a candidate 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 California Fair Political Practices Commission shall apply to interpretations of this Section.

Article IX. - Miscellaneous Provisions

3.12.340 - Applicability of other laws.

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

3.12.350 - Reference to other laws.

All references in this Act to other laws refer to those laws as amended.

3.12.360 - 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.

3.12.370 – City Council Amendments.

The City Council may make any amendments to this Act that are consistent with its purpose.

SECTION 4. Repeal and Reenactment of Oakland Municipal Code, Section 3.20.190.

Oakland Municipal Code, Section 3.20.190, *Restriction on former elected city officers from acting as a local governmental lobbyist*, is hereby repealed and reenacted as follows with deleted text shown as ~~strike through~~ and new text shown as underscored.

3.20.190 - Restriction on former elected city officers from acting as a local governmental lobbyist.

No officer of the City or person who has held the position of department head or budget director shall be permitted to act as a local governmental lobbyist for a period of ~~one (1) year~~ two (2) years after leaving office.

SECTION 5. Repeal and Reenactment of O.M.C. Chapter 3.20, Article VI, into Articles VI and VII. Oakland Municipal Code, Article VI, *Enforcement*, of Chapter 3.20, *Lobbyist Registration Act*, is hereby repealed and reenacted as Articles VI, *Enforcement*, and VII, *Miscellaneous*, as follows with deleted text shown as ~~strike through~~ and new text shown as underscored.

Article VI. - Enforcement

3.20.200 - Administrative action.

A. Any person who violates this Act is subject to administrative proceedings before the Public Ethics Commission pursuant to the Public Ethics Commission's Complaint Procedures. The Public Ethics Commission shall not commence an administrative action alleging a violation of this Act more than four (4) years after the date of the alleged violation.

B. If the Public Ethics Commission finds a violation of this Act, the Public Ethics Commission may: (1) find mitigating circumstances and take no further action; (2) issue a public statement or

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reprimand, or (3) impose an administrative penalty of up to one thousand dollars (\$1,000.00) for each violation.

C. Commencement of an administrative action is the date that the Public Ethics Commission sends written notification of the allegation to the respondent pursuant to the Public Ethics Commission's Complaint Procedures.

D. If any penalty imposed by the Public Ethics Commission is not timely paid, the Public Ethics Commission shall refer the debt to the appropriate City agency or department for collection.

3.20.210 - Civil penalties.

A. Civil penalties shall be imposed by resolution of the Public Ethics Commission.

B. Except as otherwise specified in this Act, the Commission may impose penalties of up to one thousand dollars (\$1,000) for each complaint sustained.

C. If any civil penalty imposed by the Public Ethics Commission is not timely paid, the Commission shall refer the debt to the appropriate city agency or department for collection.

3.20.220 - Criminal violation.

A. Any person who knowingly or willfully violates this Act is guilty of a misdemeanor.

B. The prosecution of any misdemeanor violation of this Act shall commence within four (4) years after the date on which the alleged violation occurred.

C. No person convicted of a misdemeanor violation of this Act may act as a local governmental lobbyist, render consultation or advice to any registered client, or otherwise attempt to influence a governmental action for compensation for one (1) year after such conviction.

Article VII. – Miscellaneous

3.20.230 - Effective date.

The effective date of this Act shall be September 1, 2002. ~~All amendments to this Act shall go into effect immediately.~~

3.20.240 - Severability.

The provisions of this Act are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Act, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this Act, or the validity of its application to other persons or circumstances.

3.20.250 – City Council Amendments.

The City Council may make any amendments to this Act that are consistent with its purpose.

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SECTION 6. Amendment of Section 603 of the Charter of the City of Oakland. Section 603, *Public Ethics Commission*, of the Charter of the City of Oakland is hereby amended as follows with deleted text shown as ~~strikethrough~~ and new text shown as underscored:

Section 603. Public Ethics Commission.

- (a) Creation and Role. There is hereby established a Public Ethics Commission which shall be responsible for: (1) enforcement of laws, regulations and policies intended to assure fairness, openness, honesty and integrity in City government, including compliance by the City of Oakland, its elected officials, officers, employees, boards and commissions, and other persons subject to laws within the jurisdiction of the Commission; (2) education and responding to issues regarding the aforementioned laws, regulations and policies, and; (3) impartial and effective administration and implementation of programs to accomplish the goals and purposes of the Commission as defined by this Section. Such laws, regulations, policies, and programs shall include those relating to campaign finance, lobbying, transparency, and governmental ethics, as they pertain to Oakland. The Commission shall have the power to make recommendations to the City Council on matters relating to the foregoing. Nothing in this Section shall preclude other City officials, agencies, boards and commissions from exercising authority heretofore or hereafter granted to them, with the exception of Charter Section 603(b)(5).
- (b) Functions and Duties. It shall be the function and duty of the Public Ethics Commission to:
 - (1) Foster and enforce compliance with:
 - (i) Sections 218 ("Non-interference in Administrative Affairs"), 907 ("Nepotism"), 1200 ("Conflict of Interest") and 1202 ("Conflict in Office") of this Charter, for violations occurring on or after January 1, 2015;
 - (ii) The Oakland Campaign Reform Act, ~~Limited Public Financing Act~~ Oakland Fair Elections Act, False Endorsement in Campaign Literature Act, Oakland's Conflict of Interest Code, code of ethics and governmental ethics ordinance, the Oakland Lobbyist Registration Act, the Oakland Sunshine Ordinance, any ordinance intended to protect City whistleblowers from retaliation, and other Oakland laws regarding campaign finance, lobbying, transparency, or governmental ethics, as provided by ordinance or this Charter;
 - (iii) Related state laws including, but not limited to, the Political Reform Act, Ralph M. Brown Act, and Public Records Act, as they pertain to Oakland.
 - (2) Report to the City Council concerning the effectiveness of all local laws regarding campaign finance, lobbying, transparency, and governmental ethics.
 - (3) Issue oral advice and formal written opinions, in consultation with the City Attorney.

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- (4) Within the time period for submission of such information for the timely completion of the City's regular budget process, provide the Mayor and City Council with an assessment of the Commission's staffing and budgetary needs.
 - (5) Act as the filing officer and otherwise receive and retain documents whenever the City Clerk would otherwise be authorized to do so pursuant to Chapter 4 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.), provided that this duty shall be transferred to the Commission during the 24 months following the effective date of this provision and the Commission shall be the sole filing officer for the campaign finance programs by January 1, 2017.
 - (6) Educate and promote understanding regarding the requirements under the Commission's oversight and study any significant non-compliance problems or trends with Oakland's campaign finance, lobbying, transparency, and governmental ethics laws and identify possible solutions for increasing compliance.
 - (7) Review and make recommendations regarding all City systems used for public disclosure of information required by any law within the authority of the Commission.
 - (8) Perform such other functions and duties as may be prescribed by laws of this Charter or City ordinance.
- (c) Councilmember Salary Increases. The Public Ethics Commission shall set Council compensation as provided for in Charter Section 202.
- (d) Appointment, Vacancies, Terms. The Public Ethics Commission shall consist of seven (7) members who shall be Oakland residents. Commissioners shall serve without compensation.

The Commission shall be appointed as follows in subsection (1) and (2).

- (1) Appointments by Mayor, City Attorney and City Auditor. The Mayor shall appoint one member who has represented a local civic organization with a demonstrated history of involvement in local governance issues.

The City Attorney shall appoint one member who has a background in public policy or public law, preferably with experience in governmental ethics or open government matters.

The City Auditor shall appoint one member who has a background in campaign finance, auditing of compliance with ethics laws, protection of whistleblowers, or technology as it relates to open government.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting. The Mayor, City Attorney, and City Auditor may not appoint an individual who was paid during the past two years for work by a committee controlled by the official.

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Upon the effective date of this section, the three members appointed by the Mayor prior to 2015 shall continue to serve the remainder of their terms. Vacancies in the three positions appointed by the Mayor shall be filled in the following manner: the City Attorney shall appoint a member to fill the first vacancy; the City Auditor shall appoint a member to fill the second vacancy and the Mayor shall appoint the member to fill the third vacancy. Thereafter, the positions appointed by the Mayor, City Attorney and City Auditor shall be filled in the same manner and upon consideration of the same criteria as the initial appointments.

The appointments made by the Mayor, City Attorney, and City Auditor may be rejected by City Council Resolution within 45 days of receiving formal notice of the appointment. An appointment shall become effective once written notice is made by the appointing authority to the City Clerk. Upon receiving such written notice, the Clerk shall promptly provide formal notice to the City Council.

- (2) Commission Appointments. The four members of the Commission who are not appointed by the Mayor, City Attorney or City Auditor shall be appointed, following a public recruitment and application process, by the affirmative vote of at least four (4) members of the Commission. Any member so appointed shall reflect the interests of the greater Oakland neighborhood, nonprofit and business communities.

Prior to appointment, all appointees must attest in their application for appointment to attendance of at least one Public Ethics Commission meeting.

- (3) Terms of office. All categories of member shall be appointed to staggered terms. Members of the Commission shall be appointed to overlapping terms, to commence upon date of appointment, except that an appointment to fill a vacancy shall be for the unexpired term only. Members of the Commission shall serve for a term of three years. No member may serve more than two consecutive full three-year terms. If a member is appointed to fill an unexpired term which term is for more than 1.5 years, ~~he/she~~such member may serve only one additional consecutive three-year term. If a member is appointed to fill an unexpired term which term is for less than 1.5 years, ~~he/she~~such member may serve two consecutive full three-year terms.
- (4) Quorum. Four members shall constitute a quorum.
- (5) Vacancy. A vacancy on the Commission will exist whenever a member dies, resigns, ceases to be a resident of the City or ~~is absent~~absents himself/herself continuously from the City for a period of more than 30 days without permission from the Commission, is convicted of a felony, is judicially determined to be an incompetent, is permanently so disabled as to be unable to perform the duties of a member, or is removed. A finding of disability shall require the affirmative vote of at least four members of the Commission after considering competent medical evidence bearing on the physical or mental capability of the member.

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Vacancies not filled by the Mayor, City Attorney, or City Auditor within 90 days of the occurrence of such vacancy may be filled by the City Council in the same manner as provided by Charter, Section 601.

- (6) Removal. Members of the Commission may be removed by their appointing authority, with the concurrence of the Council by Resolution, only for conviction of a felony, substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of office, absence from three consecutive regular meetings except on account of illness or when absent by permission of the Commission, or violation of this Charter section, after written notice of the grounds on which removal is sought and an opportunity for a written response.
- (c) Qualifications and Restrictions. Each member of the Commission shall be a resident of Oakland and registered to vote in Oakland elections. No member of the Commission shall:
- (1) Have an employment or contractual relationship with the City during the member's tenure and for a period of one year after the date of separation.
 - (2) Be a registered Oakland lobbyist or be required to register as an Oakland lobbyist, or be employed by or receive gifts or other compensation from a registered Oakland lobbyist during the member's tenure and for a period of one year after the date of separation.
 - (3) Seek election to any other public office in a jurisdiction that intersects with the geographic boundaries of Oakland, or participate in or contribute to an Oakland municipal campaign.
 - (4) Endorse, support, oppose, or work on behalf of any candidate or measure in an Oakland election.
- (f) Enforcement.
- (1) Authority. In furtherance of Charter Section 603(b)(1) and (5), the Public Ethics Commission is authorized to:
 - (i) Conduct investigations;
 - (ii) Conduct audits of compliance with disclosure requirements with the Commission;
 - (iii) Conduct public hearings as provided by the Commission's complaint procedures or other law;
 - (iv) Issue subpoenas to compel the production of books, papers, records and documents and take testimony on any matter pending before the Commission. The Commission may seek a contempt order as provided by the general law of the state for a person's failure or refusal to appear, testify, or to produce required books, papers, records and documents;
 - (v) Impose penalties, remedies and fines, as provided for by ordinance. Ordinances enforced by the Public Ethics Commission shall not be

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subject to the \$1,000 limit on fines provided Sections 217 and 1208 of this Charter. The Commission's decision to impose penalties and fines for violation of any regulation or ordinance over which the Commission has authority shall be appealable to the Alameda County Superior Court by filing a petition for writ of mandamus;

- (vi) Submit referrals to other enforcement authorities, including but not limited to the Alameda County District Attorney, California Fair Political Practices Commission, and California Attorney General;
 - (vii) Seek remedial relief for violations and injunctive relief;
 - (viii) By an affirmative vote of at least five members, reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 218 and 1202 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;
 - (ix) Reprimand, censure, or impose administrative remedies, as provided by a governmental ethics ordinance adopted by the City Council, for violations of Section 907 of this Charter, according to the Commission's due process procedures as provided in the Commission's complaint procedures;
 - (x) Perform other functions as authorized by law.
- (2) Final enforcement action. Final enforcement action by the Commission on a matter, including but not limited to the imposition of fines or dismissal of a case, shall be made by an affirmative vote of at least four members.
- (3) Investigations. Preliminary review by Commission staff of allegations shall be confidential, to the extent permitted by law, until any of the following occurs:
- (i) Placement of the item on a Public Ethics Commission meeting agenda;
 - (ii) Passage of one year since the complaint was filed;
 - (iii) Action by the Executive Director closing the file without placing it on the agenda, pursuant to the Commission's complaint procedures or policies; or
 - (iv) Expiration of the Statute of Limitations.
- (4) Penalty guidelines and Enforcement Discretion. The Public Ethics Commission shall develop a policy setting forth standards for imposing penalties and exercising enforcement discretion. Commission staff shall adhere to the policy when recommending penalties under each of the different penalty provisions that the Commission has the power to enforce.
- (5) Per diem late filing fees. Regarding per diem fees that are authorized due to the late filing of disclosure reports, including campaign finance statements, lobbyist

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reports, and other ethics-related disclosures filed with the Commission by law, the following shall apply:

- (i) Assessments. Any instance of late filing that triggers the assessment of a fee of \$1,000 or more by the Commission shall be placed on a Commission meeting agenda before issuance of the fee;
 - (ii) Waiver guidelines. The Commission shall establish waiver guidelines in accordance with state law, which the Commission, as the filing officer, shall follow in determining whether or not to grant a waiver. These guidelines shall be published on the Commission's website. The Commission shall prescribe criteria for appeal to the Commission of waiver decisions made by the Executive Director. At each regular Commission meeting, the Executive Director shall provide a written report, which shall be published online, regarding any waivers decisions made since the previous regular meeting;
 - (iii) Referral of final, uncollected fees to collections. Unpaid non-investigatory, per diem late filing fees for disclosure programs that are past due for more than 90 days shall be referred to a City delinquent revenue collection office.
- (6) Private right of action. Oakland residents shall have a private right of action to file suits to enforce the Oakland Campaign Reform Act, Oakland Lobbyist Registration Act, Oakland Sunshine Ordinance, and any City governmental ethics ordinance when the City does not impose or stipulate to a penalty or file suit for a particular violation. Such private right of action shall be enabled for a given ordinance once criteria for such suits, including but not limited to a required notice period, actionable violations and remedies that may be sought, are prescribed by the ordinance.
- (g) Staff Assistance & Budget.
- (1) The City shall appropriate a sufficient budget for the Public Ethics Commission to fulfill the functions and duties as set forth above.
 - (2) Sufficient staffing shall not be less than the following minimum staffing requirement. ~~Effective July 1, 2015, the City shall meet a minimum staffing requirement for the Commission. The minimum staffing shall consist of the following full-time positions or their equivalent should classifications change: Executive Director; Enforcement Chief; One Deputy Director; One Ethics Investigator; One Ethics Program Analyst I or Operations Support Specialist; One Ethics Program Analyst II; One Administrative Assistant I.~~ Effective July 1, 2023, the City shall also provide additional adequate staff necessary to properly administer the Democracy Dollars Program established by the Oakland Fair Elections Act, including but not limited to one full-time Democracy Dollars Program Manager and three Full Time Equivalent positions, to be determined as necessary by the Commission, all of whom shall report to the Executive Director of the Public Ethics Commission.

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- (3) The minimum staffing budget set-aside may be suspended or reduced, for a fiscal year or a two-year budget cycle, upon a finding in the budget resolution that the City is facing an extreme fiscal necessity, as defined by City Council resolution.
- (3)(4) The Executive Director shall serve at the pleasure of the Commission. By an affirmative vote of at least four members, the Commission may terminate the Executive Director. Upon a vacancy, the Commission shall conduct a search for the Executive Director with staff assistance provided by the City Administrator. Upon completion of the search and its vetting of applicants, the Commission shall select two or three finalists and forward the selections to the City Administrator, who shall select one as the Executive Director. The City Administrator shall not have the authority to remove the Executive Director. The Commission shall periodically conduct a performance review of the Executive Director.
- (4)(5) The ~~Deputy Director~~Enforcement Chief shall serve at the pleasure of the Executive Director. Other than the Executive Director and Enforcement Chief~~Deputy Director~~, staff shall be civil service in accordance with Article IX of the City Charter. ~~After the effective date of this Charter provision, the Commission Executive Director shall identify special qualifications and experience that the Program Analysts and Operation Support Specialist candidates must have.~~ Candidates for ~~staff~~future vacancies shall be selectively certified in accordance with the Civil Service Personnel Manual, as may be amended from time to time, except that said selective certification shall not be subject to discretionary approval by the Personnel Director.
- (5)(6) All staff are subject to the restrictions in Charter Section 603(e), except that staff are not prohibited from employment with the City and the one-year post-service restriction shall apply only to the Executive Director.
- (h) Amendment of Laws. Prior to enacting any amendments to laws that the Commission has the power to enforce, the City Council shall make a finding that the proposed changes further the goals and purposes of the ordinance or program in question and provide specifics substantiating the finding. Absent an urgency finding akin to suspending compliance with the Sunshine Ordinance, amendments to laws that the Commission has the power to enforce and proposed ballot measures that would amend such laws that are proposed by one or more members of the City Council shall be submitted to the Commission for review and comment, prior to passage of the amendments or approval of the proposed measures for the ballot by the City Council.
- (i) References to Other Laws in this Section. All references to other laws in this Section shall refer to these laws as they may be amended from time to time.

SECTION 7. Severability. Should any provision of this Measure, or its application to any person or circumstance, be determined by a court of competent jurisdiction to be unlawful, unenforceable or otherwise void, that determination shall have no effect on any other provision of this Measure or the application of this Measure to any other person or circumstance and, to that end, the provisions hereof are severable.

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SECTION 8. Effective Date. This Measure shall be effective only if approved by a majority of the voters voting thereon and shall go into effect ten (10) days after the vote is declared by the City Council, except the amendments to the Oakland Campaign Reform Act and Lobbyist Registration Act shall go into effect on January 1, 2023.

; and be it

FURTHER RESOLVED: That each ballot used at the November 8, 2022 election shall have printed, in addition to any other matter required by law, the following:

Ordinance Enabling Resident Allocation of Public Financing for Election Campaigns and Charter Amendment Authorizing Public Ethics Commission Budget and Staffing Increases to Manage the Public Financing

MEASURE __

Measure __. Shall the Measure amending the Oakland Municipal Code and City Charter to establish resident public financing for candidate election campaigns, increase transparency regarding independent spending in City elections, further restrict former city officials from acting as lobbyists, and provide additional resources to the Public Ethics Commission for implementation be adopted?	Yes	
	No	

; and be it

FURTHER RESOLVED: That the City Council authorizes and directs the City Clerk of City of Oakland to file certified copies of this resolution with the Alameda County Clerk at least 88 days prior to November 8, 2022; and be it

FURTHER RESOLVED: That the City Council requests that the Board of Supervisors of Alameda County include on the ballots and sample ballots recitals and measure language to be voted on by the voters of the qualified electors of City of Oakland; and be it

FURTHER RESOLVED: That the City Clerk is directed to cause the posting, publication and printing of notices, pursuant to the requirements of the Charter of the City of Oakland, Chapter 3 of the Oakland Municipal Code, the Government Code, and the Elections Code of the State of California; and be it

FURTHER RESOLVED: That in accordance with applicable law, the City Clerk shall fix and determine a date for submission of arguments for or against said proposed Ordinance and rebuttals, and said date shall be posted in the Office of the City Clerk; and be it

Item 05 - Proposal to Increase Contribution Limits

FURTHER RESOLVED: That the City Council requests that the Registrar of Voters of County of Alameda perform necessary services in connection with said election; and be it

FURTHER RESOLVED: That the City Clerk and City Administrator are hereby authorized and directed to take any and all actions necessary under law to prepare for and conduct the 2022 General Municipal Election and appropriate all monies necessary for the City Administrator and City Clerk to prepare for and conduct the November 8, 2022 General Municipal Election, consistent with the laws of the City of Oakland and the State of California.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE: **JUL 11 2022**

AYES - FIFE, ~~WALSH~~, KALB, ~~WALSH~~, REID, TAYLOR, THAO AND
PRESIDENT FORTUNATO BAS - 6

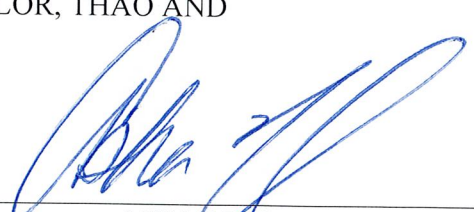
NOES - 0

ABSENT - 0

ABSTENTION - 0

Excused - 2 Gallo
Kaplan

ATTEST: _____


ASHA REED
City Clerk and Clerk of the Council of the
City of Oakland, California

Item 05 - Proposal to Increase Contribution Limits

CITY ATTORNEY'S BALLOT TITLE AND SUMMARY OF MEASURE _____

TITLE: MEASURE AMENDING THE OAKLAND MUNICIPAL CODE AND CITY CHARTER TO: (1) ESTABLISH RESIDENT PUBLIC FINANCING FOR CANDIDATE ELECTION CAMPAIGNS; (2) INCREASE TRANSPARENCY REGARDING INDEPENDENT SPENDING IN CITY ELECTIONS; (3) FURTHER RESTRICT FORMER CITY OFFICIALS FROM ACTING AS LOBBYISTS; AND (4) PROVIDE ADDITIONAL RESOURCES TO THE PUBLIC ETHICS COMMISSION FOR IMPLEMENTATION

22 JUL 28 PM 4:27

FILED
OFFICE OF THE CITY CLERK
OAKLAND

SUMMARY:

This measure would amend the Oakland Municipal Code to establish a program to allow Oakland residents to allocate public financing for candidates' campaigns for City of Oakland and Oakland School Board elections, increase transparency regarding independent spending in City elections, and further restrict former City officials from acting as lobbyists. This measure also would amend the City Charter to provide additional resources to the Oakland Public Ethics Commission for implementation of the new public financing program.

The measure would:

- repeal the existing Limited Public Financing Act (Oakland Municipal Code Chapter 3.13), which provides the City's current system for publicly financing candidate campaigns, and replace it with the Fair Elections Act, that would establish a new public financing program;
- make public financing available to candidates for any City or Oakland School Board elected office;
- allocate public financing by providing four "Democracy Dollars" vouchers to every eligible Oakland resident, who would be allowed to award their vouchers to participating candidates for redemption from the City at \$25 per voucher;
- establish budget set-aside requirements to fund the program.

Like the Limited Public Financing Act, the Fair Elections Act would be administered by the Public Ethics Commission.

This measure would eliminate lower contribution limits for candidates who decline the voluntary expenditure ceiling, providing all candidates the same contribution limits.

The measure would remove limits on contributions to independent (i.e., third-party) groups spending to influence voters in City elections. This measure also would expand disclosure requirements on campaign advertisements from such groups,

Item 05 - Proposal to Increase Contribution Limits

requiring disclosure of their top three donors of \$5,000 or more, and requiring the filing of additional disclosures with the Public Ethics Commission. In addition, the measure would require "paid for by" disclosures on all campaign and officeholder communications, as well as disclosures on social media accounts used for campaign purposes.

The measure would prohibit former City officials from acting as local government lobbyists after leaving office for two years instead of the current one-year prohibition.

The measure would amend the City Charter to increase minimum staffing for the Public Ethics Commission, funding a Democracy Dollars Program Manager and three full time positions to administer the new public financing program.



Barbara J. Parker
City Attorney

Item 05 - Proposal to Increase Contribution Limits

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OAKLAND

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CITY ATTORNEY'S IMPARTIAL ANALYSIS OF MEASURE _____


The Oakland Public Ethics Commission is responsible for oversight of various laws including the Campaign Reform Act, the Limited Public Financing Act, and the Lobbyist Registration Act. In 2014, Oakland voters approved a City Charter amendment that created a new section 603 to strengthen the Public Ethics Commission, which included provisions to set aside money for minimum staffing.

This measure would repeal the Limited Public Financing Act and replace it with the Fair Elections Act. The current public financing program is available only to candidates for City Council; and it caps public financing for an election at \$500,000 and allocates the financing by reimbursing qualifying candidates. The new program would be available to candidates for City Council, Mayor, City Attorney, City Auditor, and School Board and would require that the City set aside a minimum of \$4,000,000 for public financing, per election, unless the City faces extreme fiscal necessity. Residents of Oakland would receive "Democracy Dollars" vouchers and could assign the vouchers to qualified candidates of their choice. Candidates who receive vouchers would be able to redeem them from the City to receive public financing.

The measure would amend the Campaign Reform Act to, among other things, lower contribution limits for publicly financed candidates and heighten disclosure requirements for third-party campaign advertisements. Instead of requiring identification of the top two donors of \$5,000 or more only on mass mailings and television advertisements, the measure would require identification of the top three donors on all third-party advertisements.

This measure would amend the City Charter to increase minimum staffing for the Public Ethics Commission. The measure also would extend the restriction on former City officials acting as local government lobbyists after leaving office from one year to two years.

The Oakland City Council placed this measure on the ballot. A "yes" vote supports the replacement of the Limited Public Financing Act ordinance with the Fair Elections Act ordinance and amendment of the Campaign Reform Act and Lobbyist Registration Act ordinances and Section 603 of the City Charter. A "no" vote opposes replacement of the Limited Public Financing Act with the Fair Elections Act and amendment of the Campaign Reform Act, Lobbyist Registration Act, and Section 603 of the City Charter. A majority vote (i.e., more than 50% of the votes cast) is required to pass the measure.



Barbara J. Parker
City Attorney

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Item 05 - Proposal to Increase Contribution Limits

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Summary

This measure, if approved by a majority of Oakland voters, would repeal the Limited Public Financing Act (LPFA), which has been in effect since 1999, and enacts the Fair Elections Act (Act) enabling resident allocation of public financing for elective office campaigns. It would also modify the Campaign Reform and Lobbyist Registration acts and fund the Public Ethics Commission (PEC) to implement the new Act. This Act would first apply to the 2024 elections.

The proposed measure would specifically create the Democracy Dollars Program, consisting of vouchers (four \$25 vouchers, totaling \$100) to be distributed to eligible Oakland residents to support the campaigns of candidates for City Council, Mayor, City Auditor, City Attorney, and school board. The purpose is to expand participation for elective offices in Oakland. The Act would also extend the lobbying ban from one year to two years after a City official leaves government service to curb corruption and the appearance of corruption.

Financial Analysis

If the measure passes, and if the City Council adopts such an ordinance in the future, we estimate the City would incur approximately \$700,000 in one-time start-up costs, approximately \$1,600,000 in annual operating costs, and \$3,845,000 in additional budget appropriation every two years to the Democracy Dollar Fund (Fund). These estimated costs are described below.

One-time start-up costs

We estimate the City will incur \$700,000 in one-time start-up costs which include integrating the new system requirements into the existing campaign financial reporting system and establishing technical requirements.

Annual operating costs

We estimate the City will incur \$1,600,000 in annual operating costs to administer the Act. This estimate includes \$350,000 in annual non-staff-related administrative costs and \$1,250,000 in additional staffing costs to hire four additional staff to administer the Act.

Biennial budget for the Fund

The legislation requires the City Council to appropriate \$4 million every two years to fund the vouchers. This new program would replace the existing LPFA program currently

Item 05 - Proposal to Increase Contribution Limits

ARGUMENT IN FAVOR OF CAMPAIGN REFORM MEASURE

Oaklanders deserve a local government that is transparent and accountable. We deserve a government that prioritizes the needs of Oakland residents, rather than wealthy special interests. We need to know that our local elected officials are fighting for us—that they’re working to create affordable housing, improve our schools, and keep the streets safe—instead of helping their wealthy campaign funders. Vote YES on the Oakland Fair Elections Act!

The Oakland Fair Elections Act:

- Increases transparency for money in politics. Campaign ads will be required to list their top three contributors so voters can see who’s funding candidates and ballot measures.
- Closes the “revolving door” of top city officials becoming lobbyists. The Act doubles the length of the ban on lobbying by former city officials from one year to two years, to help prevent corruption.
- Amplifies the voices of everyday Oaklanders. The Act provides each eligible resident with four \$25 Democracy Dollars vouchers to donate to qualifying Oakland candidates of their choice. Candidates will now have incentives to meet with voters in every neighborhood. And with campaigns funded by everyday Oaklanders, our local leaders will be more likely to listen to our concerns and prioritize our values.
- Lowers contribution limits. The Act lowers the maximum campaign contribution amount to reduce the risk of corruption. Stricter limits means more assurance that our local leaders are fighting for all of us.
- Fights corruption. The Act provides additional investigative resources to the Oakland Public Ethics Commission to be our watchdog at City Hall.

Let’s build a local government where our representatives represent all of us — where candidates and elected officials can focus on what our communities need, not what big-money donors and special interests want. Learn more at FairElectionsOakland.org

Jonathan Mehta Stein
Executive Director, California Common Cause

liz suk
Executive Director, Oakland Rising

Shaketa Redden
Executive Director, Causa Justa Just Cause

Abdi Soltani
Executive Director, ACLU of Northern California

Viola Gonzales
President, League of Women Voters Oakland

Item 05 - Proposal to Increase Contribution Limits

ARGUMENT AGAINST CAMPAIGN REFORM MEASURE

Oakland is in a fiscal crisis. We can't hire enough people to clean the streets or answer 911 calls. Instead of restoring needed services, the politicians on the City Council want to take our General Fund tax dollars to finance their reelections. This measure would take more General Fund money than Oakland spends on police oversight, affordable housing, or youth sports, and give it to politicians. While getting money out of politics is a worthy goal, this measure is biased toward incumbents, has no controls for fraud, and does nothing to limit the millions of dollars spent in recent elections by special interest Super PACs.

It's ironic that this measure claims to create more transparency when it was placed on the ballot only after the Council suspended the Sunshine Ordinance to make last-minute changes. There has been no independent community engagement or analysis, and it's sponsored by a Super PAC that has spent hundreds of thousands of dollars of special interest money electing City Council incumbents. At a time when election rules across the country are being changed to benefit opponents of democracy, we need to be very careful about changing election laws. As a result of the last-minute placing of this measure on the ballot, it's poorly drafted and lacks fraud controls. When Oakland's Limited Public Financing Act began, a man affiliated with the murderous Your Black Muslim Bakery cult collected public money with a fake campaign. With more money available, what's to stop someone from stealing your tax dollars again? This measure throws money at the ineffective Public Ethics Commission without adding oversight or accountability. The Public Ethics Commission has failed to keep Oaklanders informed of the activities of dark money lobbyists. Oakland needs ethics reform, not more wasteful spending.

Vote no.

Carol Wyatt
Oakland Resident/Former Public Ethics Commissioner

Seneca Scott
Oakland Resident/Local Business Owner

Marcus Crawley
Alameda County Taxpayers Association

Item 05 - Proposal to Increase Contribution Limits

REBUTTAL TO ARGUMENT IN FAVOR OF CAMPAIGN REFORM MEASURE

This measure does the opposite of what proponents claim it does: it limits access to public office. The hypocrisy is shocking: all of those signing the argument in favor are leaders of "dark money" organizations that do not disclose all of their donors. One also operates a partisan fund that has spent hundreds of thousands of dollars in recent elections supporting City Council incumbents.

The proposed measure would do nothing about this kind of unlimited spending. Yet it would unreasonably limit how much you can give to a candidate, making it harder for challengers to change the course of our city.

The transparency provisions are a smokescreen - state law already requires top donors to PACs to be disclosed on advertisements.

The measure was placed on the ballot not by citizens, but by incumbent City Councilmembers with a vested interest in making it harder for challengers to compete against them.

This measure would cost \$8 million every budget cycle. Oakland is already strapped and the City can't even provide basic services. The last thing we need is another expensive bureaucracy.

Stop the incumbent politicians' money and power grab - vote no on this fake, expensive measure.

Carol Wyatt
Oakland Resident/Former Public Ethics Commissioner

Seneca Scott
Oakland Resident/Local Business Owner

Marcus Crawley
President, Alameda County Taxpayers Association

Item 05 - Proposal to Increase Contribution Limits

Rebuttal to Argument Against Campaign Reform

The Oakland Fair Elections Act makes common-sense reforms to improve transparency and accountability in Oakland elections. It is endorsed by the community-led Oakland Public Ethics Commission (PEC), which studied the topic for years and will oversee implementation. Opponents' argument is full of misrepresentations that protect special interest donors. The Oakland Fair Elections Act:

- was co-created by a broad coalition including ACLU NorCal, the League of Women Voters Oakland, Oakland Rising, Asian Americans Advancing Justice - Asian Law Caucus, and California Common Cause. There are no super PACs involved.

- improves transparency for political spending, requiring advertisements to list their top three funders and publicly disclose funding information.

- will support more diverse community-backed candidates and more competition for public office. Candidates will be able to run for office without dependence on wealthy donors. A similar program in Seattle led to these outcomes.

- is a critical investment in building a local government that works for all Oaklanders. To ensure we see change on issues like affordable housing, community safety, and quality schools, we need a more responsive city government. It uses already-existing funds – less than half of one percent of the general fund – and does not increase taxes.

- has been carefully drafted, vetted by campaign finance experts, and thoroughly reviewed in multiple, transparent public hearings. It contains security measures to prevent fraud.

The Oakland Fair Elections Act's components are tested and proven. Increasing transparency, reducing campaign limits, providing democracy dollars, and closing the revolving door of lobbyists will improve election fairness and accountability.

Marc A. Pilotin

Oakland resident / Former chairperson, Oakland Public Ethics Commission

Daniel G. Newman

President & Co-Founder, MapLight

Aarti Kohli

Executive Director, Advancing Justice - Asian Law Caucus

Kimi Lee

Executive Director, Bay Rising

Jon Bean

Deputy Director, Oakland Rising



Item 6 - Disclosure Report

Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Alex Van Buskirk, Lead Analyst, Compliance and Disclosure
Jelani Killings, Lead Analyst, Education and Engagement
DATE: September 4, 2024
RE: Disclosure and Engagement Monthly Report for the September 16, 2024,
Special Public Ethics Commission Meeting

This memorandum provides a summary of major accomplishments in the Public Ethics Commission's (PEC or Commission) Disclosure and Engagement program activities since the last regular meeting.

Commission staff disclosure activities focus on improving online tools for public access to local campaign finance and other disclosure data, enhancing compliance with disclosure rules, and conducting data analysis for Public Ethics Commission projects and programs as required.

Engagement activities include training and resources provided to the regulated community, as well as general outreach to Oakland residents to raise awareness of the Commission's role and services and to provide opportunities for dialogue between the Commission and community members.

Compliance with Disclosure Requirements

Commission staff conducts filing officer duties as required by state and local law and aims to help candidates, lobbyists and City officials submit required disclosure reports and ensure residents can easily access campaign finance, lobbyist, and ethics-related data and information.

Campaign Finance Disclosure – In August 2024, the Oakland City Clerk certified candidates for the ten local positions on Oakland's November ballot (City Attorney, five City Council seats, and four OUSD Director seats). Thirty-six candidates qualified for ballot status, and 27 have registered campaign committees. There are three Oakland ballot measures on Oakland's November ballot, with one associated ballot measure committee supporting Measure MM (Wildfire Protection Zone Parcel Tax Measure). There is also the Mayoral recall question on Oakland's November ballot and one committee in support and one committee in opposition to the recall question.

July 31, 2024, marked the semi-annual campaign reporting deadline for all active registered committees, 85 in total, for activity between January 1, 2024, and June 30, 2024. Just one committee for a candidate on the November 2024 ballot required to file has not done so. Another committee, for a candidate who did not qualify for the ballot for the November election, also did not file. These two committees (Committee to Elect Shan Hirsch for City Council, ID# 1464290 and Tariq Ikhara for Oakland City Council 2024, ID# “Pending”) were referred to Enforcement after several contacts were made by Commission staff in an effort to gain compliance. Surface review of filings for activity between January 1, 2024, and June 30, 2024, is in progress and requests for amendments will be made as required upon completion.

August 7, 2024, started the 90-day period leading up to the November election when late contribution reports (FPPC Form 497) and late independent expenditure reports (FPPC Form 496) must be filed within 24-hours for contributions or independent expenditures of \$1,000 or more. Measure W (November 2022) amended the Oakland Campaign Reform Act to require that any committee or person required by state law to file a 24-hour or 10-day Late Independent Expenditure Report (FPPC Form 496) with the Commission also submit a Supplemental Independent Expenditure Disclosure report (OCRA Form 305), including a copy of the content of the communication. After the first pre-election deadline, which is September 26, 2024, Commission staff will screen campaign statements for untimely and unreported late contributions and independent expenditures and assess late fees as required.

As previously noted, the first pre-election filing deadline for the November election falls on September 26, 2024. All candidates on the November ballot must file. Candidates raising or spending \$2,000 or more file their campaign statements on the FPPC Form 460. Candidates intending to keep their campaign activity under \$2,000 must file the FPPC Form 470. Ballot measure committees and other recipient committees with fundraising or spending activity connected with the November ballot must also file for the pre-election deadline.

Campaign statements are available to view and download at the Commission’s [Public Portal for Campaign Finance Disclosure](#). Campaign finance data, graphs, and visualizations are available via Commission-sponsored apps [Show Me the Money](#), [Open Disclosure Oakland](#), [Oakland’s Open Data portal](#), and links on the Public Ethics Commission website.

Lobbyist Registration Program – The Oakland Lobbyist Registration Act (LRA) requires any person that qualifies as a lobbyist to register annually with the Commission before conducting any lobbying activity. Registration renewals were due January 31. To date, 54 lobbyists have registered with the City of Oakland for 2024.



In November 2023, the Oakland City Council adopted amendments to the Lobbyist Registration Act including a new annual lobbyist registration fee as well as a requirement that lobbyists take an online training provided by the Commission. To date, 53 lobbyists have taken the online training provided by the Commission and the Commission has received new annual lobbyist registration fees from 51 of 54 registered lobbyists (there are a few recently registered lobbyists who are in the process of providing payment or requesting a waiver). Commission staff is continuing to monitor online training and new fee payment activity to ensure compliance by registered lobbyists.

July 31, 2024, was the deadline for quarterly lobbyist activity reports covering the period from April 1, 2024 through June 30, 2024 (Quarter 2). Lobbyists reported 228 contacts with Oakland public officials during the first quarter.

The following table shows the distribution of lobbying activities across different municipal decisions and the positions advocated for or against in Quarter 2 (2024).

Municipal Decision	Informational meeting	Policy development	Support	Oppose
Information only	20	0	6	0
Land Use (Permit, Zoning, Study)	0	4	33	10
Ordinance, Policy, or Other Legislative Matter	1	50	32	1
Other Permits, Administrative Decisions	8	0	15	38
Public Contract	0	0	10	0
TOTAL	29	54	96	49

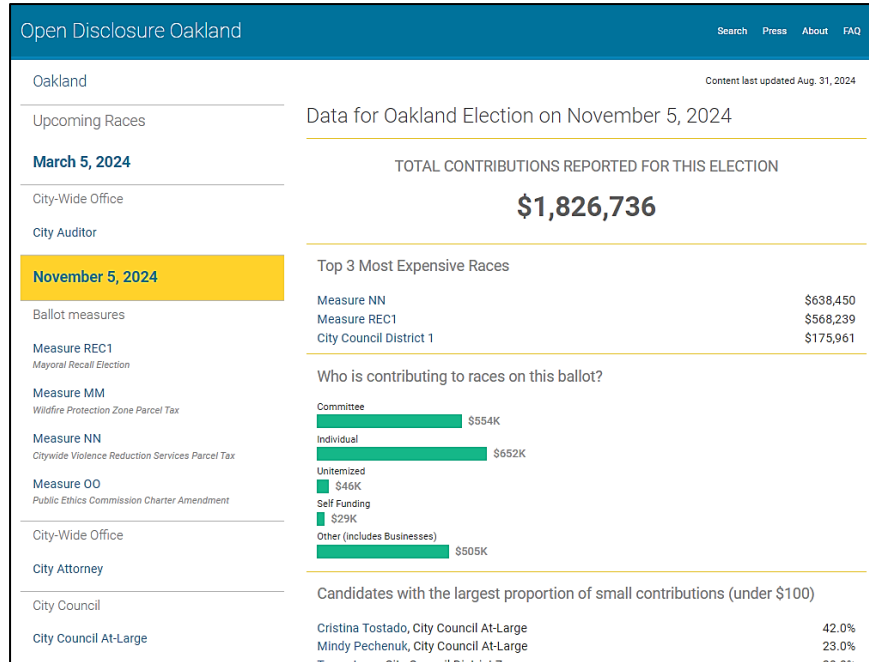
The following table shows the lobbyist client distribution by reported industry in Quarter 2 (2024).

Industry	Number of Clients
Real Estate, Rental and Leasing	20
Non-Profit/Advocacy Organization	14
Information/Technology	12
Finance and Insurance	8
Health Care and Social Assistance	7
Transportation and Warehousing	7
Construction	6
Retail Trade	5
Manufacturing/Industrial	5
Merchandise/Retail	4

An up-to-date list of registered lobbyists and lobbyist activity reports with links to view and download individual reports is available at the Public Ethics Commission’s [Lobbyist Dashboard and Data](#) webpage.

Illuminating Disclosure Data

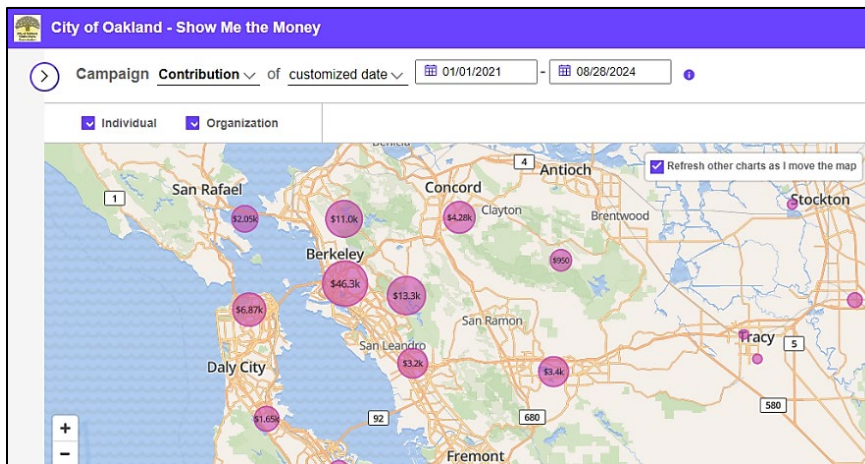
Open Disclosure Oakland – The opendisclosure.io campaign finance app is live with the data for the 2023-2024 election cycle. Open Disclosure Oakland, a nonpartisan tool, was developed by volunteers from [OpenOakland](https://OpenOakland.org), a civic technologist group, in partnership with Commission staff to give all Oakland residents equal access to campaign finance data. The Open Disclosure Oakland website shows funds donated to both political



candidates and ballot measure committees and provides clear summaries of money raised and spent as well as financial trends for each election. The website also includes a search function that makes campaign donation records easy to search and sort, and allows users to search campaign donors by name across multiple campaigns and elections.

Open Disclosure Oakland is updated daily with data imported directly from the [City's campaign finance database](#) and includes a notification system that sends subscribers alerts about new campaign reports.

“Show Me the Money” Campaign Finance Mapping – The City of Oakland [“Show Me the Money”](#) app is live with 2024 campaign finance data. “Show Me the Money” builds a map showing the geographic source of campaign contributions to candidates and totals donated from that location. Oakland residents can dig deeper by clicking each location point, and the



application will reveal the names of top contributors from that area. Up to three candidates may be selected at a time for comparison. Features beyond the contribution map include allowing users to review campaign contribution trends and campaign spending patterns.

Like the Commission's other campaign finance projects, this app is updated daily with data imported directly from the [City's campaign finance database](#). Followers of Oakland elections can find the "Show Me the Money" app via links on the Commission's website, [Oakland's Open Data portal](#), and Open Disclosure Oakland candidate pages.

Thank you to the PEC's two 2024 student volunteers, Anya Lassila and Francis Doran, for performing research and data entry necessary to maintain both apps as well as contributing improvements to the Show Me the Money source code/programming.

Disclosure Priorities Update

At the Commission's August 2023 retreat, the Commission and its staff discussed near and mid-term project priority setting over the next one to two years. The following are the adopted priorities for the Disclosure Program area. Note that there are some items listed as "On Hold" due to staff and budgetary considerations affecting capacity:

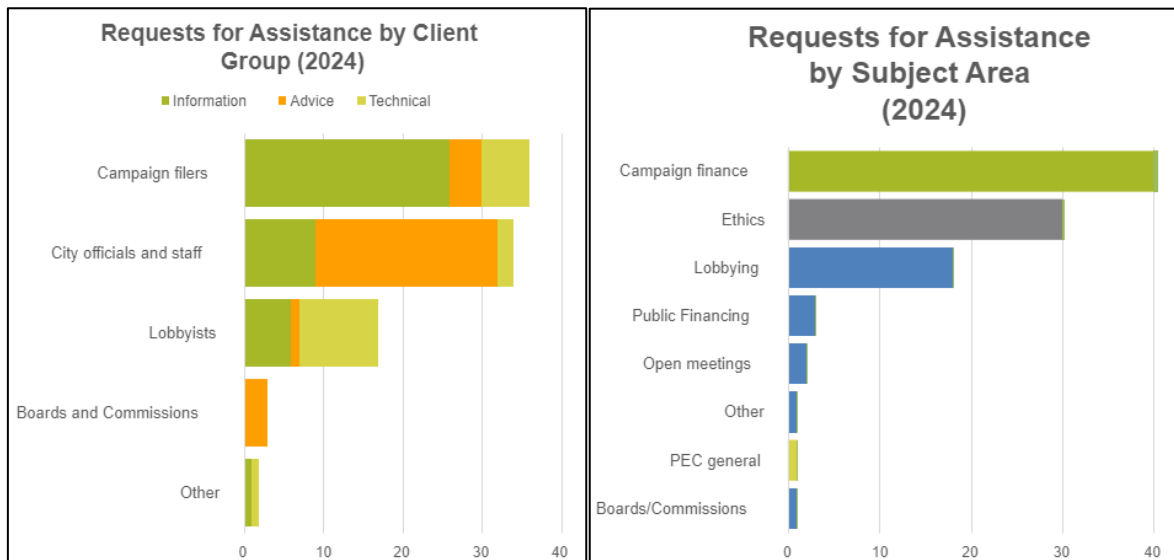
- Near Term (2023), in order of priority:
 - Update the Lobbyist Registration and Reporting Database: **Complete/In Progress (Ongoing)**.
 - Updates were completed to the Lobbyist Registration and Reporting Database application to align with form/reporting changes required under the Lobbyist Registration Act; work continues on maintaining and updating the application as needed with assistance from the Information Technology Department (ITD). In addition, Commission staff is continuing to work with ITD and the Finance Department on development of a point-of-sale system for lobbyist registration fee payments.
 - Publish a Public Records Performance Dashboard: **On Hold**.
- Mid Term (2024), in order of priority:
 - Update the Open Disclosure Portal for 2023 and 2024: **Complete/In Progress (On Going)**.
 - This Open Disclosure portal/application is in place covering the 2023-2024 election cycle. The project requires Commission staff regularly coordinate with OpenOakland civic technologist volunteers. For example, Commission staff must update the candidate and election data on the backend of the system and provide ongoing quality assurance reviews of the website content. Commission staff will begin a marketing campaign in mid-to-late September advertising the Open Disclosure portal/application.
 - Update the Show Me the Money Application for 2023 and 2024: **Complete/In Progress (On Going)**.

- This “Show Me the Money” application is in place covering the 2023-2024 election cycle. The “Show Me the Money” application was developed by Tyler Technologies for the platform supporting the City’s Open Data Portal in 2020. Similar to the Open Disclosure portal/application, Commission staff must update candidate and election data on the backend of the system to maintain the application for new elections.
- Mid/Long Term (2024-2025), as higher priority projects are completed and/or increased staff capacity allow, in order of priority:
 - *Initiate Digital Schedule O Form/Searchable Contractor Database: **On Hold.***
 - *Ensure Implementation of a Ticket Distribution (Form 802) Database, Per 2022 Ticket Policy/Improved Transparency Portal: **On Hold.***

Advice and Engagement

The Commission’s Engagement program seeks to ensure Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.

Advice and Technical Assistance – Between July 2024 and August 2024, Commission staff responded to 19 requests for information, advice or assistance regarding campaign finance, ethics, Sunshine law, or lobbyist issues.



New Employee Orientation – Commission staff continues to make presentations at the City’s monthly New Employee Orientation (NEO) providing new employees with an introduction to the Public Ethics Commission and overview of the Government Ethics Act (GEA).

In the months of July and August, Staff provided an overview of the City's ethics rules to over 50 new City employees. Employees required to file Form 700 were also assigned the Commission's mandatory online Government Ethics Training for Form 700 Filers.

Board and Commissions Staff Liaison Training – On August 12, PEC staff participated in a joint effort with the Mayor's office, City Clerk, and City Attorney to provide a comprehensive training for City Boards and Commissions staff liaisons. The training covered all relevant laws and responsibilities, including Sunshine and GEA requirements, pertaining to boards and commissions to ensure understanding and compliance. Staff shared about PEC resources, highlighted the PEC's online training for Form 700 filers, and emphasized the importance of maintaining an accurate list of board/commission members to ensure that filing and training requirements are being met.

Candidates and Campaigns – As part of our continuing campaign education efforts, staff issues routine advisories to ensure that candidates and committees are aware of local rules during this election season. In August, Staff sent out three advisories covering the following topics:

- An advisory to remind campaign committees of the 24-hour reporting requirements for contributions and independent expenditures of \$1,000 or more.
- A citywide advisory to remind City staff and officials about the rules related to campaign activity.
- An advisory to elected officials and campaign filers about the Oakland Campaign Reform Act's new social media disclaimer requirements.

Limited Public Financing Program (LPF) – On August 22 and August 23, Staff provided trainings for candidates interested in participating in the Limited Public Financing program. A total of 12 candidates completed the required LPF training provided by Staff to learn about program requirements and the reimbursement process.

The deadline for candidates to opt-in to the LPF program was August 28. A total of 13 candidates opted-in to the public financing program. The next step is for participating candidates to submit their LPF application (LPF Form 2) demonstrating that they have met the eligibility requirements along with their initial reimbursement request (LPF Form 3) by September 20.

Commissioner Recruitment – Distribution of the Commissioner recruitment announcement and application started on July 16 and will continue through the application deadline on September 6. Outreach channels include the Commission website, targeted email distribution lists, social media, and digital ads in local press outlets. Flyers are posted in City Hall offices that are frequented by the public. The Commissioner recruitment webpage includes information about the Commissioner role, desired skills, links to the online application, as well as more information about the Commission. Commissioners also attended National Night Out events to share about the current vacancy.

Online Engagement

Social Media – Commission staff has continued producing monthly social media content highlighting the Commission’s upcoming meetings, commissioner recruitment, and the PEC’s contribution limit survey.

Outreach (Advice and Engagement) Priorities Update

At the Commission’s August 2023 retreat, the Commission and its staff discussed near and mid-term project priority setting over the next one to two years. The following are the adopted priorities for the Outreach Program area with updates. Note that there are some items listed as “On Hold” due to staff and budgetary considerations affecting capacity:

- Near Term (2023):
 - **Recruit for PEC Vacancy: Complete.**
 - Staff implemented a robust recruitment strategy to fill its 2023 Commission-appointed vacancy that included email blasts to PEC agenda subscribers and community organizations, paid advertisements in both online and printed media outlets, social media posts, and tabling at community events. A Total of 17 applications were received representing the highest number of submitted applications over the previous five years.
 - **Highlight the Need of Additional Enforcement Resources: Ongoing.**
 - As part of the FY 2024-25 Midcycle Budget process, staff submitted two letters and met with the City Administrator, Budget Director, and elected officials to share the Commission’s need for additional staffing. Commission staff have also discussed staffing needs at City Council meetings, Commission meetings, and in PEC staff reports. The PEC’s understaffing has also been noted in the local press.
- Mid Term (2024):
 - **Increase Awareness of PEC’s Campaign Finance Applications: In Progress.**
 - Updates for the 2023-2024 election cycle have been made and Staff is developing a communications plan for the launch of the Open Disclosure and Show Me the Money apps scheduled for Sept/Oct.
 - **Increase Awareness of How to File Complaints/Anonymous Complaints with the PEC: On Hold.**
 - In addition to social media posts, Staff will be developing an educational campaign to inform the public about the PEC and its role, including investigation of complaints. Due to Staff capacity, the educational campaign will likely be implemented in 2025.
- Additional Considerations:
 - **Increase Awareness of the PEC and Its Role: Ongoing.**

- Staff and Commissioners attended several community events/meetings in 2023 and 2024 to share the role of the Commission and its activities. The Commission created a Subcommittee to review general outreach materials and create a calendar of potential community events for Commissioners to attend. The PEC has also received substantial press coverage this year relating to the public financing programs it administers and its enforcement role.

Item 7 - Democracy Dollars Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Suzanne Doran, Program Manager
Bobby Zaidi, Community Engagement Analyst
DATE: September 6, 2024
RE: Measure W Oakland Fair Elections Act Implementation Update for the
September 16, 2024, Special PEC Meeting

With the passage of Measure W, the Oakland Fair Elections Act, the Public Ethics Commission (PEC or Commission) is planning for a transition of growth in staffing, structure, and responsibilities as administrator of a completely re-designed public financing program. This memorandum provides an update on implementation activities since the last Commission meeting.

Administrative Processes and Technology

The PEC's resolution authorizing entering into a contract with MapLight for the development of the Democracy Dollars software platform passed at the July 2 City Council meeting. In July and August, the PEC-IT team began meeting with MapLight to negotiate the scope of work for the contract. Once finalized, the contract goes to the City Attorney and Contract Administration departments for final approval.

Staffing

On August 3, the PEC welcomed Rabab "Bobby" Zaidi (he/him) to our team as our Democracy Dollars Community Engagement Specialist. This position is funded by a one-year grant from the Haas Jr. Fund to assist development of the Democracy Dollars resident-focused, equity-centered engagement plan to encourage broad participation in the January 2026 launch. Over the coming months, staff activities will include drafting the Democracy Dollars Program's communication strategy and outreach plan. Bobby brings a wealth of experience to the PEC gained as a community engagement planner with the City of Austin Watershed Protection Department including leading a pilot bilingual community ambassador program, which was recognized by the International Association for Public Participation.

Community Engagement and Partnerships









OpenOakland – As previously reported, staff is partnering with volunteers from civic technology group Open Oakland interested in prototyping user interfaces for residents to interact with the Democracy Dollars program. The goal of the project is to conduct early user testing to inform the design process when staff begins working with vendor MapLight. After mapping resident "user journeys" in March and April, the project team created mock-ups of











potential Democracy Dollars designs and mobile-first webpages to simulate the resident experience registering and then assigning their Democracy Dollars. In August, volunteers and Commission staff tabled and conducted user-testing at the Lakeview branch library and the BOSS Black August Block Party. In addition to testing, staff distributed PEC flyers and brochures, Commissioner recruitment information, and City of Oakland swag to volunteer testers and interested community members. The Open Oakland team is preparing a summary of their findings and recommendations to share with the Commission in the coming months. Thanks Commissioner Gage for helping staff the PEC table on short notice!

Online Engagement – In August, staff established an easily recognizable URL for the Democracy Dollars webpage, <https://oaklandca.gov/DemocracyDollars> as well as a dedicated email address for program inquiries after launch.

Item 7 - Democracy Dollars Report
DEMOCRACY DOLLARS

IMPLEMENTATION OVERVIEW WITH KEY DATES

 2023: Preliminary Tasks	
Jan – Jun 2023	<ul style="list-style-type: none"> ✓ FY 2023 – 2025 budget proposal and advocacy ✓ Business requirements for technology drafted in partnership with ITD ✓ Develop initial program webpages to chart implementation progress
June 2023 Milestone 1:	 FY 2023 – 2025 Budget adopted
Jul – Sept 2023	<ul style="list-style-type: none"> ✓ Democracy Dollars Program postponed due to lack of funding ✓ Supplemental independent expenditure disclosure requirements implemented ✓ Engagement with campaign filers to raise awareness of new disclosure requirements and gain feedback on process for collecting new disclosure data
Sep 2023 Milestone 2:	 Program manager position filled
Oct – Dec 2023	<ul style="list-style-type: none"> ✓ Graduate student researcher recruited to support outreach development ✓ Collaborative projects initiated with Open Oakland volunteers
Nov 2023 Milestone 3:	 \$210,000 Grant funding approved for outreach strategy development
 2024 – 2025: Program Foundations	
Jan – Jun 2024	<ul style="list-style-type: none"> ✓ Grant-funded Engagement Specialist position recruitment ✓ Technology vendor selected
June 2024 Milestone 5:	 Council authorizes contracting with technology vendor
August 2024 Milestone 6:	 Community Engagement Specialist hired
Jul – Dec 2024	<ul style="list-style-type: none"> • Negotiate contract with vendor and submit for City Administrator approval • Identify policy modifications for Commission action prior to launch, including pilot options • Community Engagement plan development begins • Development of forms, systems for program administration
Oct 2024 Milestone 7:	 Software platform development begins
Jan – Jun 2025	<ul style="list-style-type: none"> • Budget development for FY 2025 – 2027 • Develop regulations for Commission approval, as needed • Develop contract for signature verification • Democracy Dollars design options finalized • Develop marketing materials and educational resources • Recruit for new permanent staff positions • Develop performance metrics and determine baselines

Jun 2025 Milestone 8:		Community engagement plan adopted
Jul 2025 Milestone 9:		FY 2025 – 2027 program funds budgeted
Aug – Sep 2025 Milestone 10:		New positions filled, staff onboard
Sep – Dec 2025		<ul style="list-style-type: none"> Finalize service contract and process for signature verification Adopt program rules and regulations prior to 2026 launch, as needed Evaluate progress towards milestones required for 2026 launch date Finalize and publish outreach and training materials for Oakland residents, candidates Democracy Dollars funds available announced
Dec 2025 Milestone 11:		Software platform tested and ready to deploy
 <h2>2026: Program Launch</h2>		
Jan 2026 Milestone 12:		Candidate application process begins
Jan - Mar 2026		<ul style="list-style-type: none"> Outreach to raise awareness of Democracy Dollars program DD voucher, packet, and mailing information ready for printing and distribution Software platform and public program dashboard live
Apr 2026 Milestone 13:		DD mailed to Oakland registered voters by April 1, 2024
Apr – Nov 2026		<ul style="list-style-type: none"> PEC staff processes DD vouchers, disburses funds to candidates Ongoing community outreach to promote program
Nov 2026 Milestone 14:		First Election with Democracy Dollars
Dec 2026 - ongoing		<ul style="list-style-type: none"> Candidates return unused funds Program audit, performance evaluation reports for Commission and City Council
 <h2>2027: Post-election Evaluation</h2>		
2027 Milestone 15:		Report to City Council

Item 08 - Enforcement Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Charlotte Hill
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Simon Russell, Enforcement Chief
DATE: September 6, 2024
RE: Enforcement Program Report for the September 16, 2024, PEC Meeting

Since the last Enforcement Unit Program Update submitted to the Commission on June 26, 2024 Commission staff:

- received seven formal (sworn) complaints which are currently in the intake phase; and
- received thirteen informal (unsworn) complaints, of which six were rejected, one was referred to another agency, and the remainder are still awaiting a determination whether to escalate to a formal complaint or reject;

In the same period of time, Commission staff:

- reached proposed settlement agreements in five cases following an investigation; and
- dismissed six complaints without opening an investigation.

The following complaints or cases have been resolved or submitted to the Commission:

1. **In the Matter of Lynette Gibson McElhaney (PEC # 19-17).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
2. **In the Matter of Michael Hunt and the Oakland Fire Department (PEC # 24-17).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
3. **In the Matter of Unknown/Not Specified (City Attorney's Office; George Hills Company, Inc.) (PEC # 24-18).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
4. **In the Matter of Bay Area Community Services (PEC # 24-19).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.

5. **In the Matter of Unknown/Not Specified (Oakland Police Department and the City of Oakland) (PEC # 24-20).** Dismissed for insufficient evidence of a violation within the jurisdiction of the PEC.
6. **In the Matter of Mark Forte; Christopher Tan; Unknown/Not Specified (Official(s) at Planning & Building Department) (PEC # 24-21).** Dismissed for failure to pursue mediation; referred to mediation program.

This brings the total Enforcement caseload to one-hundred and forty open complaints or cases.

Enforcement's current staffing is: one (1) Enforcement Chief and one (1) permanent full-time Investigator.

Legal Actions/Litigation Update

Since the last Enforcement Unit Program Update submitted to the Commission on June 26, 2024, the following public court actions have been initiated or closed by or involving the Enforcement Unit:

1. *Andy Duong v. City of Oakland Public Ethics Commission*, Alameda County Superior Court case no. 24CV084262 (petition to quash subpoena, filed).

Overview of the Enforcement Process



The PEC's Enforcement Unit investigates and, where appropriate, administratively prosecutes alleged violations of the City's ethics, campaign finance, lobbying, and related laws. Violations can result in the issuance of a monetary fine, a warning letter, or some other remedy to ensure compliance with the law (e.g. a diversion agreement or injunction). Some violations can also be referred to the District Attorney for criminal prosecution.

Enforcement matters begin with a complaint. "Formal" complaints are submitted on the PEC's official complaint form and are signed under penalty of perjury. "Informal" complaints are received in any other manner (e.g. via e-mail, a phone call, etc.) and are not signed under penalty of perjury. By law, the Enforcement Unit must review all formal complaints and report to the Commission at one of its public meetings whether or not it has decided to open an

investigation into a formal complaint. By contrast, Enforcement has the discretion not to review an informal complaint and does not have to report rejected informal complaints to the Commission. Commission staff may also initiate its own “pro-active” complaints.

Complaints do not automatically trigger an investigation. Instead, they enter what is called “Preliminary Review,” in which Enforcement determines whether there are sufficient legal and evidentiary grounds to open an investigation. This can involve some preliminary fact-finding, usually for purposes of verifying or supplementing the facts alleged in the complaint.

At the completion of Preliminary Review, the Enforcement Chief and the PEC Executive Director jointly decide whether to open an investigation or dismiss the complaint. All dismissals are reported to the Commission at one of its public meetings. Investigations are confidential, though complainants and respondents (the people being investigated) are usually notified that an investigation has been opened. Enforcement will usually confirm the existence of an investigation if asked, but it will not share any of its findings or analysis until it is ready to present them to the Commission or a court.

The Enforcement Chief and the PEC Executive Director jointly decide whether the evidence gathered during an investigation merits prosecution or closure of the case. This internal decision-making process is referred to as “Legal Analysis” in Enforcement’s case processing workflow. Investigative activity may also continue during this process. If Enforcement recommends closure of a case at this stage, it must present its findings to the Commission at one of its public meetings and obtain a majority vote in favor of closure.

If Enforcement chooses to prosecute a violation, it will usually try to work out a joint settlement agreement with the respondent(s). Settlement negotiations are confidential, and for administrative purposes Enforcement classifies matters at this stage as “Seeking Settlement.” Investigative activity may also continue during this process. All proposed settlement agreements must be presented to the Commission at one of its public meetings and require a majority vote for their approval.

If Enforcement is unable to settle a case within a reasonable time (typically sixty days) or otherwise decides that a hearing is necessary, it will file an Investigation Summary with the Commission at one of its public meetings. This document, also known as a “probable cause report,” lays out the allegations that Enforcement wishes to prosecute, as well as supporting evidence. A majority of the Commission must vote to find probable cause and send the matter to an administrative hearing.

Matters at this stage are classified as “Administrative Hearing” in Enforcement’s internal workflow. The Executive Director and the hearing officer will arrange the logistical and

procedural details of the hearing. All administrative hearings are open to the public, and are conducted either by the full Commission, a panel of Commissioners, a single Commissioner, a single hearing officer not from the Commission, or an administrative law judge.

After an administrative hearing, the hearing officer(s) will issue their factual findings and proposed penalty (if any). The full Commission will then vote at one of its public meetings whether to adopt those findings and impose the recommended penalty. The Commission may impose a penalty different from the one recommended by the hearing officer(s).

The Enforcement Unit's full Complaint Procedures and Penalty Guidelines can be found on our website.

Appendix: Current Caseload by Violation Type

The table below breaks down the precise types of violations currently involved in Enforcement’s open complaints or cases. Note that the total number below is higher than our number of total cases, since one case can involve multiple types of violations.

	On Hold	Intake	Preliminary Review	Investigation	Legal Analysis	Seeking Settlement	Administrative Hearing	Grand Total
Campaign Finance	19		6	22	2	17	1	67
Campaign Using Multiple Bank Accounts	1			1				2
City Contractor Making Campaign Contribution	5			2			1	10
Coordination Between Candidate And "Independent" Campaign			2	1		2		5
Disguising Source Of Campaign Funding ("Campaign Money Laundering")	1		1	2		1		5
Failure To Register A Political Campaign	1			1				2
Inaccurate Reporting Of Campaign Finances	3		2	5	1	4		15
Late Filing Of Campaign Finance Report	3			8		1		12
Making/Receiving Campaign Contribution Over The Legal Limit	1			1	1	3		6
Misuse Of Campaign Funds For Personal Purposes	1						1	2
Inaccurate or Missing Disclaimer On Campaign Ad	3		1	1		3		8
Government Ethics	32	8	28	45	2	9		124
Bribery	2		3	1		2		8
Financial Conflict Of Interest	1	3	3		1			8
Holding Incompatible Public Offices			1					1
Inaccurate Reporting On Financial Disclosure Form 700	2		3					5
Late or Non-Filing Of Financial Disclosure Form 700	1	1		38		6		46
Misuing Official Powers For Private Gain (Coercion/Inducement)	17	1	8	4		1		31
Misuse Of City Resources For Personal Or Campaign Purposes	6		2	2	1			11
Receiving An Improper Gift Based On Amount	1		3					4
Receiving An Improper Gift Based On Source	1		1					2
Seeking Or Taking Job That Conflicts With City Duties ("Revolving Door")			1					1
Awarding City Contract To Oneself ("Self-Dealing")	1	1	1					3
Leak Of Confidential Info			1					1
Council member Interfering In City Administration		1						1
Awarding City Job Or Contract To Family Member		1	1					2
Lobbyists		1		1			1	3
Failure To Register As A Lobbyist ("Shadow Lobbying")							1	1
Late Filing Of A Lobbyist Activity Report		1		1				2
Miscellaneous	3	1	4	2	1	3		14
Failure To Produce Records To Police Commission Investigators	1							1
Lying Or Providing False Information To PEC Investigators	1				1	3		5
Misuse Of City Event Tickets	1							1
Retaliation Against Ethics Whistleblower			4	2				6
Allegation Outside The Jurisdiction Of PEC		1						1
Open Meetings & Public Records	7		2	1				10
Failure To Produce Public Records Or Information	3			1				4
Failure To Properly Agendize Or Follow Meeting Agenda	4		2					6



Item 09 - Executive Director's Report

Ryan Welch, Chair
Francis Upton IV, Vice Chair
Alea Gage
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Nicolas Heidorn, Executive Director
DATE: September 4, 2024
RE: Executive Director's Report for the September 16, 2024, Special Meeting

This memorandum provides an overview of the Public Ethics Commission's (PEC or Commission) significant activities not included in other program reports since the last regular meeting, as well as an update on the status of different Commission priorities adopted at the August 2023 retreat. The attached overview of Commission Programs and Priorities also includes the ongoing goals and key projects for 2023-24 for each program area.

Limited Public Financing Program

Last year, the City Council voted to re-authorize the Limited Public Financing (LPF) Program for the 2024 election cycle with a total budget of \$155,000. Under the LPF Program, qualifying candidates running for Council District office may request that eligible campaign expenses be reimbursed.

The deadline for Council District candidates to opt into the LPF Program for this election cycle closed on August 28. In total, 13 candidates filed LPF Form 1 to accept public financing.¹ Because there are insufficient funds to fully fund each potentially eligible candidate, candidates may only receive a maximum of \$11,923 in public funding ($\$155,000 / 13$ potentially eligible candidates).

Candidates who accept public financing must file LPF Form 2 to apply to participate in the Program, and demonstrate their eligibility to participate, by September 20, 2024. Among other requirements, by that date candidates must raise \$7,500 from Oakland residents and make \$7,500 in qualifying campaign expenditures. After September 20, the maximum amount of per candidate public funding will be re-calculated using the actual number of qualified candidates, which will result in the maximum funds candidates are eligible for increasing.

Commission Vacancy

In June of this year, Commissioner Hill stepped down from the Commission, creating a vacancy in a PEC-appointed Commission seat. In August the Commission opened a public application process to fill the remainder of Commissioner Hill's term, which expires January 21, 2025, as

¹ One candidate opted into the Program but failed to qualify for the ballot and will not be eligible receive public financing.

well to fill the subsequent full three-year term for that same seat. The application period to apply for both the partial term and full term expires on September 9, 2024.

To publicize this opportunity, staff purchased ads in the Oaklandside online news publication; shared the opportunity with community groups, including Common Cause, the League of Women Voters of Oakland, and Oakland's minority bar associations; emailed the Commission's distribution list twice; and posted to social media.

As of September 4, the Commission has received 7 applications. Applications were received from residents in Council Districts 2, 3, 4, 5, and 7. Most applicants heard about the opportunity to serve on the PEC from the Commission's website or email listserv, followed by social media or advertising.

Applicant District Residency

District	Count	Percent
District 1	0	0%
District 2	1	14%
District 3	2	29%
District 4	1	14%
District 5	2	29%
District 6	0	0%
District 7	1	14%
Grand Total	7	100%

At its July meeting, Chair Micik created the Commissioner Recruitment and Selection of Finalists for Interviews Subcommittee, which will meet in September to vet the applicants and recommend finalists for the full Commission's consideration, and expected appointment of a new Commissioner(s), at its October 9, 2024, meeting.

The PEC has one additional vacancy, which is for a seat filled by mayoral appointment. That seat has been vacant since January 2023.

Enforcement Staffing

The Commission's caseload far exceeds its enforcement staffing capacity. In August, the Executive Director met with the City Administrator and other staff to discuss possible options for increasing the PEC's enforcement staffing, including potential part-time, temporary hiring, or hiring of law clerks. Achieving appropriate staffing for the Enforcement Program remains a critical priority for the Commission.

2023 Retreat Priorities Update

At its August 2023 retreat, the PEC discussed near and mid-term project priority setting over the next one to two years in three non-enforcement program areas. In discussion, Commissioners identified the Executive/Policy Priorities listed below. This section provides a brief update as to each priority.

- Near Term (2023), in order of priority:
 - *Work with the City Council to adopt the Limited Public Financing Program of 2024 (High Priority): **Complete.***
 - The PEC proposed, and the Council adopted, the LPF Program of 2024. Funding for the LPF was preserved in the FY24-25 Midcycle Budget and the PEC is presently implementing this Program.
 - *Work with the City Council to adopt Lobbyist Registration Act Amendments (High Priority): **Complete.***
 - The PEC proposed, and the Council adopted, amendments to the LRA, including adopting an equity-based fee waiver/reduction policy. The PEC is presently implementing this policy.
 - *Pilot a Voter Guide in the 2024 Election (High Priority): **Partially Complete & On-Hold.***
 - Staff developed drafts of a paper voter guide which underwent user testing and received stakeholder, public, and Commissioner comment. In collaboration with Open Oakland, staff also mocked up what a mobile guide might look like, based on the categories in the draft paper guide. Due to the need to preserve PEC funding, uncertainty of whether or not the LPF would occur in 2024, and workload constraints, a pilot was not feasible for the 2024 election. However, staff anticipates incorporating a guide in the online Democracy Dollars portal, which build off the lessons learned and work product developed this past year.
 - *Recommend whether the PEC should set the Mayor Salary (Medium): **Complete.***
 - The Commission proposed, and the Council considered but did not adopt, a policy for how the Mayor's salary should be set.
 - *Review City Charter provisions relating to the PEC with (Medium): **Complete.***
 - The Commission proposed comprehensive reform to its charter authorities. Councilmember Kalb introduced a proposal which incorporated some of those reforms. That proposal was placed on the November 2024 ballot.
- Mid/Long Term (2024-25), in order of priority:
 - *Bi-Annual Policy Review: LRA (High): **On hold.***
 - Due to staffing changes, the need to intensively engage in the City's budget process, and additional work needed on other policy priorities (e.g. Charter change), staff has not had capacity to begin this work.
 - *Strengthen Public Records/Mediation (High): **In-Progress.***

- In 2023 and 2024, led by the Transparency Subcommittee, the Commission collected information on challenges and best practices relating to public records responses. The PEC has held hearings with the Oakland Police Department and Oakland Fire Departments to better understand the unique challenges of those high-volume departments, and will be hearing from the Planning Department next in October. In addition, the PEC successfully applied to have a team of Goldman students conduct research and write and present a report to the Commission on public records response best practices.
- *Build Ethics Commission Network (Low – begin with regular meetings): **Complete.***
 - The Oakland PEC has organized quarterly online meetings of the Executive Directors of the Los Angeles, San Diego, San Francisco, and Oakland Ethics Commissions.
- For Future Consideration, unordered:
 - Contractor Contributor Certification: **On hold.**
 - Regular Auditing Program: **On hold.**

The PEC anticipates holding another retreat in January of 2025 to review and potentially revise existing ongoing priorities.

\$1,000+ Late Fees / Late Fee Waivers

Under City Charter Section 603(f), any assessment of a per diem late fee of \$1,000 or more must be placed on the PEC’s agenda. The PEC did not issue any late fees exceeding that amount since the last reporting period.

Under City Charter Section 603(f), if the Executive Director waives any per diem fees for the late filing of a disclosure report, including a campaign finance or lobbying report, he or she must notify the Commission at their next regular meeting. Pursuant to the PEC’s [Guidelines for Waiving Late Filing Fees](#), I waived the following fees:

- Lobbyist Report Late Fees:

Lobbyist	Report	Waiver Eligibility	Days Late	Amount Waived
Arghandiwal, Edreece	Quarter 2 2024	NO PRIORS	2	\$20
Swanson, Sandre	Quarter 2 2024	NO PRIORS	2	\$20
Ogilvie, Robert	Quarter 1 2024	NO PRIORS	2	\$20
Shenoy, Kiran	Quarter 4 2023	NO PRIORS	1	\$10

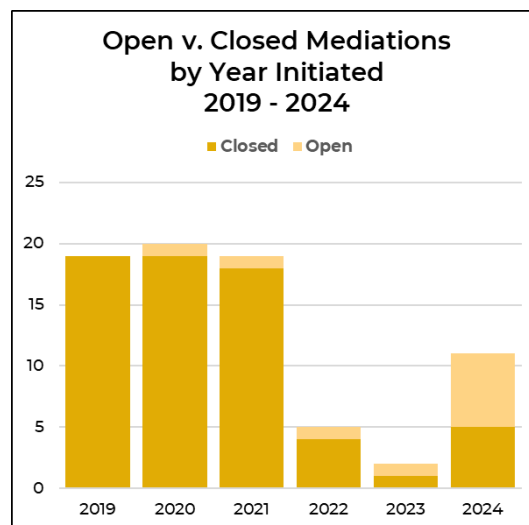
- Campaign Finance Report Late Fees: None.

Mediation Program

Pursuant to the Oakland Sunshine Ordinance, the Commission conducts mediation of public records requests made by members of the public to City departments for records within the department's control. The PEC currently has 10 open mediations. One new mediation has been opened since the last meeting.

One mediation was conducted by staff and subsequently closed since the last Commission meeting. The following mediation summaries are attached:

1. *In the Matter of the City Attorney and the Planning Department (Case No. M2024-11)*



Additional Attachment: Commission Programs and Priorities.

PUBLIC ETHICS COMMISSION

Programs and Priorities 2023/24 (new additions in *bold*)

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
<p>Lead/ Collaborate (Policy, Systems, Culture)</p>	<p>PEC facilitates changes in City policies, laws, systems, and technology and leads by example to ensure fairness, openness, honesty, integrity, and innovation.</p>	<p>Effective campaign finance, ethics, and transparency policies, procedures, and systems are in place across City agencies</p>	<ul style="list-style-type: none"> ○ Lead Measure W implementation ○ Engage in review of laws PEC enforces 	<ul style="list-style-type: none"> ✓ Lobby Registration Act amendment to incorporate new fees and waiver policy ✓ Ordinance for one-time LPF for 2024 elections ○ Voter Guide Pilot – on hold ✓ Mayor Salary Setting Guidance ✓ Charter Review Options ○ Policy Review: Lobbyist Registration Act– on hold ✓ Ethics Commission Network ✓ Invite Department Presentations on Records Request Responses
<p>Educate/ Advise</p>	<p>Oakland public servants, candidates for office, lobbyists, and City contractors understand and comply with City campaign finance, ethics, and transparency laws.</p>	<p>The PEC is a trusted and frequent source for information and assistance on government ethics, campaign finance, and transparency issues; the PEC fosters and sustains ethical culture throughout City government.</p>	<ul style="list-style-type: none"> • Regular ethics training • Information, advice, and technical assistance • Targeted communications to regulated communities • New trainings as needed for diversion 	<ul style="list-style-type: none"> ○ Collaboration with Clerk and HR on process improvements for ethics onboarding/exit and Form 700 compliance - ongoing ✓ Public Records training
<p>Outreach/ Engage</p>	<p>Citizens and regulated community know about the PEC and know that the PEC is responsive to their complaints/questions about government ethics, campaign finance, or transparency concerns.</p>	<p>The PEC actively engages with clients and citizens demonstrating a collaborative transparency approach that fosters two-way interaction between citizens and government to enhance mutual knowledge, understanding, and trust.</p>	<ul style="list-style-type: none"> • Public Records mediations • Commissioner-led public outreach • Outreach to client groups – targeted training and compliance • PEC social media outreach 	<ul style="list-style-type: none"> ✓ Update OCRA, LPF, and LRA guides ✓ Update public and stakeholders on Democracy Dollar postponement ✓ Update Lobbyist Registration Act educational materials and share with Council ✓ Recruit for PEC vacancy ✓ Publicize Enforcement Needs ○ Publicize PEC campaign finance tools ○ Publicize how to file complaints

Item 09 - Executive Director's Report

Program	Goal	Desired Outcome	Regular Program Activities	2023/24 Projects
Disclose/ Illuminate	<p>PEC website and disclosure tools are user-friendly, accurate, up-to-date, and commonly used to view government integrity data.</p> <p>Filing tools collect and transmit data in an effective and user-friendly manner.</p>	<p>Citizens can easily access accurate, complete campaign finance and ethics-related data in a user-friendly, understandable format.</p> <p>Filers can easily submit campaign finance, lobbyist, and ethics-related disclosure information.</p>	<ul style="list-style-type: none"> • Monitor compliance (campaign finance/lobbyist/ticket use) • Proactive engagement with filers • Technical assistance • Assess late fees/refer non-filers for enforcement • Maintain data assets 	<ul style="list-style-type: none"> ○ Democracy Dollars Admin System: <ul style="list-style-type: none"> ✓ Approval to Contract ✓ Vendor Selected ○ Contract Entered ○ Work Begun ○ Updates to Ticket Distribution (Form 802) database – on hold ✓ Implement LRA Changes ○ Integrate Lobbyist App with Payment System ○ Public Records Performance Dashboard – on hold ✓ Update Open Disclosure 2024 ✓ Update Show Me The Money ○ Digitize Schedule O Form – on hold
Detect/ Deter	<p>PEC staff proactively detects potential violations and efficiently investigates complaints of non-compliance with laws within the PEC's jurisdiction.</p>	<p>Public servants, candidates, lobbyists, and City contractors are motivated to comply with the laws within the PEC's jurisdiction.</p>	<ul style="list-style-type: none"> • Process and investigate complaints • Initiate proactive cases • Collaborate/coordinate with other government law enforcement agencies 	<ul style="list-style-type: none"> ○ Digital complaint form/ mediation request – on hold ✓ Improve Enforcement database
Prosecute	<p>Enforcement is swift, fair, consistent, and effective.</p>	<p>Obtain compliance with campaign finance, ethics, and transparency laws, and provide timely, fair, and consistent enforcement that is proportional to the seriousness of the violation.</p>	<ul style="list-style-type: none"> • Prioritize cases • Conduct legal analyses, assess penalty options • Negotiate settlements • Make recommendations to PEC 	<ul style="list-style-type: none"> ○ Resolve 2016 and 2017 case backlog ○ Review/revise policies for release of public information and election-related complaints ○ Develop internal Enforcement staff manual ✓ Expand streamline & diversion
Administration/ Management	<p>PEC staff collects and uses performance data to guide improvements to program activities, motivate staff, and share progress toward PEC goals.</p>	<p>PEC staff model a culture of accountability, transparency, innovation, and performance management.</p>	<ul style="list-style-type: none"> • Annual Report • Budget proposal • Ongoing professional development and staff reviews • Fill staff vacancies • Commissioner onboarding 	<ul style="list-style-type: none"> ✓ 2023 – 2025 strategic plan preparation/retreat ✓ Develop process for City Attorney and City Auditor Salary Adjustment and adopt resolution for Council ○ Increase enforcement capacity

Item 09 - Executive Director's Report



Ryan Micik, Chair
Francis Upton IV, Vice Chair
Alea Gage
Vincent Steele
Karun Tilak

Nicolas Heidorn, Executive Director

TO: Public Ethics Commission
FROM: Jelani Killings, Ethics Analyst
DATE: September 4, 2024
RE: *In the Matter of the Planning and Building Department (Mediation Case No. M2024-11; Mediation Summary)*

I. INTRODUCTION

On July 9, 2024, the Commission received a request for mediation alleging that the City Attorney and Planning Department failed to respond to public records requests made by the Requestor on June 6, 2024 and June 21, 2024. Staff received a mediation request on July 9, 2024 and initiated the mediation program pursuant to the Oakland Sunshine Ordinance.

Because the responsive departments stated that there are no responsive records, this mediation was closed with no further action.

II. SUMMARY OF LAW

One of the primary purposes of the Oakland Sunshine Ordinance is to clarify and supplement the California Public Records Act (CPRA), which requires that all government records be open to inspection by the public unless there is a specific reason not to allow inspection.¹ The CPRA requires each agency to make public records promptly available to any person upon request.²

Any person whose request to inspect or copy public records has been denied by any City of Oakland body, agency, or department, may demand mediation of their request by Commission Staff.³ A person may not file a complaint with the Commission alleging the failure to permit the timely inspection or copying of a public record unless they have requested and participated in the Commission's mediation program.⁴

Once the Commission's mediation program has concluded, Commission Staff is required to report the matter to the Commission by submitting a written summary of the issues presented, what efforts

¹ Oakland Municipal Code § 2.20.010(C); Government Code § 7920.000 et seq.

² Government Code § 7922.530(a).

³ O.M.C. § 2.20.270(C)(1).

⁴ O.M.C. § 2.20.270(F).

Item 09 - Executive Director's Report

were made towards resolution, and how the dispute was resolved or what further efforts Commission Staff would recommend to resolve the dispute.⁵

III. SUMMARY OF FACTS

On June 6, 2024, the City received the following records request via NextRequest (24-6329):

I am requesting a copy of the document referenced as "that certain Estuary Park Agreement between the City and the Developer" which is part of the 3rd Amendment to the Development Agreement (Oak to Ninth/Brooklyn Basin) adopted and enacted by the City Council on May 16, 2023, as Ordinance No.13739.

The reference is found in Exhibit C "Phasing Schedule" at page 20 under the section titled "Phase V Demolition of Cash and Carry building and Remediation of Estuary Park and Parcel N" and then below at subsection b) Completion Time Frames.

On June 21, 2024, the Requestor made the same public records request to the Planning and Building Department via NextRequest (24-6892).

On July 1, the Planning Department provided a link to the City's Legistar platform stating that reports and documents for that Council meeting can be found online. The link did not include the specific document the Requestor was seeking. Subsequently, the Requestor reached out to the planner assigned by the Planning Department to answer questions about the request but received no reply or timetable for a response.

On July 9, the Commission received a mediation request stating that the City Attorney and the Planning Department failed to timely respond to a public records request. Subsequently, Staff initiated the mediation.

On July 17, the City Attorney closed the request stating:

After a diligent and good faith search, the City did not locate an Estuary Park Agreement between the City and Developer, and thus cannot produce any documents responsive to this request. To the extent the request calls for drafts of any agreements or documents related to pending negotiations, such documents are exempt from disclosure until the real property agreement is finalized, if ever, or the contract agreement is obtained. (See, Gov't Code Section 7928.705.)

On July 18, the Requestor emailed Staff stating that he received a satisfactory response from the City Attorney and was still waiting for a response from the Planning Department.

⁵ Complaint Procedures § IV (C)(5).

Item 09 - Executive Director's Report

Over several weeks, Staff communicated by email with the Planning Department to confirm if they had any responsive documents without success.

On August 21, the City Attorney emailed Staff on behalf of the Planning Department stating that the Requestor reached out to the City Attorney's Office with the same request and that no such agreement exists because it was never finalized by the parties and terms were never reached. In addition, the City Attorney stated that documents that are drafts only, and not finalized, are exempt from production as drafts.

On August 22, Staff notified the Requestor of the City Attorney's response on behalf of the Planning Department and that the mediation would be closed. The Requestor expressed frustration with the Planning Department's delay in responding stating:

This issue was the complete lack of a response from Planning. The initial request was made on June 20 and only now, August 21, are they saying they don't have the document because it doesn't exist. This took way too long and way too much effort. The other issue is the reference to the document sought appears in an executed agreement between the City of Oakland and the third party. It may be an obvious drafting error that no one is interested in thinking about.

IV. RECOMMENDATION

Because the responsive departments stated that there are no responsive documents, the mediation has been closed with no further action.

Item 10 - 22-09 Proposed Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION
12

13 In the Matter of

) Case No.: 22-09

14 OAKLANDERS FOR RESPONSIBLE
15 LEADERSHIP; LIBBY SCHAAF;
16 BARBARA LESLIE; ROBERT ZACHARY
17 WASSERMAN; DOUG LINNEY;
18 OAKPAC, OAKLAND METROPOLITAN
19 CHAMBER OF COMMERCE,

) **STIPULATION, DECISION AND
ORDER**

20 Respondents.
21
22

23 **STIPULATION**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents OAKLANDERS FOR RESPONSIBLE LEADERSHIP, LIBBY SCHAAF,
27 BARBARA LESLIE, ROBERT ZACHARY WASSERMAN, DOUG LINNEY, and
28 OAKPAC, OAKLAND METROPOLITAN CHAMBER OF COMMERCE, agree as follows:

Item 10 - 22-09 Proposed Settlement Agreement

- 1
2 1. This Stipulation will be submitted for consideration by the City of Oakland Public
3 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 4 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
5 the final resolution to this matter without the necessity of holding an administrative
6 hearing to determine the liability of, or penalties and/or other remedies to be imposed
7 upon, Respondents;
- 8 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
9 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
10 Procedures, and all other sources of procedural rights applicable to this PEC
11 enforcement action. These procedural rights include, but are not limited to, the right to
12 personally appear at an administrative hearing held in this matter, to be represented by
13 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
14 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 15 4. Respondents represent that they have accurately furnished to the Commission all
16 discoverable information and documents that are relevant to the Commission's
17 determination of a fair and comprehensive resolution to this matter;
- 18 5. Upon approval of this Stipulation and full performance of the terms outlined in this
19 Stipulation, the Commission will take no future action against Respondents, including
20 any officer, director, employee, or agent of Respondents, regarding the activities
21 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
22 complete resolution of all claims by the Commission against Respondents, including
23 any officer, director, employee, or agent of Respondents, related to such activities and
24 any associated alleged violations;
- 25 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission
26 may reopen this matter and prosecute Respondents to the full extent permitted by law,
27 except that the Statute of Limitations shall be waived for any violations that were not
28

Item 10 - 22-09 Proposed Settlement Agreement

1 discoverable or actionable by the Commission due to non-compliance with any
2 provision of this Stipulation;

3 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
4 does not preclude the Commission or its staff from cooperating with, or assisting any
5 other government agency with regard to this matter, or any other matter related to it;
6 except that neither the Commission nor its staff shall refer this matter, or any other
7 matter related to it, as pertains to any alleged violation by Respondents, to any other
8 government agency;

9 8. Respondents admit that they committed the violation(s) of the Oakland Municipal Code
10 with which they are specifically identified in Exhibit #1 to this Stipulation, and in the
11 manner set forth in that Exhibit, which is expressly incorporated by reference in its
12 entirety to this Stipulation and represents a true and accurate summary of the facts in
13 this matter;

14 9. The Commission will impose upon Respondents the penalties and/or other remedies
15 specified in Exhibit #1, as they pertain to each of the named Respondents;

16 10. Respondents will pay the amount specified in Exhibit #1 to this Stipulation to the City
17 of Oakland general fund within sixty (60) calendar days of the date on which the
18 Commission votes to accept this Stipulation. Commission staff may extend the payment
19 deadline at its discretion;

20 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
21 void, and within fifteen business days after the Commission meeting at which the
22 Stipulation is rejected, any payments already tendered by Respondents in connection
23 with this Stipulation will be reimbursed to them;

24 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
25 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
26 and neither any member of the Commission, nor the Executive Director or any member
27 of PEC staff, shall be disqualified from that hearing because of prior consideration of
28 this Stipulation;

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1 13. This Stipulation may not be amended orally. Any amendment or modification to this
2 Stipulation must be in writing duly executed by all parties and approved by the
3 Commission at a regular or special meeting, except for any extension to the payment
4 deadline described in paragraph 10, which Commission staff may grant at its sole
5 discretion and which need only be in writing not requiring execution;

6 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws
7 of the State of California and the City of Oakland. If any provision of the Stipulation is
8 found to be unenforceable, the remaining provisions shall remain valid and enforceable;
9 and

10 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
11 have the same effect as though all parties had signed the same document. Verified
12 electronic signatures shall have the same effect as wet signatures. The parties need not
13 sign this agreement until after the Commission has voted to accept it.

14
15 So agreed:

16
17
18 _____
19 Simon Russell, Chief of Enforcement
20 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

21
22 _____
23 Oaklanders For Responsible Leadership, Respondent

_____ Dated

24
25 _____
26 Libby Schaaf, Respondent

_____ Dated

Item 10 - 22-09 Proposed Settlement Agreement

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Barbara Leslie, Respondent

Dated

Robert Zachary Wasserman, Respondent

Dated

Doug Linney, Respondent

Dated

OAKPAC, Oakland Metropolitan Chamber of
Commerce, Respondent

Dated

Item 10 - 22-09 Proposed Settlement Agreement

DECISION AND ORDER

1
2 The foregoing Stipulation of the parties to “In the Matter of OAKLANDERS FOR
3 RESPONSIBLE LEADERSHIP; LIBBY SCHAAF; BARBARA LESLIE; ROBERT
4 ZACHARY WASSERMAN; DOUG LINNEY; JAMES SUTTON; OAKPAC, OAKLAND
5 METROPOLITAN CHAMBER OF COMMERCE,” PEC Case No. 22-09, including all
6 attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland
7 Public Ethics Commission, effective upon execution below by the Chair.

8
9 So ordered:

10
11
12 _____
13 Ryan Micik, Chair
14 City of Oakland Public Ethics Commission

15
16
17 _____
18 Dated

Item 10 - 22-09 Proposed Settlement Agreement

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INTRODUCTION

This case concerns an independent expenditure committee active in the Oakland election in 2018 that was called “Oaklanders For Responsible Leadership” (ORL) with a primary purpose to oppose the re-election of incumbent Councilmember Desley Brooks to the District 6 City Council seat.

Any campaign committee over which an elected official exercises “significant influence” must be registered as a candidate-controlled committee. It is also subject to stricter rules than other types of campaign committees, including the contribution limit. In this case, Oakland voters were not informed on any of ORL’s ads or campaign forms that it was a candidate controlled committee, significantly influenced by Mayor Schaaf.

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1 In addition, leaders of the Oakland Metropolitan Chamber of Commerce’s political
2 committee, called OAKPAC, acted as a pass-through vehicle for certain donors to give money
3 to the ORL campaign committee which had the effect of those donors’ names not appearing
4 on its campaign finance forms or on the face of its ads (as committees of the type opposing
5 Brooks were legally required to do – but not OAKPAC, since it was not officially engaged in
6 active campaign activity that year).

7 PEC staff and Respondents have agreed to settle this matter without an administrative
8 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
9 analysis to the City of Oakland Public Ethics Commission for its approval. Together, PEC staff
10 and Respondents recommend approval of their agreement and imposition of administrative
11 penalties as described in more detail below.

FACTUAL SUMMARY

Organization of Oaklanders For Responsible Leadership (ORL)

12
13
14
15
16
17 In 2018, Desley Brooks was sitting on the City Council District 6 seat and was running
18 for re-election. Sometime around the summer of that year, Mayor Schaaf contacted a political
19 consultant she had used on her successful 2014 mayoral run, Ace Smith, seeking advice about
20 a possible independent expenditure campaign against Brooks’ re-election. (“Independent
21 expenditure,” also called an “IE,” refers to a political campaign that is not directly connected
22 to any of the candidates that it supports or opposes. The legal rules surrounding IEs are
23 discussed in detail later in this Exhibit).

24 Given that his own professional background was focused on different types of races,
25 Smith did not believe he would be a good fit to run an IE against a local candidate, so he and
26 Mayor Schaaf approached campaign consultant Doug Linney to see if he would be interested.
27 Linney later told the PEC that during his initial meeting with Mayor Schaaf and Smith, Schaaf

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1 told him, “Let's do an IE campaign against Desley, and let me see if I can get some other folks
2 involved to make it happen” (the quote is from Linney, paraphrasing what Mayor Schaaf had
3 said to him).

4 Following that meeting with Mayor Schaaf, Linney agreed to work on the effort. Mayor
5 Schaaf then asked Linney to produce a formal campaign plan. Although Linney typically ran
6 campaigns on a tight budget, he told the PEC that Mayor Schaaf encouraged him to approach
7 this campaign with a larger budget in mind.

8 At Mayor Schaaf's request, Linney produced a document on July 10, 2018, called
9 “District 6 IE Proposal.” It envisioned a two-pronged campaign, consisting of anti-Brooks
10 messaging focused on allegations of corruption and bullying behavior, as well as a voter
11 turnout drive focused on newly registered voters and midterm skippers. The centerpiece of
12 the strategy, in the words of Linney's proposal, was the use of an “aggressive and highly
13 targeted field campaign to ‘create’ 3,500 votes.” Linney conceived a campaign timeline that
14 included August polling and canvassing, September “voter ID, persuasion” and advertising,
15 and October pursuit of identified supporters as well as additional advertising. The campaign
16 team would consist of Linney (overall management, mail), Nathan Stalnaker (field canvassing)
17 and Andrew Truman Kim (phone banking), as well as an initial itemized budget of \$181,400.
18 The subsequent campaign largely followed this plan, including in its selection of the key
19 campaign personnel (Linney, Stalnaker and Truman Kim). Linney later described this
20 document to the PEC as “our working plan.”

21 Linney shared the plan with Mayor Schaaf, as well as with Smith's campaign firm. He
22 did not share it with any other people at this time. Mayor Schaaf took part in subsequent
23 group discussion of the plan with Linney and Smith's firm. At one point, she suggested raising
24 the budget to more than \$200,000 because (as she stated in an email to Linney and Smith) “I
25 think raising \$200k shouldn't be hard and could shoot for more.” Linney corresponded with
26 Mayor Schaaf about formally registering the committee, but held off as she worked to involve
27 others.

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1 After receiving Linney’s proposal, Mayor Schaaf met with Barbara Leslie and Zachary
2 Wasserman of the Oakland Metropolitan Chamber of Commerce and its campaign committee,
3 called OAKPAC, who Schaaf knew were also contemplating campaign activities. Mayor Schaaf
4 provided them with Linney’s campaign plan, as well as feedback on the plan that she had
5 received from Smith. She invited Leslie, Wasserman and others to join a series of weekly
6 phone conferences with Linney “to discuss strategy and stay in touch on the campaign”
7 (Schaaf’s words in an email to Leslie and Wasserman at that time).

8 Around this same time, Linney enlisted the services of polling firm EMC Research and
9 its President/CEO, Ruth Bernstein. EMC produced a draft poll for the IE campaign, which was
10 shared with Mayor Schaaf for her feedback. Mayor Schaaf also provided the draft to Leslie
11 and Wasserman for purposes of discussion at the group’s upcoming weekly phone
12 conferences (despite Linney’s reluctance to share the draft too widely). The poll had been
13 scheduled to begin in early August, but was halted at the last minute at Mayor Schaaf’s
14 request, in order to incorporate feedback from OAKPAC. Following several rounds of
15 discussion (including direct conversations between Mayor Schaaf and Bernstein, as well as
16 between Mayor Schaaf and Linney) and revision, polling finally began in mid-August.

17 On August 8, 2018, the first phone conference of the IE team (which still had not yet
18 been officially registered or given a name) was held between Mayor Schaaf, Leslie,
19 Wasserman, Linney, Stalnaker (the consultant who would be overseeing the field program, as
20 described earlier in Linney’s campaign plan), and Andreas Cluver of the Alameda County
21 Building Trades Council. This was the first of what became a weekly series of phone
22 conferences to discuss the progress of the IE campaign. Topics of discussion at these
23 meetings included fundraising, polling, messaging, endorsements, and the recruitment of
24 “public-facing members” (described below). Linney and Stalnaker would also provide
25 updates on the progress of the campaign, particularly the field program. Attendance at these
26 meetings fluctuated over the course of the campaign; Mayor Schaaf did not attend every
27 meeting, but she made an effort to call in for at least a portion of the meeting if she were able.

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1 She also remained in direct communication with Linney through email and text message,
2 outside of the weekly meetings.

3 An early topic of discussion among the group was the need to find “public facing
4 members” (in the words of an email from Leslie to Linney on the subject) whose names could
5 appear on the group’s campaign forms and represent the campaign to the public. In the words
6 of an email that Linney sent to Mayor Schaaf at the time, they needed someone who would
7 be “believable as a decision-maker on this.” Around this time, the group had also received
8 advice from Linney to the effect that Mayor Schaaf could assist the IE as long as she did not
9 hold decision-making authority for the campaign. As discussed later in this Exhibit, this is not
10 an accurate statement of the law concerning candidate-controlled committees (the correct
11 rule is that Mayor Schaaf could not have “significant participation” in the campaign, which is
12 not the same thing as being a “decision-maker”). The group was particularly concerned with
13 finding people to fill that role who lived in District 6, because no one involved with the group
14 to this point lived in the district where the campaign was occurring. Mayor Schaaf suggested
15 names, and other members of the group tried to recruit those people, but they were
16 unsuccessful.

17 Finally, Linney suggested that Police Commissioner Jose Dorado could fill this role.
18 Linney ran this idea by the group, including Mayor Schaaf, and did not receive any objection.
19 Dorado then joined the group and began attending the weekly phone conferences as of
20 August 29, 2018 (about a month after the weekly meetings had started, and more than two
21 months after Linney had produced ORL’s campaign plan). In interviews with the PEC, Linney
22 and Dorado both confirmed that this was largely a ministerial role. Neither Mayor Schaaf, nor
23 any other member of ORL appeared on any of the committee’s campaign forms as a principal
24 officer, despite being more closely involved in the committee’s strategy and fundraising than
25 Dorado.

26 Once Dorado was brought on board, the group formally registered as a campaign
27 committee on August 24, 2018, with Dorado as its principal officer. The name given for the
28

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1 committee on its registration form (Form 410) was “Oaklanders For Responsible Leadership,
2 Opposing Desley Brooks For Oakland City Council 2018” (referred to hereafter in this Exhibit
3 as “ORL”). ORL did not identify itself as a candidate-controlled committee on its registration
4 form, nor did it list Mayor Schaaf as a controlling candidate. Mayor Schaaf did not sign the
5 form.

6 In September, ORL began its field program, in which it visited prospective voters door-
7 to-door in District 6. Neither the committee’s field script, nor its talking points for the field
8 staff, mentioned Mayor Schaaf’s role with the committee. According to ORL’s internal (non-
9 public) talking points, field staff were instructed to identify ORL by its committee name (which
10 did not mention Mayor Schaaf). If asked who was behind the committee, campaign workers
11 were to name Jose Dorado and “city leaders who believe there is a need for better, more
12 responsible leadership in District 6” (according to the script ORL gave its canvassers). If asked
13 directly whether Mayor Schaaf was involved with the campaign, field staff were instructed to
14 respond that the “Mayor supports the effort. We expect the Mayor to help with the
15 fundraising, but [she] isn't a part of the decision making process...”

16 Similarly, phone bankers for ORL were given a script that instructed them to say that
17 they were calling from “Oaklanders For Responsible Leadership.” The call script made no
18 reference to Mayor Schaaf’s involvement with the group, instead telling phone bankers to
19 state that ORL “was formed in response to many residents deeply concerned with Desley
20 Brooks’ unacceptable pattern of behavior on our City Council.”

21 On September 9, 2018, Linney shared a draft of an ORL “doorhanger” (an ad that can
22 be physically left on a door handle) with Mayor Schaaf, Leslie, Wasserman, Cluver, and
23 Dorado. The draft doorhanger told voters that Brooks was facing four opponents in the
24 election, and encouraged voters to select any of the other candidates besides Brooks, without
25 indicating any preference among them. The District 6 election was a ranked-choice contest in
26 which voters could select only up to three candidates for the seat.

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1 Mayor Schaaf responded privately to Linney about her concerns over not encouraging
2 voters to select three specific candidates. Linney said that he had not considered such a
3 possibility. ORL then discussed the matter at its weekly meeting of September 12, 2018, and
4 Linney produced a memo for the group that described each of Brooks' four opponents, for
5 purposes of choosing which three to promote in ORL's campaign messaging. By the end of
6 September, ORL began promoting Loren Taylor, Natasha Middleton, and Maria "Marlo"
7 Rodriguez as its preferred candidates.

8 On September 30, 2018, Mayor Schaaf took a photo of those three candidates at an
9 endorsement event and emailed it to Linney under the subject line "Photo of our 3." The
10 photo subsequently appeared in one of ORL's mailers.

11 As the campaign continued, ORL had difficulty raising enough money to pay Linney in
12 addition to its other campaign expenses. Nevertheless, Linney continued to work with ORL
13 despite the uncertainty over whether he would be fully paid. Linney indicated to the PEC that
14 he believed that fundraising by the Mayor, labor and OAKPAC would be sufficient to cover his
15 fees. Following the election, Mayor Schaaf helped ORL raise enough money to pay Linney's
16 outstanding fee.

17 Ultimately, Desley Brooks lost the election. She received 5,483 first-round votes versus
18 9,858 for the winning candidate in this ranked-choice contest.

19 Following payment of an outstanding debt to Linney (including a win bonus), ORL filed
20 a Form 410 with the PEC on June 15, 2020, terminating itself as a committee. At no time during
21 its existence did ORL ever report Mayor Schaaf as its controlling candidate, or change its name
22 to reflect her controlling candidate status.¹

23
24
25
26 ¹ The evidence does not indicate that the treasurers for ORL or OAKPAC were aware of the Mayor's influence
27 over ORL.

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ORL Files Campaign Forms that Fail to Disclose It Was Candidate-Controlled

Throughout the campaign, ORL filed numerous campaign forms with the PEC in compliance with rules governing independent expenditure campaign committees rather than in compliance with rules governing candidate controlled campaign committees.

Form 410

The first type of form that ORL filed with the PEC is called a Form 410 (“Statement of Organization”). These are forms that a committee must file when it first registers, and whenever it changes its name, purpose, or main personnel. It must also disclose on this form whether it is a controlled committee of a candidate or officeholder. A Form 410 must be signed by the controlling candidate, under penalty of perjury. Finally, it is the form on which a committee declares what its name will be. As explained in more detail later in this Exhibit, candidate-controlled committees are required to put the last name of their controlling candidate in the committee’s name (e.g. “Committee X, a Controlled Committee of Oakland Mayor Smith”). The purpose of the form is to inform voters of who is running a particular campaign committee.

The table below shows all of the dates that ORL filed a Form 410. On none of these forms did it disclose that it was a controlled committee, nor did it identify Mayor Schaaf as its controlling candidate. It also failed to include Mayor Schaaf’s last name in its committee name on any of these forms. Mayor Schaaf did not sign any of these forms.

Form 410s Filed By ORL	
Date Filed	Committee Name Given on Form
August 24, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

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August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
June 15, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

Form 460

ORL also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate or officeholder, under penalty of perjury. The purpose of the form is to inform voters where committees are getting their money from, and what they are spending it on.

The table below shows all of the dates that ORL filed a Form 460 with the PEC, reporting the money it had raised and spent. On each of these forms, it gave its name as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018.” Mayor Schaaf’s last name did not appear in its committee name, did not state that it was a controlled committee, and did not identify Mayor Schaaf as its controlling candidate on any of these forms. Mayor Schaaf did not sign any of the forms as its controlling candidate:

Form 460s Filed By ORL		
Date Filed	Dates Covered	Committee Name Given on Form
September 27, 2018	January 1 – September 22, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15	October 10, 2018	January 1 – September 22, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
16 17 18 19 20 21 22 23 24 25 26 27 28	October 25, 2018	September 23 – October 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	January 31, 2019	October 21 – December 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	July 30, 2019	January 1, 2019 – June 30, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	January 29, 2020	July 1, 2019 – December 31, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
	June 10, 2020	January 1, 2020 – June 10, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

Form 497

ORL also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports” or “late contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as ORL) receives \$1,000 or more from a single donor in the 90 days before the election concerning the candidate that the committee is supporting or opposing. The purpose of the form is to the inform voters -- before the election -- of which donors are making large contributions benefitting or opposing certain candidates.

The table below shows all of the dates that ORL filed a Form 497 with the PEC, reporting the contributions over \$1,000 it had raised in the ninety days before the 2018

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1 election. On each of these forms, it gave its name as “Oaklanders For Responsible Leadership,
2 Opposing Desley Brooks For Oakland City Council 2018.” to the forms did not include Mayor
3 Schaaf’s last name in its committee name on all of these forms:

Form 497s Filed By ORL		
Date Filed	Committee Name Given on Form	Activity Reported
August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received
September 14, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,999 in contributions received
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,000 in contributions received
September 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
September 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,499 in contributions received
September 27, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
September 28, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received
October 5, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$7,500 in contributions received
October 8, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$1,000 in contributions received

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1 2	October 11, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
3 4	October 12, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received
5 6	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
7 8	October 18, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
9 10	October 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$14,000 in contributions received
11 12	November 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
13 14	November 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received

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Form 496

Finally, ORL filed what are known as Form 496s (“Independent Expenditure Reports”, sometimes informally referred to as “24-hour independent expenditure reports” or “late independent expenditure reports”). These are forms that must be filed whenever a committee makes an independent expenditure (such as an ad) that costs \$1,000 or more in the 90 days before an election. The form must include the committee’s full name. The purpose of the form is to inform voters – before the election – of who is making independent expenditures, and where the money for those independent expenditures is coming from.

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1 On the following dates, ORL filed a Form 496 with the PEC, in which it gave its name
2 as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council
3 2018.” Mayor Schaaf’s last name did not appear in its committee name on all of these forms:

Form 496s Filed By ORL While Libby Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
October 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,470.73 of canvassing opposing Desley Brooks \$12,500 in contributions received
October 2, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,774.82 of canvassing opposing Desley Brooks \$7,490 in contributions received \$2,500 in contributions returned
October 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$8,052 of literature opposing Desley Brooks \$39,980 in contributions received
October 9, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$17,282 of polling, literature, photography, and consulting opposing Desley Brooks \$21,300 in contributions received
October 15, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 of web costs opposing Desley Brooks \$56,280 in contributions received
October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,491.55 of polling, photography, staff time, consulting, and literature opposing Desley Brooks \$4,990 in contributions received

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1 2	October 17, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,104.60 of canvassing opposing Desley Brooks
3 4 5 6	October 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$21,164 of polling, consulting, photography, literature, and web costs opposing Desley Brooks \$20,440 in contributions received
7 8 9 10	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,178 of photography and web costs opposing Desley Brooks \$16,948 in contributions received
11 12 13 14	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$13,212.06 of canvassing and literature opposing Desley Brooks \$16,948 in contributions received
15 16 17	October 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$19,291 of literature opposing Desley Brooks \$16,948 in contributions received
18 19 20 21 22	November 6, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$16,000 of staff time opposing Desley Brooks \$34,848.99 in contributions received \$5,000 in contributions returned

ORL Publishes Ads that Fail to Disclose It is Candidate Controlled

In addition to its field program of door-to-door voter contact, ORL also released a

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1 number of physical ads during the campaign. These included what is known as a
2 “doorhanger” (an ad that is left around a voter’s door handle), as well as four mailers. All of
3 these ads included a disclaimer that said “This mailing was not authorized, approved or paid
4 for by a candidate for city office, a committee controlled by a candidate for city office, or an
5 election official.” None of the disclaimers on these mailers or doorhanger listed that ORL was
6 a candidate controlled committee.

7 ORL was not required to break down the costs of each of its individual mailers on the
8 campaign finance forms it filed. Its internal records also do not clearly indicate precisely how
9 much money was spent on the design, production, and delivery of each of its mailers and the
10 doorhanger (nor are they required to). However, in total ORL reported spending \$82,194.14
11 on “literature” (i.e. printed campaign ads) during the 2018 election. This does not include
12 related costs that might have also gone into making these mailers and the doorhanger, such
13 as the cost of legal review, the portion of the door-to-door canvassing budget that went into
14 delivering the doorhangers, or Linney’s precise consulting fee per piece of literature.
15 However, based on this aggregate literature cost, it can be said that each of the mailers and
16 the doorhanger cost the following, at minimum:

Approximate Cost of Each ORL Mailer, As Percentage of Total Reported “Literature” Expenses			
Mailer	Copies Printed (Approx.)	% of Total Copies Printed	% of “Literature” Expenses
Doorhanger	9,000	18.5%	\$15,205.92
Mailer #1	12,730	26%	\$21,370.44
Mailer #2	9,000	18.5%	\$15,205.92
Mailer #3	9,000	18.5%	\$15,205.92
Mailer #4	9,000	18.5%	\$15,205.92

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ORL Receives Contributions In Excess Of The Legal Limit

In 2018, candidate campaign committees in Oakland were prohibited from receiving contributions of more than \$800 from all contributors except “broad-based committees” (such as labor union PACs or OAKPAC), for which the limit was \$1,600 per election. In 2019 that limit went up to \$1,700 per election for broad-based committees, but remained the same for all other contributors.

Throughout the 2018 campaign and into 2019, ORL received the following direct² contributions in excess of \$800 from a single contributor:

Direct Contributions Received By ORL Over The Contribution Limit			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of Limit
McGrath Properties, Inc. ³	08/30/2018	\$2,500	\$1,700
David Roe	09/13/2018	\$4,990	\$4,190
Jennifer L. Pahlka	09/19/2018	\$4,000	\$3,200
Patricia Kernighan	09/20/2018	\$950	\$150
International Brotherhood of Electrical Workers Local 595 PAC	09/24/2018	\$10,000	\$8,400
Kenneth J. Schmier	09/25/2018	\$4,999	\$4,199
Sprinkler Fitters & Apprentices Local 483 PAC	09/25/2018	\$7,500	\$5,900
Lisa Schmier	09/26/2018	\$4,999	\$4,199

² We use the word “direct” here because, as shown below, ORL also received earmarked contributions through OAKPAC. We are therefore not including purported contributions from OAKPAC in this table; we will account for those earmarked donations from third parties in later in this Exhibit.

³ This contribution was returned on 9/11/18.

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1	Sheet Metal Workers'			
2	International Association Local	09/27/2018	\$10,000	\$8,400
3	Union No. 104			
4	Eugene Zahas	09/27/2018	\$2,500	\$1,700
5	Sprinkler Fitters & Apprentices			
6	Local 483 PAC	10/04/2018	\$7,500	\$5,900
7	Bruce Beasley	10/05/2018	\$1,000	\$200
8	U.A. Local 342 PAC Fund	10/10/2018	\$5,000	\$3,400
9	Kim A. Thompson	10/11/2018	\$2,500	\$1,700
10	Libitzky Holdings, L.P.	10/15/2018	\$4,999	\$4,199
11	State Building & Construction			
12	Trades Council of California	10/17/2018	\$10,000	\$8,400
13	Independent Expenditure PAC			
14	Carmel Partners	10/25/2018	\$5,000	\$4,200
15	Danny W. Wan	10/25/2018	\$1,500	\$700
16	Salvatore T. Fahey	10/29/2018	\$999	\$199
17	Libby Schaaf	10/29/2018	\$999	\$199
18	Cannaroyalty ⁴	10/31/2018	\$5,000	\$4,200
19	DRIVE Committee	11/08/2018	\$5,000	\$4,200
20	Elaine Brown	11/19/2018	\$1,000	\$200
21	Andrew Fremder	11/19/2018	\$1,000	\$200
22	Ron Gershoni	11/19/2018	\$2,500	\$1,700
23	Michael McDonald	11/19/2018	\$1,000	\$200
24	Robert (Zachary) Wasserman	11/19/2018	\$1,000	\$200
25	Total Amount of Contributions = \$108,435			
26	Total Received Over The Contribution Limit = \$82,035			

In addition, ORL received the following donations via OAKPAC (see section below) that were also over the legal contribution limit:

⁴ This contribution was returned on 11/5/18.

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Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200
TMG Partners	11/16/2018	\$10,000	\$9,200
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
Abid	07/02/2019	\$3,000	\$2,200
Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
Wasserman	07/02/2019	\$1,000	\$200
CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000
Total Amount of contributions = \$89,800			
Total over the limit = \$77,000			

OAKPAC & ORL Fail to Properly Report Intermediary (Conduit) Contributions

In the course of their fundraising efforts, OAKPAC was effectively used as a pass-through vehicle for donors who wished to contribute money to ORL.

When soliciting donations to ORL, some ORL principals gave donors the option of contributing directly to ORL or waiting until October 20, 2018, and giving their money to

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1 OAKPAC instead. This was done because ORL, as a primarily-formed committee⁵ opposing
2 Desley Brooks, was legally required to publicly report all of its large donors within 24 hours.
3 OAKPAC, on the other hand, was not officially engaged in an IE against Brooks, and therefore
4 did not have to make any such disclosures. All it was required to do was file periodic (not daily)
5 reports on its finances, the last of which (before the election) covered all money it had
6 received up to October 20. Donors who wished to keep their names out of the public record
7 until after the election were given the option of holding off on donating until after October
8 20, and then giving their money to OAKPAC. OAKPAC then contributed that money to ORL
9 under its own name (it is unclear whether any donors were told that their money would go
10 specifically to ORL, but most were told that that OAKPAC was “supporting” efforts to unseat
11 Brooks). Meanwhile, ORL was informed of these pledges (before October 20) and could make
12 its spending decisions accordingly, knowing that this money would eventually be coming its
13 way “via OAKPAC” (in the words of ORL’s internal accounting document).

14 In addition, ORL principals also encouraged donors who wished to give \$5,000 or more
15 to send their money to OAKPAC instead of ORL, with the understanding that OAKPAC would
16 give the money to ORL. This was done in order to avoid Oakland’s law requiring IE committees
17 such as ORL to disclose their top two donors over \$5,000 on the face of ads that they send
18 out to public. By reportedly giving money to OAKPAC rather than ORL, donors could avoid
19 being named on the face of ORL’s ads.

21 ⁵ A “primarily-formed committee” is a campaign committee that spends at least 70% of its funds to support or
22 oppose one or more specific candidates (or ballot measures) in a particular election, or has the primary
23 purpose of supporting or opposing one or more specific candidates (or ballot measures). ORL was a primarily-
24 formed committee because it spent 100% of its funds opposing Desley Brooks; it therefore had to comply with
25 the particular disclosure rules applying to primarily-formed committees (including the requirement to report
26 large contributions it received within 24 hours). OAKPAC was not a primarily-formed committee and therefore
27 did not have to file those 24-hour disclosure reports.

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1 Fundraising for ORL in this manner continued even after the election concluded. ORL
2 owed a debt to Linney’s firm after the election, including a \$40,000 win bonus. In order to pay
3 back the debt, Leslie, Wasserman and Mayor Schaaf organized a fundraising dinner in which
4 guests were encouraged to contribute up to \$5,000. All of these donors were told to make
5 their checks out to OAKPAC, though the event was advertised as a joint fundraising event for
6 ORL and OAKPAC. That event took place on July 1, 2019. The funds were split between ORL
7 and OAKPAC.

8 Neither ORL nor OAKPAC reported any of these transactions as “intermediary
9 contributions” on their campaign finance reports, as required under the law. Leslie and
10 Wasserman (the latter of whom personally solicited many of these contributions) reviewed
11 and approved OAKPAC’s campaign finance reporting forms, and Leslie signed them as to their
12 completeness and accuracy, under penalty of perjury. Leslie and Wasserman later told the PEC
13 that they were not aware that OAKPAC would be deemed under the law to be acting as the
14 “intermediary” for these donations and that they would not have solicited donations in this
15 way if they had fully understood the legal implications of it. Leslie told the PEC that she was
16 primarily focused on not making OAKPAC a “primarily formed committee” under the law
17 (essentially meaning a committee that spends 70% or more of its funds on a particular race)
18 The donors to OAKPAC whose contributions were passed on to ORL without being properly
19 reported were the following:

Contributions to ORL Made Via OAKPAC		
Donor (per 460)	Date of Contribution to OAKPAC	Amount
Bay Area Citizens PAC	10/23/2018	\$2,500
Horizon Beverage Company	10/26/2018	\$5,000
Equity and General Trade Association	11/05/2018	\$5,000
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000
Kiva Sales and Service	11/05/2018	\$2,500

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Lane Partners	11/05/2018	\$10,000
Best Bay Apartments, Inc.	11/16/2018	\$10,000
TMG Partners	11/16/2018	\$10,000
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000
Abid	07/02/2019	\$3,000
Argent Materials, Inc.	07/02/2019	\$5,000
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000
Oakland Lofts, LLC	07/02/2019	\$5,000
Wasserman	07/02/2019	\$1,000
CCSAC, Inc.	07/22/2019	\$5,000
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000

This money was given by OAKPAC to ORL on the following dates:

Earmarked Funds From OAKPAC to ORL		
Contributor	Date	Amount
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/02/2018	\$2,500
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/02/2018	\$10,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/12/2018	\$17,500
Oakland Metropolitan Chamber of Commerce (OAKPAC)	11/26/2018	\$20,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	05/30/2019	\$10,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	07/10/2019	\$19,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	08/13/2019	\$5,000
Oakland Metropolitan Chamber of Commerce (OAKPAC)	12/20/2019	\$5,000

The following is a breakdown of how the donations to OAKPAC were contributed to ORL in several batches:

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Earmarked Funds From OAKPAC to ORL (Precise Breakdown)				
Original Donor to OAKPAC	Date Given (per 460)	Amount	Date of Donation from OAKPAC to ORL	Amount
Bay Area Citizens PAC	10/23/18	\$2,500	-	-
Horizon Beverage Company	10/26/18	\$5,000	-	-
-	-	-	11/01/18	\$10,000
-	-	-	11/01/18	\$2,500
Equity and General Trade Association	11/05/18	\$5,000	-	-
Total =		\$12,500		\$12,500
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/18	\$5,000	-	-
Kiva Sales and Service	11/05/18	\$2,500	-	-
Lane Partners	11/05/18	\$10,000	-	-
-	-	-	11/08/18	\$17,500
Total =		\$17,500		\$17,500
Best Bay Apartments, Inc.	11/16/18	\$10,000	-	-
TMG Partners	11/16/18	\$10,000	-	-
-	-	-	11/21/18	\$20,000
Total =		\$20,000		\$20,000
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	5/20/19	\$10,000	-	-
-	-	-	5/23/19	\$10,000
Total =		\$10,000		\$10,000
Abid	7/02/19	\$3,000	-	-
Argent Materials, Inc.	7/02/19	\$5,000	-	-
Foster Interstate Media, Inc. & Affiliated Entities	7/02/19	\$5,000	-	-
Oakland Lofts, LLC	7/02/19	\$5,000	-	-
Wasserman	7/02/19	\$1,000	-	-
-	-	-	7/02/19	\$19,000
Total =		\$19,000		\$19,000
CCSAC, Inc.	07/22/2019	\$5,000	-	-
-	-	-	08/13/2019	\$5,000
Total =		\$5,000		\$5,000

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Comcast Financial Agency Corporation	12/18/2019	\$5,000	-	-
-	-	-	12/20/2019	\$5,000
Total =		\$5,000		\$5,000

The pass-through donations under investigation totaled \$89,800. This represented nearly half of the total money raised by ORL over the course of its existence from 2018-2019 (\$202,808.99) and for which the names of the true donors were not reported to the public. Note that nearly half of this money was given after the 2018 election was over.

SUMMARY OF LAW & LEGAL ANALYSIS

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the violations.

All definitions of terms are the same as those set forth in the California Political Reform Act (California Government Code Sections 81000 through 91014), as amended, unless the term is specifically defined in Oakland's Campaign Reform Act (Oakland Municipal Code Chapter 3.12) or the contrary is stated or clearly appears from the context.⁶

Provisions of the California Political Reform Act relating to local elections, including any subsequent amendments, are incorporated into the Oakland Campaign Reform Act (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.⁷

ORL Was a Candidate-Controlled Committee

Many of the alleged violations in this matter hinge on whether ORL was "candidate-controlled." Being a candidate-controlled committee is not a violation in-and-of itself, but candidate-controlled committees have additional disclosure requirements and must abide by

⁶ OMC § 3.12.140.

⁷ OMC § 3.12.240(d).

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1 Oakland’s campaign contribution limit. Therefore, to determine whether ORL violated any of
2 the laws applicable to candidate-controlled committees, it must first be established that it was
3 indeed “candidate-controlled.”

4 A committee is candidate-controlled if a candidate or elected official has a significant
5 influence on the actions or decisions of the committee.⁸ Neither the Political Reform Act, FPPC
6 Regulations, or the Oakland Municipal Code define the term “significant influence.” The
7 applicable standard for determining when a candidate exercises “significant influence” over
8 a campaign committee can only be found in advice letters published by the FPPC, one of which
9 states, “The definition of ‘controlled committee’ has been interpreted broadly to include any
10 significant participation in the actions of a committee by a candidate... [including] extensive
11 involvement in a committee’s fundraising activity.”⁹

12 13 **Element 1: Committee**

14
15 The first element to establish is whether ORL was a “committee.” A “committee” is
16 any person or combination of persons who directly or indirectly receives campaign
17 contributions totaling two thousand dollars (\$2,000) or more in a calendar year, or who makes
18 independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year.¹⁰
19 Here, ORL received contributions in 2018 well in excess of \$2,000 and made independent
20 expenditures well in excess of \$1,000 that same year, according to its sworn campaign
21 reporting forms. It first registered as a committee on August 24, 2018. It crossed the \$2,000
22 threshold for contributions received on August 30, 2018. There is thus no question that ORL
23 was a “committee” for our purposes here.

24
25 ⁸ Cal. Govt. Code § 82016.

26 ⁹ FPPC Lyman Advice Letter No. I-19-163

27 ¹⁰ Cal. Govt. Code § 82013.

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Element 2: Candidate or Elected Official

The second element to establish if a committee is candidate-controlled is to establish whether the person alleged to have controlled the committee was a candidate or elected official. The term “candidate” includes an elected officer.¹¹ “Elected officer” means any person who holds an elective office.¹²

Here, Mayor Schaaf was a candidate or elected official because she was serving as Mayor of Oakland at the time of her involvement with ORL, having been elected to that position in 2014. She also had an open committee at the time, *Libby Schaaf for Mayor 2018*, for which she was also registered as the controlling candidate. She was a candidate for the office of Oakland Mayor in 2018, during the same election in which ORL was active. There is no question that Mayor Schaaf was a “candidate” for our purposes here.

Element 3: Significant Influence on the Actions or Decisions of the Committee

Finally, to establish that a committee is candidate-controlled, there must be sufficient facts to show that a candidate or elected official had “significant influence” on the actions or decisions of the committee.¹³ Neither the Political Reform Act, FPPC Regulations, or the Oakland Municipal Code define the term “significant influence.” The applicable standard for determining when a candidate exercises “significant influence” over a campaign committee can only be found in advice letters published by the FPPC, one of which states, “The definition of ‘controlled committee’ has been interpreted broadly to include any significant participation

¹¹ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

¹² OMC § 3.12.040; Cal. Govt. Code § 82020.

¹³ OMC § 3.12.040; Cal. Govt. Code § 82016.

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1 in the actions of a committee by a candidate... [including] extensive involvement in a
2 committee's fundraising activity.”¹⁴

3 Such influence can be direct or indirect.¹⁵ Reading the FPPC Advice Letters and legal
4 precedent as a whole, examples of the type of behavior that might constitute significant
5 influence include communicating with a committee about its campaign strategy, messaging,
6 or advertising, or making substantial fundraising efforts for a committee.¹⁶ However,
7 fundraising alone is not sufficient to constitute “significant influence” unless a candidate has
8 extensive involvement in the committee's fundraising activities by actively participating in its
9 solicitations, fundraising events and fundraising strategy.¹⁷

10 Actions that do not constitute significant influence include things such as publicly
11 supporting a committee, making donations from the official's own personal funds to a
12 committee, or appearing on a committee's advertisements without working on the
13 messaging of those advertisements.¹⁸ It also does not include providing ministerial or
14 administrative support to a campaign (e.g. bookkeeping).¹⁹ It does not matter whether the
15 candidate has an official title or role on the campaign: “[P]ractical operational realities, rather
16 than job title, determine whether a committee is controlled.”²⁰

17 Here, Mayor Schaaf was fundamental in selecting ORL's personnel, shaping its
18 strategy, and determining its messaging. She also initially reached out to professional
19 campaign consultants about starting an independent expenditure campaign, asked Doug
20

21 ¹⁴ FPPC Lyman Advice Letter No. I-19-163

22 ¹⁵ Id.

23 ¹⁶ *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021).

24 ¹⁷ *Barker* Advice Letter, FPPC # A-97-478 (1997); FPPC *Pirayou* Advice Letter, No. 1-10-159.

25 ¹⁸ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ¹⁹ *Lacy* Advice Letter, FPPC #I-03-076 (2003).

27 ²⁰ *Lacy* Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).

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1 Linney to produce a written campaign plan, and continued to have significant participation in
2 ORL even after the campaign was underway. She was a regular attendee at ORL meetings,
3 which were meant to discuss ORL strategy. Mayor Schaaf also made suggestions as to who
4 should be the “public face” of ORL, and remained in personal, one-on-one contact with Linney
5 throughout the campaign. However, later in the campaign she did send an e-mail request to
6 the ORL group to be taken off of group emails.

7 In sum, the totality of Mayor Schaaf’s participation rose to the FPPC’s standard for
8 “significant influence” over the decisions and activities of ORL. As such, ORL was a candidate
9 controlled committee.

10 11 *ORL Failed to Publicly Identify Itself as a Controlled Committee On Its Campaign Forms*

12
13 All committees must register with the appropriate filing officer²¹ and file periodic
14 campaign forms itemizing their contributions and expenditures.²² For committees that are
15 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
16 a candidate in an Oakland election, their filing officer is the PEC.²³ The forms they must file
17 (including any amendments to those forms) include:

- 18
19 • the committee’s initial registration and termination statements (Form 410)²⁴
20 • its pre-election and semi-annual campaign statements (form 460)²⁵
21

22
23 ²¹ Cal. Govt. Code § 84101.

24 ²² Cal. Govt. Code § 84215.

25 ²³ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).

26 ²⁴ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

27 ²⁵ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

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- its 24-hour contribution reports (Form 497)²⁶, and
- its 24-hour independent expenditure reports (Form 496).²⁷

Each of those reports, including amendments, must include the committee's full name.²⁸ For a candidate-controlled committee, its name must include the last name of its controlling candidate²⁹ (e.g. "... a controlled committee of Mayor Smith"). The Form 410 and Form 460 must also be signed by the controlling candidate, under penalty of perjury.³⁰

Element 1: Candidate-controlled committee

The first element to establish whether ORL failed to file campaign forms identifying Mayor Schaaf as its controlling candidate, is to show that Mayor Schaaf did indeed control ORL. As demonstrated above, ORL was a candidate-controlled committee of Mayor Schaaf, an Oakland elected official. ORL was therefore required to file the above-listed forms with the PEC.

Element 2: Failure to Disclose Candidate-Controlled Status on Forms

The next element to establish whether ORL failed to file campaign forms identifying

²⁶ Cal. Govt. Code § 84203; OMC §§ 3.12.240, 3.12.260.

²⁷ Cal. Govt Code §§ 84204(c), 84215(d); OMC §§ 3.12.240, 3.12.260.

²⁸ Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b) (full name required on late independent expenditure report).

²⁹ Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

³⁰ Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations § 18410(a)(13).

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1 Schaaf as its controlling candidate, is to demonstrate that it filed forms that lacked the
2 required disclosure particular to each form.

3 4 *Form 410*

5
6 A Form 410 must include the committee's full name. For a candidate-controlled
7 committee, its name must include the last name of its controlling candidate (e.g. "...a
8 controlled committee of Mayor Smith"). The Form 410 must also expressly disclose that it is a
9 controlled committee, and identify its controlling candidate. The controlling candidate must
10 sign the form under penalty of perjury.

11 Here, ORL filed Form 410s with the PEC on the following dates August 24, 2018; August
12 31, 2018; September 20, 2018; June 15, 2020. None of those forms disclosed that ORL was a
13 controlled committee, identified Mayor Schaaf as its controlling candidate, or included Mayor
14 Schaaf's last name in the committee name. Mayor Schaaf did not sign any of the forms.

15 16 *Form 460*

17
18 A Form 460 must include the committee's full name. For a candidate-controlled
19 committee, its name must include the last name of its controlling candidate (e.g. "...a
20 controlled committee of Mayor Smith"). The Form 460 must also expressly disclose that it is
21 a controlled committee, and identify its controlling candidate. The controlling candidate must
22 sign the form under penalty of perjury.

23 On the following dates, ORL filed a Form 460 with the PEC, in which it did not disclose
24 that it was a controlled committee, did not identify Mayor Schaaf as its controlling candidate,
25 and failed to include Mayor Schaaf's last name in its committee name: September 27, 2018
26 (covering January 1 – September 22, 2018); October 10, 2018 (covering January 1 – September
27 22, 2018); October 25, 2018 (covering September 23 – October 20, 2018); January 31, 2019

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1 (covering October 21 – December 31, 2018); July 30, 2019 (covering January 1, 2019 – June 30,
2 2019); January 29, 2020 (covering July 1, 2019 – December 31, 2019); and June 10, 2020
3 (covering January 1, 2020 – June 10, 2020). Mayor Schaaf did not sign any of the forms.

4 5 *Form 497*

6
7 A Form 497 must include the committee’s full name. For a candidate-controlled
8 committee, its name must include the last name of its controlling candidate (e.g. “...a
9 controlled committee of Mayor Smith”).

10 On the following dates, ORL filed a Form 497 with the PEC, in which it failed to include
11 Mayor Schaaf’s last name in its committee name (all dates are from 2018): August 31,
12 September 14, September 20, September 25, September 26, September 27, September 28,
13 October 5, October 8, October 11, October 12, October 16, October 18, October 26, November
14 2, and November 3.

15 16 *Form 496*

17
18 A Form 496 must include the committee’s full name. For a candidate-controlled
19 committee, its name must include the last name of its controlling candidate (e.g. “...a
20 controlled committee of Mayor Smith”).

21 On the following dates, ORL filed a Form 496 with the PEC, in which it failed to include
22 Mayor Schaaf’s last name in its committee name (all dates are from 2018): October 2 (twice),
23 October 3, October 9, October 15, October 16, October 17, October 25, October 30 (twice),
24 October 31, and November 6.

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1
2 *ORL Failed to Publicly Identify Itself As a Candidate Controlled Committee On Its Mass Mailers*

3
4 Any committee that makes independent expenditures for a mass mailing or other
5 campaign materials which support or oppose any candidate must place a disclaimer on the
6 mailing containing certain information. Among the information to be disclosed is the
7 committee's name.³¹

8 Here, ORL put out a doorhanger and four mailers that gave its name as "Oaklanders
9 For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018," without
10 identifying Mayor Schaaf as its controlling candidate in the committee name. As
11 demonstrated below, this was a violation of Oakland's disclaimer rules.

12 13 **Element 1: Mass mailing**

14
15 "Mass mailing" means over two hundred substantially similar pieces of mail.³² Here,
16 ORL produced a doorhanger (9,000 copies) and four mailers (12,730 copies of the first mailer,
17 and approximately 9,000 copies each of the remaining three mailers). These quantities mean
18 that the doorhanger and four mailers qualified as mass mailings.

19 20 **Element 2: Independent expenditure**

21
22 An independent expenditure is an expenditure made by a committee in connection
23 with a communication (e.g. a television ad or mailer) which expressly advocates the election
24

25
26

³¹ OMC § 3.12.230(A).

27 ³² Cal Govt Code § 82041.5.

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1 or defeat of a clearly identified candidate, but which is not made to or at the behest of the
2 affected candidate or their campaign committee.³³

3 Here, ORL produced a doorhanger and mailers that expressly advocated the defeat of
4 Desley Brooks and supported the election of her opponents (Loren Taylor, Natasha
5 Middleton, Maria Rodriguez, and sometimes Mya Whitaker). There is no evidence that ORL
6 coordinated in any way with any of the affected candidates or their campaign committees in
7 the production of its doorhanger or four mailers. Mayor Schaaf did take a photo of three
8 candidates (Loren Taylor, Natasha Middleton, and Maria Rodriguez) that appeared on one of
9 ORL's mailers, but there is no evidence gathered that she informed them that it would be used
10 on one of ORL's mailers, or otherwise discussed ORL's expenditures with them.

11 As such, ORL's mass mailings supported or opposed particular candidates but were
12 not produced in coordination with those candidates. They therefore qualified as independent
13 expenditures.

14 **Element 3: Disclaimer including committee's name**

15
16
17 The final element to consider is whether ORL placed a disclaimer on its doorhanger
18 and mailers that included all of the information required, including the committee's name.

19 Here, the doorhanger and mailers all included a disclaimer which gave the committee's name
20 as "Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council
21 2018." This name did not include language to the effect of, "a controlled committee of
22 Oakland Mayor Schaaf," as required. All of the mailers also included a disclaimer stating that
23 the ads were not authorized by a "candidate" or "a committee controlled by a candidate,"
24 which was untrue – all of the ads were authorized by a candidate controlled committee.

25
26
27 ³³ Cal. Govt. Code § 82031.

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1 As such, ORL distributed five mass mailings that were independent expenditures and
2 failed to meet the City of Oakland's disclaimer requirements.

3 4 *ORL Received Contributions Over The Legal Limit*

5
6 In the 2018 election, candidate-controlled committees in Oakland were prohibited
7 from receiving contributions in excess of eight hundred dollars (\$800) from any person, other
8 than broad-based committees such as labor union PACs or OAKPAC, for which the
9 contribution limit was one-thousand six dollars (\$1,600).³⁴ ORL was a candidate-controlled
10 committee that received contributions in excess of these amounts, as demonstrated
11 immediately below.

12 13 **Element 1: Candidate-controlled committee**

14
15 The first element to establish whether a violation of the contribution limit took place,
16 is to show that ORL was candidate-controlled. As demonstrated above, ORL was a candidate-
17 controlled committee of Mayor Schaaf.

18
19
20
21
22 ³⁴ OMC §§ 3.12.050(B) (individual limit), 3.12.060(B) (broad-based committees). A broad-based committee is a
23 committee of persons which has been in existence for more than six (6) months, receives contributions from
24 one hundred (100) or more persons, and acting in concert makes contributions to five (5) or more candidates.

25 OMC § 3.12.040(A). Both the labor unions PACs that contributed to ORL, as well as OAKPAC, fit within this
26 definition because they are long-standing committees funded by dues-sharing from their large member base,
27 and have supported five or more candidates throughout their existence.

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Element 2: Receiving contributions over the legal limit

The next element to establish whether a violation of the contribution limit took place, is to show that ORL received contributions in excess of \$800 from contributors who were not broad-based committees, and in excess of \$1,600 from contributors who were broad-based committees (such as labor union PACs or OAKPAC).

The following table shows all direct contributions received by ORL in excess of the contribution limit:

Direct Contributions Received By ORL Over The Contribution Limit			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of Limit
McGrath Properties, Inc. ³⁵	08/30/2018	\$2,500	\$1,700
David Roe	09/13/2018	\$4,990	\$4,190
Jennifer L. Pahlka	09/19/2018	\$4,000	\$3,200
Patricia Kernighan	09/20/2018	\$950	\$150
International Brotherhood of Electrical Workers Local 595 PAC	09/24/2018	\$10,000	\$8,400
Kenneth J. Schmier	09/25/2018	\$4,999	\$4,199
Sprinkler Fitters & Apprentices Local 483 PAC	09/25/2018	\$7,500	\$5,900
Lisa Schmier	09/26/2018	\$4,999	\$4,199
Sheet Metal Workers' International Association Local Union No. 104	09/27/2018	\$10,000	\$8,400
Eugene Zahas	09/27/2018	\$2,500	\$1,700
Sprinkler Fitters & Apprentices Local 483 PAC	10/04/2018	\$7,500	\$5,900
Bruce Beasley	10/05/2018	\$1,000	\$200
U.A. Local 342 PAC Fund	10/10/2018	\$5,000	\$3,400

³⁵ This contribution was returned on 9/11/18.

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1	Kim A. Thompson	10/11/2018	\$2,500	\$1,700
2	Libitzky Holdings, L.P.	10/15/2018	\$4,999	\$4,199
3	State Building & Construction Trades Council of California Independent Expenditure PAC	10/17/2018	\$10,000	\$8,400
4	Carmel Partners	10/25/2018	\$5,000	\$4,200
5	Danny W. Wan	10/25/2018	\$1,500	\$700
6	Salvatore T. Fahey	10/29/2018	\$999	\$199
7	Libby Schaaf	10/29/2018	\$999	\$199
8	Cannaroyalty ³⁶	10/31/2018	\$5,000	\$4,200
9	DRIVE Committee	11/08/2018	\$5,000	\$4,200
10	Elaine Brown	11/19/2018	\$1,000	\$200
11	Andrew Fremder	11/19/2018	\$1,000	\$200
12	Ron Gershoni	11/19/2018	\$2,500	\$1,700
13	Michael McDonald	11/19/2018	\$1,000	\$200
14	Robert (Zachary) Wasserman	11/19/2018	\$1,000	\$200
Total Amount of Contributions = \$108,435				
Total Received Over The Contribution Limit = \$82,035				

In addition, ORL received the following donations via OAKPAC (see section below) that were also over the legal contribution limit:

Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200

³⁶ This contribution was returned on 11/5/18.

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1	TMG Partners	11/16/2018	\$10,000	\$9,200
2	Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
3	Abid	07/02/2019	\$3,000	\$2,200
4	Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
5	Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
6	Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
7	Wasserman	07/02/2019	\$1,000	\$200
8	CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
9	Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000
10	Total Amount of contributions = \$89,800			
11	Total over the limit = \$77,000			

11 In conclusion, ORL was a candidate-controlled committee that received contributions
12 totaling \$159,035.00 over the legal limit.

OAKPAC Made Earmarked Contributions to ORL

16 No campaign contributions shall be made via a third-party intermediary unless it is
17 reported as such by all parties who are required to file campaign finance reports.³⁷

18 Here, OAKPAC principals solicited contributions to ORL and gave the donors the
19 option to make their checks payable to OAKPAC; and then directed OAKPAC's treasurer to
20 make contributions of an equivalent amount to ORL. Neither OAKPAC nor ORL publicly
21 reported that OAKPAC was acting as an intermediary for others. The original donors' names
22 were therefore never publicly identified with ORL, though they were listed on reports filed
23 by OAKPAC after the election was over.

27 ³⁷ OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84211, 84215 and 85704.

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Liability

Any person who violates any provision of the Oakland Campaign Reform Act, who causes any other person to violate any provision of this Act, or who aids and abets any other person in the violation of the Act, may be found liable for an administrative violation by the PEC. If two or more persons are responsible for any violation, they shall be jointly and severally liable.³⁸

"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.³⁹

The principal officer of a committee is any individual primarily responsible for approving the political activity of the committee including, but not limited to authorizing the content of the communications made by the committee, the committee's contributions or expenditures, or the committee's campaign strategy. If more than one individual shares in the primary responsibility for those activities, each such individual is a principal officer.⁴⁰

In addition to a committee itself, persons who qualify as principal officers of the committee are jointly and severally liable for violations by the committee. For committees controlled by a candidate, the candidate and the committee's treasurers are deemed to be principal officers.⁴¹ In addition, an agent acting on behalf of a person is jointly and severally liable for a violation that arises out of the agent's actions. There is a rebuttable presumption that "agents" of a committee include any current or former officer of the committee; any person who has received compensation or reimbursement from the committee; and any

³⁸ OMC 3.12.270(C)

³⁹ OMC 3.12.040(J)

⁴⁰ 2 Cal. Code of Regulations § 18402.1.

⁴¹ OMC 3.12.230(A)

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1 person who holds or has held a position within the committee organization that reasonably
2 appears to be able to authorize expenditures for committee activities.⁴²

3 “Aiding and abetting” is not itself a violation but rather a legal rule that allows the
4 Enforcement Unit to charge anyone who caused, encouraged, or participated in the
5 underlying violation, even if they were not the direct perpetrator. The test of whether a
6 person aided or abetted in the commission of a violation is whether that person in any way,
7 directly or indirectly, aided the perpetrator(s) by acts or encouraged the perpetrator(s) by
8 words or gestures, instigated or advised the commission of the violation, or was present for
9 the purpose of assisting in its commission.⁴³ An aider and abettor must have knowledge of
10 the illegal purpose of the perpetrator(s) and have intentionally assisted them in the violation.
11 The aider and abettor is not only liable for the particular violation that to their knowledge their
12 confederates were contemplating committing, but they are also liable for the natural and
13 reasonable or probable consequences of any act that they knowingly aided or encouraged.⁴⁴

VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP; MAYOR SCHAAF; DOUG LINNEY

14
15
16
17
18 Respondents, Oaklanders For Responsible Leadership; Mayor Schaaf (its controlling
19 candidate); and Doug Linney (who caused, aided and abetted the violations), violated the
20 following Oakland Municipal Code(s):
21
22
23

24 ⁴² OMC 3.12.230(B)

25 ⁴³ *People v. Villa*, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a
26 similar “aiding and abetting” provision to that found under OMC 3.12.270(C)).

27 ⁴⁴ *Id.* at 134.

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Count 1: Failure to Disclose Controlling Candidate on Campaign Forms

On the following dates, Oaklanders For Responsible Leadership filed a Statement of Organization (“Form 410”) with the PEC, on which it did not disclose that it was a controlled committee, did not identify Mayor Schaaf as its controlling candidate, and failed to include Mayor Schaaf’s last name in its committee name. Mayor Schaaf did not sign any of the forms.

Form 410s Filed By ORL While Libby Schaaf Was Controlling Candidate	
Date Filed	Committee Name Given on Form
August 24, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
June 15, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Mayor Schaaf was required to be identified as the controlling candidate on the committee’s Form 410, and she was required to sign the committee’s Form 410.

On the following dates, Oaklanders For Responsible Leadership filed a Recipient Committee Campaign Statement (“Form 460”) with the PEC, in which it gave its name as “Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018.” It failed to include Mayor Schaaf’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Mayor Schaaf as its controlling candidate. Mayor Schaaf did not sign any of the forms as its controlling candidate:

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Form 460s Filed By ORL While Libby Schaaf Was Controlling Candidate

Date Filed	Dates Covered	Committee Name Given on Form
September 27, 2018	January 1 – September 22, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
October 10, 2018	January 1 – September 22, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
October 25, 2018	September 23 – October 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
January 31, 2019	October 21 – December 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
July 30, 2019	January 1, 2019 – June 30, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
January 29, 2020	July 1, 2019 – December 31, 2019	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”
June 10, 2020	January 1, 2020 – June 10, 2020	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Mayor Schaaf was required to be identified as the controlling candidate on the committee’s Form 460, and she was required to sign the committee’s Form 460.

On the following dates, Oaklanders For Responsible Leadership filed a Contribution Report (“Form 497”) with the PEC, in which it failed to include Mayor Schaaf’s last name in its committee name:

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Form 497s Filed By ORL While Libby Schaaf Was Controlling Candidate

Date Filed	Committee Name Given on Form	Activity Reported
August 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received
September 14, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,999 in contributions received
September 20, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,000 in contributions received
September 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
September 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,499 in contributions received
September 27, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
September 28, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received
October 5, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$7,500 in contributions received
October 8, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$1,000 in contributions received
October 11, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
October 12, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$2,500 in contributions received

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1	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,990 in contributions received
2			
3	October 18, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$10,000 in contributions received
4			
5	October 26, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$14,000 in contributions received
6			
7			
8	November 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 in contributions received
9			
10	November 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,500 in contributions received
11			
12			

13
14 As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

15
16 On the following dates, Oaklanders For Responsible Leadership filed an Independent Expenditure Report (“Form 496”) with the PEC, in which it failed to include Mayor Schaaf’s last name in its committee name:

Form 496s Filed By ORL While Libby Schaaf Was Controlling Candidate			
Date Filed	Committee Name Given on Form	Activity Reported	
21 22 23 24 25 26 27	October 2, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,470.73 of canvassing opposing Desley Brooks \$12,500 in contributions received
28	October 2, 2018 (amendment)	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,774.82 of canvassing opposing Desley Brooks \$7,490 in contributions received \$2,500 in contributions returned

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	October 3, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$8,052 of literature opposing Desley Brooks \$39,980 in contributions received
	October 9, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$17,282 of polling, literature, photography, and consulting opposing Desley Brooks \$21,300 in contributions received
	October 15, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$5,000 of web costs opposing Desley Brooks \$56,280 in contributions received
	October 16, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,491.55 of polling, photography, staff time, consulting, and literature opposing Desley Brooks \$4,990 in contributions received
	October 17, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$4,104.60 of canvassing opposing Desley Brooks
	October 25, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$21,164 of polling, consulting, photography, literature, and web costs opposing Desley Brooks \$20,440 in contributions received
	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$12,178 of photography and web costs opposing Desley Brooks \$16,948 in contributions received
	October 30, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$13,212.06 of canvassing and literature opposing Desley Brooks

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		\$16,948 in contributions received
October 31, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$19,291 of literature opposing Desley Brooks \$16,948 in contributions received
November 6, 2018	“Oaklanders For Responsible Leadership, Opposing Desley Brooks For Oakland City Council 2018”	\$16,000 of staff time opposing Desley Brooks \$34,848.99 in contributions received \$5,000 in contributions returned

As the controlling candidate, Mayor Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

In this way, Respondent violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).

Count 2: Failure to Disclose Controlling Candidate On A Mass Mailer

On or around September 21, 2018, Respondents distributed approximately 9,000 copies of a mass mailer in Oakland. That mass mailer failed to identify the subject committee as candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure was \$15,205.92.

On or around October 3, 2018, Respondents distributed approximately 12,730 copies of a second mass mailer in Oakland. That mass mailer failed to identify the subject committee as a candidate-controlled committee of Mayor Schaaf. The approximate value of the unlawful expenditure was \$21,370.44.

In or around October 2018, Respondents distributed approximately 9,000 copies of a third mass mailer in Oakland. That mass mailer failed to identify the subject committee as

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1 candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure
2 was \$15,205.92.

3 In or around October 2018, Respondents distributed approximately 9,000 copies of a
4 fourth mass mailer in Oakland. That mass mailer failed to identify the subject committee as
5 candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure
6 was \$15,205.92.

7 In or around October 2018, Respondents distributed approximately 9,000 copies of a
8 fifth mass mailer in Oakland. That mass mailer failed to identify the subject committee as
9 candidate-controlled by Mayor Schaaf. The approximate value of the unlawful expenditure
10 was \$15,205.92.

11 In this way, Respondents violated OMC § 3.12.230.

VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP; MAYOR SCHAAF

15
16 Respondents, Oaklanders For Responsible Leadership; and Mayor Schaaf (its
17 controlling candidate who caused the violation), violated the following Oakland Municipal
18 Code(s):

Count 3: Failure to Properly Report Intermediary (Conduit) Contributions

21
22 On their campaign statements (Form 460), Respondents reported the following
23 contributions as being received from OAKPAC rather than from the true source of the
24 contributions:

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Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200
TMG Partners	11/16/2018	\$10,000	\$9,200
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
Abid	07/02/2019	\$3,000	\$2,200
Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
Wasserman	07/02/2019	\$1,000	\$200
CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000

These contributions should have been reported as contributions from the true sources, with OAKPAC reported as an intermediary; but they were not.

In this way, Respondents violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84211, 84215 and 85704.

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VIOLATIONS:

OAKLANDERS FOR RESPONSIBLE LEADERSHIP

Respondent, Oaklanders For Responsible Leadership, violated the following Oakland Municipal Code(s):

Count 4: Receiving Contributions in an Amount Over the Legal Limit

On the following dates, Respondent received direct monetary contributions in excess of \$800, which was the contribution limit for candidate-controlled committees in 2018:

Direct Contributions Received By ORL Over The Contribution Limit			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of Limit
McGrath Properties, Inc. ⁴⁵	08/30/2018	\$2,500	\$1,700
David Roe	09/13/2018	\$4,990	\$4,190
Jennifer L. Pahlka	09/19/2018	\$4,000	\$3,200
Patricia Kernighan	09/20/2018	\$950	\$150
International Brotherhood of Electrical Workers Local 595 PAC	09/24/2018	\$10,000	\$8,400
Kenneth J. Schmier	09/25/2018	\$4,999	\$4,199
Sprinkler Fitters & Apprentices Local 483 PAC	09/25/2018	\$7,500	\$5,900
Lisa Schmier	09/26/2018	\$4,999	\$4,199
Sheet Metal Workers' International Association Local Union No. 104	09/27/2018	\$10,000	\$8,400
Eugene Zahas	09/27/2018	\$2,500	\$1,700

⁴⁵ This contribution was returned on 9/11/18.

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1	Sprinkler Fitters & Apprentices Local 483 PAC	10/04/2018	\$7,500	\$5,900
2	Bruce Beasley	10/05/2018	\$1,000	\$200
3	U.A. Local 342 PAC Fund	10/10/2018	\$5,000	\$3,400
4	Kim A. Thompson	10/11/2018	\$2,500	\$1,700
5	Libitzky Holdings, L.P.	10/15/2018	\$4,999	\$4,199
6	State Building & Construction Trades Council of California Independent Expenditure PAC	10/17/2018	\$10,000	\$8,400
7	Carmel Partners	10/25/2018	\$5,000	\$4,200
8	Danny W. Wan	10/25/2018	\$1,500	\$700
9	Salvatore T. Fahey	10/29/2018	\$999	\$199
10	Libby Schaaf	10/29/2018	\$999	\$199
11	Cannaroyalty ⁴⁶	10/31/2018	\$5,000	\$4,200
12	DRIVE Committee	11/08/2018	\$5,000	\$4,200
13	Elaine Brown	11/19/2018	\$1,000	\$200
14	Andrew Fremder	11/19/2018	\$1,000	\$200
15	Ron Gershoni	11/19/2018	\$2,500	\$1,700
16	Michael McDonald	11/19/2018	\$1,000	\$200
17	Robert (Zachary) Wasserman	11/19/2018	\$1,000	\$200
Total Amount of Contributions = \$108,435				
Total Received Over The Contribution Limit = \$82,035				

18 And on the following dates, Respondent received monetary contributions in excess of
19 \$800, which was the contribution limit for candidate-controlled committees in 2018, via
20 OAKPAC:
21

Contributions Over the Limit to ORL (Made Via OAKPAC)			
Donor (per 460)	Date of Contribution to OAKPAC	Amount	Amount Over the Limit
Bay Area Citizens PAC	10/23/2018	\$2,500	\$1,700
Horizon Beverage Company	10/26/2018	\$5,000	\$4,200
Equity and General Trade Association	11/05/2018	\$5,000	\$4,200

27 ⁴⁶ This contribution was returned on 11/5/18.

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Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000	\$4,200
Kiva Sales and Service	11/05/2018	\$2,500	\$1,700
Lane Partners	11/05/2018	\$10,000	\$9,200
Best Bay Apartments, Inc.	11/16/2018	\$10,000	\$9,200
TMG Partners	11/16/2018	\$10,000	\$9,200
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000	\$9,200
Abid	07/02/2019	\$3,000	\$2,200
Argent Materials, Inc.	07/02/2019	\$5,000	\$4,200
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000	\$4,200
Oakland Lofts, LLC	07/02/2019	\$5,000	\$4,200
Wasserman	07/02/2019	\$1,000	\$200
CCSAC, Inc.	07/22/2019	\$5,000	\$4,200
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000	\$5,000
Total Amount of contributions = \$89,800			
Total over the limit = \$77,000			

As a candidate-controlled committee, the Respondent committee was prohibited from receiving contributions from a single source in excess of \$800 per person or \$1,600 per broad-based committee during the 2018 election.

In this way, Respondent violated OMC § 3.12.050.

VIOLATIONS:

LIBBY SCHAAF; DOUG LINNEY

Respondents, Libby Schaaf (controlling candidate of ORL, who also caused the violations); and Doug Linney (who caused the violations), violated the following Oakland Municipal Code(s):

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Count 5: Receiving Contributions in an Amount Over the Legal Limit

On the dates listed above in Count 4, Respondents received direct monetary contributions in excess of \$800, which was the contribution limit for candidate-controlled committees in 2018.

As principals of a candidate-controlled committee, Respondents were prohibited from receiving contributions from a single source in excess of \$800 per person or \$1,600 per broad-based committee during the 2018 election.

In this way, Respondents violated OMC § 3.12.050.

VIOLATIONS:

OAKPAC, OAKLAND METROPOLITAN CHAMBER OF COMMERCE; BARBARA LESLIE, ROBERT ZACHARY WASSERMAN

Respondents, OAKPAC, Oakland Metropolitan Chamber of Commerce; Barbara Leslie (OAKPAC's principal officer, who also caused the violations), and Robert Zachary Wasserman (OAKPAC's agent, who also caused the violations) violated the following Oakland Municipal Code(s):

Count 6: Failure to Properly Report Intermediary (Conduit) Contributions

Respondents, either directly or by causing/aiding-and-abetting, reported the following payments as direct contributions from OAKPAC to ORL rather than accurately reporting them as intermediary contributions from the original donors:

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Contributions to ORL Made Via OAKPAC		
Donor (per 460)	Date of Contribution to OAKPAC	Amount
Bay Area Citizens PAC	10/23/2018	\$2,500
Horizon Beverage Company	10/26/2018	\$5,000
Equity and General Trade Association	11/05/2018	\$5,000
Holiday Inn Express Hotel & Suites - Balaji Enterprises, LLC	11/05/2018	\$5,000
Kiva Sales and Service	11/05/2018	\$2,500
Lane Partners	11/05/2018	\$10,000
Best Bay Apartments, Inc.	11/16/2018	\$10,000
TMG Partners	11/16/2018	\$10,000
Wilson Meany LP AAF / 11 West Ninth Street Property Owner LP	05/20/2019	\$10,000
Abid	07/02/2019	\$3,000
Argent Materials, Inc.	07/02/2019	\$5,000
Foster Interstate Media, Inc. and Affiliated Entities	07/02/2019	\$5,000
Oakland Lofts, LLC	07/02/2019	\$5,000
Wasserman	07/02/2019	\$1,000
CCSAC, Inc.	07/22/2019	\$5,000
Comcast Financial Agency Corporation, A Comcast Cable Communications Group Company	12/18/2019	\$5,000
		Total = \$89,800.00

Instead, OAKPAC reported them as contributions from OAKPAC to ORL on the following dates:

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Intermediary Contributions From OAKPAC to ORL Not Correctly Reported		
Date	Amount	Reporting Period
10/25/2018	\$7,500	07/01/18 – 12/31/18
11/02/2018	\$2,500	07/01/18 – 12/31/18
11/02/2018	\$10,000	07/01/18 – 12/31/18
11/12/2018	\$17,500	07/01/18 – 12/31/18
11/26/2018	\$20,000	07/01/18 – 12/31/18
05/30/2019	\$10,000	1/1/19 – 6/30/19
07/10/2019	\$19,000	7/1/19 – 12/31/19
08/13/2019	\$5,000	7/1/19 – 12/31/19
12/20/2019	\$5,000	7/1/19 – 12/31/19

In this way, Respondents violated OMC § 3.12.240, incorporating Cal. Govt. Code §§ 84211, 84215 and 85704.

PENALTY ANALYSIS

Oakland's Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to Disclose Controlling Candidate on Campaign Forms	1	\$1,000	\$5,000
Failure to Disclose Controlling Candidate on a Mass Mailer	2	\$1,000	\$5,000 or three times the value of the unlawful expenditure, whichever is greater

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1 2 3 4 5 6	Failure to Properly Report Intermediary Contributions	3, 6	\$1,000	\$5,000 or three times the amount not properly reported, whichever is greater
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	Receiving Contributions Over The Legal Limit	4-5	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.⁴⁷

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent;

⁴⁷ OMC § 3.12.270(C).

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1 9. The respondent's ability to pay the contemplated penalty without suffering undue
2 financial hardship. This factor shall not apply to the portion of a penalty that
3 constitutes a repayment or disgorgement of the unlawful amount, except in cases of
4 extreme financial hardship.

5
6 The PEC has broad discretion in evaluating a violation and determining the appropriate
7 penalty based on the totality of circumstances. This list of factors to consider is not an
8 exhaustive list, but rather a sampling of factors that could be considered. There is no
9 requirement or intention that each factor – or any specific number of factors - be present in
10 an enforcement action when determining a penalty. As such, the ability or inability to prove
11 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an
12 enforcement action or impose a penalty.

Analysis of the Present Case

13
14
15
16 The circumstances of the Respondents' conduct establish the following aggravating
17 and mitigating factors that should be taken into account when determining an appropriate
18 penalty in this case.

19 The Respondents' violations in this case are serious. The strict rules applying to
20 candidate-controlled committees go directly to the very purpose of campaign finance law.
21 Candidates for office, and particularly high-ranking officeholders such as the Mayor, have a
22 disproportionate ability to bring in campaign money. This includes donations from sources
23 whose business interests could benefit from being in a candidate or official's good favor, even
24 if that relationship never rises to a formal quid pro quo. Here, there is no evidence of any quid
25 pro quo. However, the contribution restrictions serve to reduce the actuality or appearance
26 of corruption, and (in the case of officeholders) to reduce the unfair fundraising benefits that
27 can come with political power.

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1 In this case, Mayor Schaaf and her associates' actions were negligent. All of them were
2 fully aware that Mayor Schaaf had significant participation in the IE campaign against Brooks,
3 including its creation, strategy, budgeting decisions, and selection of personnel.

4 In an interview with PEC staff, Mayor Schaaf conveyed that she believed at the time
5 that she had an understanding of the rules concerning what makes a committee "candidate-
6 controlled." Specifically, she said the rules would have required her to only have a "supporting
7 role" and "limited involvement" on the committee, and "being more responsive or reactive
8 to requests that people make for your help." Mayor Schaaf did receive advice from Doug
9 Linney regarding what he believed his attorneys had told him regarding permissible activities
10 that would not constitute "significant activity." However, the advice as conveyed by Mr.
11 Linney was not accurate and articulated a greater level of permissible activity than that
12 permitted under FPPC Advice Letters. Mayor Schaaf told the PEC that she guided her behavior
13 based on this erroneous information.

14 To be clear, candidates and officeholders are allowed to fundraise for existing
15 committees, including independent expenditure committees. What they cannot do is create
16 or repurpose an existing committee, and then exercise significant influence over the
17 committee. Here, Mayor Schaaf was negligent in determining her obligations to avoid
18 "significantly influencing" the campaign committee, resulting in the listed violations related
19 to this influence.

20 For his part, though Doug Linney was aware of the extent Mayor Schaaf's role with
21 ORL, he later told the PEC that it was his understanding that Mayor Schaaf was not the final
22 "decision-maker" for ORL and that therefore she was not its controlling candidate. Linney
23 facilitated the filing of ORL's campaign forms that failed to disclose her controlling role. While
24 stating to PEC staff that this was his first independent expenditure campaign, as a generally
25 experienced campaign consultant, Linney should have been aware that ORL's solicitation and
26 receipt of contributions were over the legal limit. He also facilitated the publication of mailers
27 that did not disclose Mayor Schaaf's controlling role on the campaign.

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1 However, in mitigation, the Brooks campaign distributed campaign mailers and made
2 press statements that stated that Mayor Schaaf was involved with the committee, therefore
3 the public was provided with some information about Mayor Schaaf's possible involvement,
4 albeit not on the face of ORL's mailers or campaign forms.

5 In further aggravation, regarding Respondent Schaaf, the Mayor's actions could be
6 considered as part of a pattern. This is evidenced by PEC cases #19-01 and #22-09, concerning
7 similar activity in the 2018 election, and which are also being brought to the PEC at the same
8 time as this case. However, the Mayor contends she was acting under the same mistaken
9 advice provided to her by Mr. Linney in these matters. The Mayor has also been involved in a
10 prior PEC case (though not as a respondent) involving contributions from a City contractor to
11 one of her committees (PEC #18-19).

12 As an additional aggravating factor, the violations may have had some impact on the
13 election. The candidate opposed by this committee ultimately lost.

14 In mitigation, the Mayor, Linney and Leslie were forthcoming when providing
15 documents to PEC investigators. This included documents that evidenced the violations in this
16 case. The Mayor and other witnesses also voluntarily provided interviews to PEC staff without
17 a subpoena. Schaaf and Linney's actions appear to have been motivated by a
18 misunderstanding of the law.

19 As for the violations associated with using OAKPAC as a pass-through for earmarked
20 contributions, these are also serious violations of the Campaign Reform Act. The people
21 involved in this arrangement were all sophisticated individuals who should have been familiar
22 with campaign finance law (Wasserman is also an attorney) and engaged in activity which
23 deprived voters of donor information required by law. In mitigation, OAKPAC did report the
24 original donors on its own Form 460s, though not until after the election was over. Leslie and
25 Wasserman's actions appear to have been motivated by a misunderstanding of the law.

26 None of the respondents in this case have prior PEC or FPPC violations in which they
27 were named individually. Finally, respondents are now admitting liability to the violations in
28

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1 this agreement, thereby taking responsibility for what occurred and working with the PEC to
2 redress any harm caused.

3 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
4 finances of Mayor Schaaf, Linney, Leslie, and Wasserman, and found that the penalties
5 contemplated in this settlement agreement are sufficiently large to act as a deterrent to
6 future violations, without being so large as to cause an undue financial burden for them. PEC
7 staff has also reviewed the finances of OAKPAC and determined that the penalty
8 contemplated here is sufficiently large to act as a deterrent to future violations, without being
9 so large as to cause an undue financial burden for OAKPAC.

RECOMMENDED PENALTIES

10
11
12
13 In light of the above factors, PEC staff and respondents have mutually agreed upon
14 the following penalties and recommend that the Commission vote to approve them:

Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Failure to Disclose Controlling Candidate on Campaign Forms	Oaklanders For Responsible Leadership; Libby Schaaf; Doug Linney	-	\$5,000
2	Failure to Disclose Controlling Candidate on a Mass Mailer	Oaklanders For Responsible Leadership; Mayor Schaaf; Doug Linney	\$82,194.12	\$10,000
3	Failure to Properly Report Intermediary Contributions	Oaklanders For Responsible Leadership; Mayor Schaaf	\$89,800	\$5,000

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1	4	Receiving Contributions in an Amount Over The Legal Limit	Oaklanders For Responsible Leadership	\$159,035	\$80,518
2					
3	5	Receiving Contributions in an Amount Over The Legal Limit	Mayor Schaaf; Doug Linney	(Same as Counts 4 above)	\$5,000
4					
5	6	Failure to Properly Report Intermediary Contributions	OAKPAC, Oakland Metropolitan Chamber of Commerce; Barbara Leslie; Robert Zachary Wasserman	\$89,800	\$48,000
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1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 20-41.1, 22-17

14 COMMITTEE FOR AN AFFORDABLE
15 EAST BAY; ERNEST BROWN; LIBBY
16 SCHAAF; JONATHAN BAIR; BARBARA
17 LESLIE; OAKLAND POLICE OFFICERS
ASSOCIATION;

) **STIPULATION, DECISION AND
ORDER**

18 Respondents.
19

20 **STIPULATION**

21
22 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
23 respondents COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN;
24 LIBBY SCHAAF; JONATHAN BAIR; BARBARA LESLIE; and OAKLAND POLICE
25 OFFICERS ASSOCIATION, agree as follows:

- 26
27 1. This Stipulation will be submitted for consideration by the City of Oakland Public
28 Ethics Commission (Commission) at its next regularly scheduled meeting;

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- 1 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
2 the final resolution to this matter without the necessity of holding an administrative
3 hearing to determine the liability of, or penalties and/or other remedies to be imposed
4 upon, Respondents;
- 5 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
6 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
7 Procedures, and all other sources of procedural rights applicable to this PEC
8 enforcement action. These procedural rights include, but are not limited to, the right to
9 personally appear at an administrative hearing held in this matter, to be represented by
10 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
11 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 12 4. Respondents represent that they have accurately furnished to the Commission all
13 discoverable information and documents that are relevant to the Commission's
14 determination of a fair and comprehensive resolution to this matter;
- 15 5. Upon approval of this Stipulation and full performance of the terms outlined in this
16 Stipulation, the Commission will take no future action against Respondents, including
17 any officer, director, employee, or agent of Respondents, regarding the activities
18 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
19 complete resolution of all claims by the Commission against Respondents, including
20 any officer, director, employee, or agent of Respondents, related to such activities and
21 any associated alleged violations;
- 22 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission
23 may reopen this matter and prosecute Respondents to the full extent permitted by law,
24 except that the Statute of Limitations shall be waived for any violations that were not
25 discoverable or actionable by the Commission due to non-compliance with any
26 provision of this Stipulation;
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
28 does not preclude the Commission or its staff from cooperating with, or assisting any

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1 other government agency with regard to this matter, or any other matter related to it;
2 except that neither the Commission nor its staff shall refer this matter, or any other
3 matter related to it, as pertains to any alleged violation by Respondents, to any other
4 government agency;

5 8. Respondents admit that they committed the violation(s) of the Oakland Municipal Code
6 with which they are specifically identified in Exhibit #1 to this Stipulation, and in the
7 manner set forth in that Exhibit, which is expressly incorporated by reference in its
8 entirety to this Stipulation and represents a true and accurate summary of the facts in
9 this matter;

10 9. The Commission will impose upon Respondents the penalties and/or other remedies
11 specified in Exhibit #1, as they pertain to each of the named Respondents;

12 10. Respondents will pay the amount specified in Exhibit #1 to this Stipulation to the City
13 of Oakland general fund within sixty (60) calendar days of the date on which the
14 Commission votes to accept this Stipulation. Commission staff may extend the payment
15 deadline at its discretion;

16 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
17 void, and within fifteen business days after the Commission meeting at which the
18 Stipulation is rejected, any payments already tendered by Respondents in connection
19 with this Stipulation will be reimbursed to them;

20 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
21 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
22 and neither any member of the Commission, nor the Executive Director or any member
23 of PEC staff, shall be disqualified from that hearing because of prior consideration of
24 this Stipulation;

25 13. This Stipulation may not be amended orally. Any amendment or modification to this
26 Stipulation must be in writing duly executed by all parties and approved by the
27 Commission at a regular or special meeting, except for any extension to the payment
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1 deadline described in paragraph 10, which Commission staff may grant at its sole
2 discretion and which need only be in writing not requiring execution;

3 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws
4 of the State of California and the City of Oakland. If any provision of the Stipulation is
5 found to be unenforceable, the remaining provisions shall remain valid and enforceable;
6 and

7 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
8 have the same effect as though all parties had signed the same document. Verified
9 electronic signatures shall have the same effect as wet signatures. The parties need not
10 sign this agreement until after the Commission has voted to accept it.

11
12 So agreed:

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14
15 _____
16 Simon Russell, Chief of Enforcement
17 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

18
19 _____
20 Ernest Brown, on behalf of Committee For An
21 Affordable East Bay

_____ Dated

22
23 _____
24 Ernest Brown, Respondent

_____ Dated

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26 _____
27 Libby Schaaf, Respondent

_____ Dated

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Jonathan Bair, Respondent

Dated

Barbara Leslie, Respondent

Dated

Oakland Police Officers Association, Respondent

Dated

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DECISION AND ORDER

The foregoing Stipulation of the parties to “In the Matter of COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN; LIBBY SCHAAF; JONATHAN BAIR; BARBARA LESLIE,” PEC Case No. 20-41.1, and “In the Matter of OAKLAND POLICE OFFICERS ASSOCIATION,” PEC Case No. 22-17, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

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INTRODUCTION

This case concerns a political campaign committee active in the Oakland 2020 election that was called the “Committee For An Affordable East Bay” and supported the City Council At-Large candidacy of Derreck Johnson against incumbent Rebecca Kaplan.

A campaign committee has the right to raise and expend unlimited campaign funds, unless it is “controlled” by a City candidate. Mayor Schaaf, then Mayor of Oakland and a candidate as defined by California Government Code 82061, participated in the activities of this committee to an extent that the committee became a “candidate-controlled committee” with the meaning of the statute. Once the committee became a “candidate-controlled”

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1 committee it committed several violations of the Oakland Municipal Code, as detailed in this
2 stipulation. These violations include failing to register properly, accepting contributions over
3 the city's campaign contribution limit, and accepting contributions from City contractors.

4 In addition, the committee also received a copy of non-public polling data that had
5 been commissioned by the city's police union. The polling data was first provided to the
6 Derreck Johnson campaign and it was eventually received by the candidate controlled
7 committee. Neither the Johnson campaign nor the candidate controlled committee publicly
8 disclosed any of this activity, as required.

9 PEC staff and Respondents have agreed to settle this matter without an administrative
10 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
11 analysis to the City of Oakland Public Ethics Commission for its approval. Together, PEC staff
12 and Respondents recommend approval of their agreement and imposition of administrative
13 penalties, as described in more detail below.

FACTUAL SUMMARY

Organization of the Campaign Committee

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19 Around late 2019 and early 2020, Jonathan Bair was volunteering with a housing policy
20 movement called Yes In My Backyard (YIMBY). Bair conceived of creating a political action
21 committee (PAC) that could campaign for YIMBY-allied candidates and ballot measures in the
22 greater East Bay. He developed this idea in collaboration with a handful of other YIMBY
23 volunteers, though Bair remained the point person for the project. Their initial plans focused
24 on supporting upcoming candidate races for the Oakland and Berkeley City Councils. The
25 committee was registered on July 30, 2020, as a general purpose committee called "East Bay
26 Housing Action."
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1 At this early point in the campaign season, Bair's group did not plan to campaign in the
2 Oakland City Council At-Large race, in which incumbent Rebecca Kaplan was facing various
3 opponents including Derreck Johnson. Bair even obtained the pro bono services of one of
4 Johnson's campaign advisors when developing his PAC, an arrangement that could possibly
5 have violated campaign finance laws prohibiting "coordination" between candidate-
6 controlled campaigns and independent PACs such as Bair's, if they had been planning to use
7 Bair's PAC to campaign in the At-Large race. Bair was also in direct communication with the
8 Johnson campaign at this time, offering advice as a volunteer, something that could possibly
9 have been illegal if Bair had also been planning an independent expenditure for Johnson at
10 the time.

11 Around this same time, Oakland Mayor Schaaf requested a meeting with the Oakland
12 Metropolitan Chamber of Commerce's political action committee, called "OAKPAC." OAKPAC
13 had been considering getting involved in various Oakland races. During her meeting with
14 OAKPAC, Mayor Schaaf sent a text message to Bair and asked if he was considering using his
15 PAC to campaign in the At-Large race. Bair said he was not, because he was unsure if he could
16 raise enough money to be effective across such a large district. Mayor Schaaf promised to get
17 back in touch with him. The same day, Mayor Schaaf contacted a political consulting firm and
18 a polling firm, to inquire about the costs of running TV ads and polling in Oakland's At-Large
19 race.

20 Over the next week and a half, Mayor Schaaf gathered more information from
21 consultants about the likely costs of an independent expenditure ("IE") campaign in the At-
22 Large race. She then resumed contact with Bair on August 22, 2020, at which Mayor Schaaf
23 told Bair that she believed she could help raise enough money for the PAC to be effective. She
24 also provided Bair with the cost estimates she had obtained from various consultants.
25 Following two days of correspondence with Mayor Schaaf, on August 24, 2020, Bair broke off
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1 contact with the advisor with whom he had been working (one of the Johnson campaign's
2 consultants), as well as with the Johnson campaign itself.

3 Mayor Schaaf then contacted Todd David, the Executive Director of Bay Area Housing
4 Action Committee, another YIMBY organization affiliated with Bair's. Mayor Schaaf informed
5 David of the plans underway to conduct an IE in Oakland's At-Large race. David advised that
6 it would be helpful to split the efforts between a primarily-formed PAC for the At-Large race,
7 and to create a slate mail organization (SMO) for any other races that the group might want
8 to get involved in. At Mayor Schaaf's invitation, David met with her, Bair, and others on August
9 26 and 27, 2020, to discuss this and other ideas for the proposed campaigns. During the
10 meeting, Mayor Schaaf supported David's proposal to create a SMO, which (like the PAC)
11 would also be administered by Bair and his fellow YIMBY volunteers. Per David's
12 recommendation, ultimately the SMO was used to support all of the other races which Bair
13 had originally envisioned using his PAC to support; while the PAC was then re-oriented to
14 focus on the At-Large race.

15 Another meeting involving the same people took place on August 29, 2020, this time
16 joined by political consultant Maggie Muir. David had been working with Muir on other
17 campaigns at the time and recommended her services. At this meeting (also attended by
18 Mayor Schaaf), it was decided that the PAC would support Derreck Johnson and oppose
19 Rebecca Kaplan in the At-Large race, through the use of TV ads and mailers, at an approximate
20 budget of \$200,000. Muir produced a campaign planning document to this effect, and
21 distributed it to Mayor Schaaf, Bair, David, and others. The PAC also changed its name around
22 this point, to "Committee For An Affordable East Bay."

23 Around this same time, Mayor Schaaf contacted the President of Lyft, John Zimmer,
24 and solicited a \$100,000 contribution to the PAC for purposes of opposing Kaplan's re-
25 election. (Kaplan had recently proposed a tax on ride-share companies such as Lyft, which Lyft
26 had opposed). Zimmer agreed, and Bair, who had also tried soliciting the contribution from
27

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1 Jordan Markwith of Lyft, handled the logistics of wiring the money from Lyft to the PAC. At
2 the time, Lyft was under contract with the City of Oakland to provide bike-sharing services
3 and a substantial change to its contract was pending that would require City Council approval.
4 (The Council eventually rejected the proposal in its meeting of November 10, 2020).¹ After
5 realizing that a matter concerning Lyft would be coming to the City Council, Mayor Schaaf
6 sought advice from Public Ethics Commission Director Whitney Barazoto regarding the
7 contribution and how best to proceed. Also, Schaaf publicly disclosed her solicitation of the
8 contribution from Lyft as a City contractor the day after it was made, on September 23, 2020,
9 by filing a Form 303 as required by Oakland law.

10 Meanwhile, Bair met with the original YIMBY volunteers of his committee (without
11 Mayor Schaaf, Muir, David, or others present) after Schaaf had obtained the \$100,000 pledge
12 from Lyft. Bair informed the group that Lyft had pledged a \$100,000 contribution and urged
13 that they now create a SMO to campaign in Berkeley and the Oakland District 3 race, and
14 change the PAC to a primarily-formed committee for the Oakland At-Large race supporting
15 Derreck Johnson and opposing Rebecca Kaplan. Although this group had a practice of taking
16 votes on major decisions, no vote was taken on these decisions. Several YIMBY volunteers
17 disagreed with the decision to accept this money from Lyft and quit the group soon
18 afterward.

19 Throughout September 2020, Bair and his treasurer Ernest Brown met weekly with
20 Mayor Schaaf, Muir, David, and others, to discuss fundraising, strategy, and messaging for the
21 PAC's At-Large campaign. They also corresponded about these matters over group emails and
22 text messages.

23 Bair's group of YIMBY volunteers also met separately on its own most weeks, but
24 consultant Muir did not attend most of those meetings (nor did Mayor Schaaf or others). In
25 its meetings, Bair's group of YIMBY volunteers focused on implementing the At-Large race's

26
27 ¹ Lyft entered a separate settlement in this matter with the PEC; see case # 20-41.2

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1 strategy that had been developed by Muir following her meeting with the larger group; as
2 well as on its own, separate efforts in various Berkeley City Council and ballot measure races
3 (through the use of the SMO).

4 As the campaign progressed, Muir began working on drafts of television ads to be run
5 by the PAC. Muir sent drafts of the PAC's television ads to Mayor Schaaf, Bair, and others, and
6 invited their feedback. Mayor Schaaf emailed Muir links to some news articles that could be
7 used in ads, as well as quotes from the articles that could be used in ads. Muir subsequently
8 used the same articles and one of the quotes Mayor Schaaf sent in the TV ad for the PAC that
9 she was developing at that time.

The Campaign Committee's Receipt of an Unreported In-kind Contribution of a Poll

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11
12
13 In late August 2020, the city's police union commissioned a poll concerning the
14 upcoming elections and voter sentiments about a police union endorsement in the wake of
15 the recent George Floyd protests. The polling results showed that Johnson performed better
16 if voters were informed of certain aspects of his personal background; and that a police union
17 endorsement would be perceived negatively by voters. The poll had cost \$38,760.

18 The police union had been in contact with the Johnson campaign and provided it with
19 the polling results, along with a portion of a PowerPoint presentation the pollster had put
20 together for the police union that summarized key takeaways from the Kaplan-Johnson data.
21 The Johnson campaign never reported this in-kind contribution on any of its campaign finance
22 reporting forms, and the police union never reported making this contribution either (because
23 the contribution was worth \$10,000 or more, this made the police union a "major donor" and
24 it incurred reporting obligations under the law, including the obligation to report this
25 particular contribution to the Johnson campaign).

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1 Johnson's campaign manager, Michelle Hailey, then emailed the poll results and
2 analysis on September 2, 2020, to Barbara Leslie (the President of the Chamber of Commerce).
3 Leslie then emailed the file to Mayor Schaaf, whom Leslie knew to be involved with the pro-
4 Johnson PAC as a general matter.

5 Mayor Schaaf then emailed the same document to Muir (the PAC's consultant who
6 was designing its ads), saying "I happened to get this poll from someone who got it from
7 someone who got it from someone. It has helpful info. Until I get permission from the person
8 I got it from, I don't want to share with the whole group² but you should see it now." Muir
9 replied, "Very helpful, thank you!" Mayor Schaaf later stated to the PEC that she believed the
10 poll had been sent to Leslie directly by the police union and had no reason to believe it had
11 been received by or come from the Johnson campaign.

12 Language used by Muir subsequently for a television ad to be run by the PAC,
13 supporting Derreck Johnson (the ad was called "Had Her Chance") used language similar to
14 the poll's. The television ad cost \$40,000. The PAC reported the cost of these ads, as required,
15 on public campaign finance reporting forms.

16 Neither the Johnson campaign nor the campaign committee ever reported a
17 contribution of the polling results and analysis on their respective campaign finance reporting
18 forms.

Campaign Committee Fundraising

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22 Throughout the campaign, Mayor Schaaf solicited another \$57,000 from 12 donors, in
23 addition to Lyft, which ended up comprising 82% of the total monetary contributions received
24 by the campaign committee, by directly contacting potential donors and persuading them to

25 _____
26 ² This refers to the other people working on the PAC and the SMO.

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1 make a donation. She described the campaign committee as being created and run solely by
2 YIMBYs. She also described it as an “independent” committee, i.e. one without a contribution
3 limit.

4 The table below shows all monetary contributions raised by the PAC in 2020.³
5 Contributions that Schaaf personally solicited (as evidenced in documents and testimony
6 received by the PEC) are highlighted in yellow:

All Contributions Raised by “Committee For An Affordable East Bay” PAC (those solicited by MayorSchaaf are in yellow)		
Donor	Date	Amount
Victoria Fierce for Alameda County Democratic Central Committee	08/24/2020	\$1,251.61
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000
Cestra Butner	09/21/2020	\$5,000
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000
Edward Gerber	09/21/2020	\$1,000
Alvin Attles	09/22/2020	\$1,000
Erik Moore	09/22/2020	\$1,000
Charles Freiberg	09/29/2020	\$2,500
David Roe	09/29/2020	\$2,000
Martha Siegel	09/29/2020	\$10,000
Robert Spears	09/29/2020	\$2,500
Reuben, Junius & Rose LLP	09/30/2020	\$9,999
Alexander Riaz Taplin	10/13/2020	\$10,000
Adelin Cai	10/14/2020	\$8,000
Michael Yang	10/15/2020	\$7,000
Jennifer Pahlka	10/17/2020	\$2,500
William Witte	10/21/2020	\$7,500

23 _____
24 ³ The campaign committee subsequently raised a small amount of funds in 2021-2022, but those are not
25 relevant to this case because the PEC has found no evidence that Schaaf continued to be involved with the
26 campaign committee at that point.

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1	Ron Conway ⁴	10/22/2020	\$15,000
2	East Bay Rental Housing Association PAC	10/29/2020	\$3,000
3	(1) Total Monetary Contributions Solicited by Schaaf = \$157,000.00		
4	(2) Total Monetary Contributions Raised = \$190,250.61		
5	Total Percentage of Monetary Contributions Solicited by Schaaf (Line 1 ÷ Line 2) = 82%		

Contributions From City Contractors

6
7
8 The campaign committee received contributions from two City contractors. Both
9 contributions were solicited by Mayor Schaaf, and she publicly reported soliciting both of
10 these contributions in full compliance with Oakland's campaign disclosure ordinances.

11 The Lyft contribution was made on September 22, 2020, by Lyft's sponsored campaign
12 committee called Californians For Independent Work. Lyft's work with the City is detailed
13 above. Upon being informed that Lyft was a City contractor, Mayor Schaaf filed a Form 303
14 on September 23, 2020, publicly reporting that she had solicited the contribution.

15 The second contractor, William Witte, gave \$7,500 to the campaign committee on
16 October 21, 2020. Mayor Schaaf solicited that contribution, while Bair handled the logistics of
17 receiving the funds. At the time, Witte was the part-owner of a subsidiary company (95th &
18 International Housing Partners, L.P.) that was seeking to lease City-owned property in East
19 Oakland for purposes of an affordable housing and commercial retail development. (The City
20 Council approved the proposed lease on September 15, 2020). More than a week after making
21 his donation, Witte informed Mayor Schaaf that he might qualify as a City contractor. Mayor

22
23
24 ⁴ This contributor also made a \$15,000 contribution to this campaign committee on 10/16/2020 (solicited by
25 Mayor Schaaf), and the campaign committee returned that contribution on 10/21/2020. We are choosing not to
26 include the contribution of 10/16/2020 here because the contributor appears to have only intended to make a
27 single contribution of \$15,000, and the campaign committee ultimately only kept that amount.

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1 Schaaf then timely filed a Form 303 on November 9, 2020, publicly reporting that she had
2 solicited the contribution.⁵

3 *The Campaign Committee Files Campaign Forms That Fail to State It Is Candidate Controlled*

4
5
6 Throughout the campaign, the campaign committee filed its numerous campaign
7 forms with the PEC as if it were an independent expenditure committee and not a
8 “candidate controlled” committee as defined by California Government Code 82061 nor did
9 any of the filings disclose Mayor Schaaf’s name or involvement. This included all its Form
10 410s, 460s, 497s and 496s.

11 *Form 410*

12
13
14 The first type of form that the campaign committee filed with the PEC is called a Form
15 410 (“Statement of Organization”). These are forms that a campaign committee must file
16 when its first registers as a campaign committee, and whenever it changes its name, purpose,
17 or main personnel. It must also disclose on these forms whether it is a controlled committee
18 of a candidate or officeholder. The forms must be signed by the controlling candidate, under
19 penalty of perjury. Finally, it is the form on which a committee declares what its name will be.
20 As explained in more detail later in this Exhibit, candidate-controlled committees are required
21 to put the last name of their controlling candidate in the committee’s name (e.g. “Committee
22 X, a Controlled Committee of Oakland Mayor Smith”). The purpose of the form is to inform
23 the public of who is running a particular campaign committee and controlling its funds.

24 The table below shows all of the dates that the campaign committee filed a Form 410
25 from September – December 2020 (i.e., the time period when Mayor Schaaf was involved with

26
27 ⁵ Witte is also seeking to settle with the PEC regarding this contribution; see case # 20-41.3.

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1 the campaign committee). It did not disclose that it was a controlled committee, did not
2 identify Schaaf as its controlling candidate, and failed to include Mayor Schaaf's last name in
3 its committee name on any of these forms. Mayor Schaaf did not sign any of the forms.

Form 410s Filed by the PAC between September 1 – December 31, 2020

Date Filed	Committee Name Given on Form
September 10, 2020	"Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 18, 2020	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 22, 2020	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 25, 2020 (1)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 25, 2020 (2)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."
September 30, 2020 (1)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020, Sponsored by Lyft, Inc."
September 30, 2020 (2)	"Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020."

22 Form 460

24 The campaign committee also filed multiple forms known as a Form 460 ("Recipient
25 Committee Campaign Statement"). These are periodic reports that a campaign committee
26 must file in order to report all of the money that it has raised and spent throughout a
27

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1 campaign. It must use its full committee name on the form, and report whether it is a
2 controlled committee of a candidate or officeholder (such as a Mayor). The forms must be
3 signed by the controlling candidate, under penalty of perjury. The purpose of the form is to
4 inform the public where campaign committees are getting their money from, and what they
5 are spending it on.

6 The table below shows all of the dates that the PAC filed a Form 460 with the PEC,
7 reporting the money it had raised and spent from September – December 2020 (i.e. the time
8 period when Mayor Schaaf was involved with the committee). On each of these forms, it gave
9 its name as “Committee for an Affordable East Bay supporting Derreck Johnson and opposing
10 Rebecca Kaplan for Oakland City Council At-Large 2020.” It failed to include Mayor Schaaf’s
11 last name in its committee name, did not disclose that it was a controlled committee, and did
12 not identify Mayor Schaaf as its controlling candidate on any of these forms. Mayor Schaaf
13 did not sign any of the forms as its controlling candidate:

Form 460s Filed by the PAC Covering September 1 – December 31, 2020		
Date Filed	Dates Covered	Committee Name Given on Form
September 24, 2020	January 1 – September 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
October 22, 2020	September 20 – October 17, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
January 30, 2021	October 18 – December 31, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

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1 Form 497

2
3 The campaign committee also filed what are known as Form 497s (“Contribution
4 Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms
5 must be submitted within 24 hours, whenever a primarily-formed committee (such as the
6 campaign committee in this case) receives \$1,000 or more from a single donor in the 90 days
7 before the election concerning the candidate that the committee is supporting or opposing.
8 The purpose of the form is to the inform the public -- before the election -- of which donors
9 are making large contributions benefitting or opposing certain candidates.

10 The table below shows all of the dates that the campaign committee filed a Form 497
11 with the PEC, reporting the contributions over \$1,000 it had raised from September 2020 until
12 the election in November (i.e. the time period when Mayor Schaaf was involved with the
13 campaign committee). On each of these forms, it gave its name as “Committee for an
14 Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland
15 City Council At-Large 2020.” It failed to include Mayor Schaaf’s last name in its committee
16 name:

Form 497s Filed by the PAC While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 22, 2020	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$109,000 in contributions received
September 30, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$17,000 in contributions received
October 1, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and	\$9,999 in contributions received

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	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
October 2, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 in contributions received
October 14, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,000 in contributions received
October 15, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 21, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,500 in contributions received
October 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$15,000 in contributions received
October 29, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$3,000 in contributions received

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1 Form 496

2
3 Finally, the campaign committee filed what are known as Form 496s (“Independent
4 Expenditure Reports”, sometimes informally referred to as “24-hour independent
5 expenditure reports”). These are forms that must be filed whenever a committee makes an
6 independent expenditure (such as an ad) that costs \$1,000 or more in the 90 days before an
7 election. The form must include the committee’s full name. The purpose of the form is to
8 inform the public of who is making independent expenditures, and where the money for
9 those independent expenditures is coming from.

10 On the following dates, the campaign committee filed a Form 496 with the PEC, in
11 which it gave its name as “Committee for an Affordable East Bay supporting Derreck Johnson
12 and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.” It failed to include
13 Mayor Schaaf’s last name in its committee name:

14

Form 496s Filed While Mayor Schaaf Was Controlling Candidate			
Date Filed	Committee Name Given on Form	Activity Reported	
15 16 17 18 19 20 21 22 23 24 25 26 27 28	September 23, 2020 (1)	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$16,000 of TV ads opposing Rebecca Kaplan \$109,251.61 in contributions received
September 23, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$64,000 of TV ads supporting Derreck Johnson	
October 1, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$4,000 of digital ads opposing Rebecca Kaplan	
October 1, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and	\$16,000 of digital ads supporting Derreck Johnson	

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	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$26,999 in contributions received
October 9, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	(amendment to above) \$25,000 of digital ads and production supporting Derreck Johnson \$26,999 in contributions received
October 13, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$8,000 of digital ads supporting Derreck Johnson
October 13, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 of digital ads opposing Rebecca Kaplan
October 20, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,100 slate mailer supporting Derreck Johnson \$42,500 in contributions received
October 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$29,000 slate mailer supporting Derreck Johnson \$22,500 in contributions received \$15,000 in contributions returned
October 28, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,600 slate mailer opposing Rebecca Kaplan

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SUMMARY OF LAW & LEGAL ANALYSIS

1
2
3 All statutory references and discussions of law pertain to the referenced statutes and
4 laws as they existed at the time of the violations.

5 All definitions of terms are the same as those set forth in the California Political Reform
6 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
7 is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter
8 3.12) or the contrary is stated or clearly appears from the context.⁶

9 Provisions of the California Political Reform Act relating to local elections, including
10 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
11 (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.⁷

The Campaign Committee Was “Candidate-Controlled”

12
13
14
15 Nearly all of the alleged violations in this matter hinge on whether the campaign
16 committee was “candidate-controlled” as defined by California Government Code Section
17 82016. Being a candidate-controlled committee is not a violation in-and-of itself; but
18 candidate-controlled committees have very different disclosure requirements and restrictions
19 on the contributions they can accept. Therefore, to determine whether the campaign
20 committee violated any of the laws applicable to candidate-controlled committees, it must
21 first be established that it was indeed “candidate-controlled.”

22 Under the law, a committee is candidate-controlled if a candidate or elected official
23 has a “significant influence” on the actions or decisions of the committee.⁸ Neither the

24
25 ⁶ OMC § 3.12.040.

26 ⁷ OMC § 3.12.240(d).

27 ⁸ Cal. Govt. Code § 82016.

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1 Political Reform Act, FPPC Regulations, or the Oakland Municipal Code define the term
2 “significant influence.” The applicable standard for determining when a candidate exercises
3 “significant influence” over a campaign committee can only be found in advice letters
4 published by the FPPC. One such Advice Letter states, “The definition of ‘controlled
5 committee’ has been interpreted broadly to include any significant participation in the actions
6 of a committee by a candidate, his or her agent, or representatives of any other committee
7 he or she controls.”⁹ An elected official who has extensive involvement in a committee’s
8 fundraising activity by actively participating in its solicitations, fundraising events and
9 fundraising strategy is also exerting ‘significant influence’ over the committee and controlling
10 the committee within the meaning of Section 82016.¹⁰ Other relevant factors which determine
11 whether a candidate is controlling a committee include whether the candidate is involved with
12 decision making or developing or implementing campaign strategy for the committee.¹¹

Element 1: Committee

14
15
16 The first element to establish is whether the entity in question qualified as a
17 “committee.” A “committee” is any person or combination of persons who directly or
18 indirectly receives campaign contributions totaling two thousand dollars (\$2,000) or more in
19 a calendar year, or who makes independent expenditures totaling one thousand dollars
20 (\$1,000) or more in a calendar year.¹²

21
22
23 _____
24 ⁹ FPPC *Higdon* Advice Letter, No. 1-94-189; FPPC *Kopp* Advice Letter, No. A-97-108.

25 ¹⁰ FPPC *Pirayou* Advice Letter, No. 1-10-159.

26 ¹¹ FPPC *Helms* Advice Letter, No. 1-91-390.

27 ¹² Cal. Govt. Code § 82013.

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1 Here, the campaign committee received contributions in 2020 well in excess of \$2,000
2 and made independent expenditures well in excess of \$1,000 that same year, according to its
3 sworn campaign reporting forms.

4 5 **Element 2: Candidate or Elected Official**

6
7 The second element to establish if a committee is candidate-controlled is whether the
8 person alleged to have controlled the committee was a candidate or elected official. The term
9 “candidate” includes an elected officer.¹³ “Elected officer” means any person who holds an
10 elective office.¹⁴

11 Here, Mayor Schaaf was a candidate or elected official because she was serving as
12 Mayor of Oakland at the time of her involvement with the campaign committee, having been
13 elected to that position in 2014 and re-elected in 2018. She also had an open committee at the
14 time, *Mayor Schaaf for Mayor 2018 Officeholder Committee*, for which she was registered as
15 the controlling candidate.

16 17 **Element 3: Significant Influence on the Actions or Decisions of the Committee**

18
19 Finally, to establish that a committee is candidate-controlled, there must be sufficient
20 facts to show that a candidate or elected official had “significant influence” on the actions or
21 decisions of the committee.¹⁵ Neither the Political Reform Act, FPPC Regulations, or the
22 Oakland Municipal Code define the term “significant influence.” The applicable standard for
23 determining when a candidate exercises “significant influence” over a campaign committee

24
25 ¹³ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

26 ¹⁴ Cal. Govt. Code § 82020.

27 ¹⁵ Cal. Govt. Code § 82016.

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1 can only be found in advice letters published by the FPPC, one of which states, “The definition
2 of ‘controlled committee’ has been interpreted broadly to include any significant participation
3 in the actions of a committee by a candidate... [including] extensive involvement in a
4 committee's fundraising activity.”¹⁶

5 Such influence can be direct or indirect.¹⁷ Reading the FPPC Advice Letters as a whole,
6 examples of the type of behavior that might constitute significant influence include
7 communicating with a committee about its campaign strategy, messaging, or advertising, or
8 making substantial fundraising efforts for a committee.¹⁸ However, fundraising alone is not
9 sufficient to constitute “significant influence” unless a candidate has extensive involvement
10 in the committee's fundraising activities by actively participating in its solicitations,
11 fundraising events and fundraising strategy.¹⁹

12 Actions that do not constitute significant influence include things such as publicly
13 supporting a campaign, making donations from the official’s own personal funds to a
14 campaign, or appearing on a committee’s advertisements without working on the messaging
15 of those advertisements.²⁰ It also does not include providing ministerial or administrative
16 support to a campaign (e.g. bookkeeping).²¹ It does not matter whether the candidate has an
17 official title or role on the campaign: “[P]ractical operational realities, rather than job title,
18 determine whether a committee is controlled.”²²

19
20
21 ¹⁶ FPPC Lyman Advice Letter No. I-19-163

22 ¹⁷ Cal. Govt. Code § 82016

23 ¹⁸ *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021).

24 ¹⁹ *Barker* Advice Letter, FPPC # A-97-478 (1997); FPPC *Pirayou* Advice Letter, No. 1-10-159.

25 ²⁰ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ²¹ *Lacy* Advice Letter, FPPC #I-03-076 (2003).

27 ²² *Lacy* Advice Letter, FPPC #I-03-076 (2003) at 2 (internal quotation marks omitted).

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1 Here, Mayor Schaaf's participation was "significant." Without Mayor Schaaf's
2 participation, particularly with fundraising, it is unlikely Bair would have used his committee
3 for an independent expenditure in the At Large City Council race. This is evidenced by all of
4 the testimony gathered by the PEC of persons who were substantially involved with the
5 committee before Mayor Schaaf's involvement.

6 At the same time that Bair's committee was getting organized, Mayor Schaaf was
7 looking to assist another potential independent expenditure effort in the At-Large Council
8 race. On her own initiative, she contacted campaign consultants about the costs of an
9 independent expenditure in those races – information that she later provided to Bair after
10 getting involved with his campaign committee. Mayor Schaaf initially contacted Bair via text
11 message and asked if he would consider using his campaign committee to support an IE for
12 Derreck Johnson. Mayor Schaaf also arranged for Bair to meet with herself, Todd David, and
13 others for purposes of planning how the At-Large effort would be structured.

14 Mayor Schaaf contacted Lyft and secured a \$100,000 contribution to the PAC, for
15 purposes of running TV ads supporting Johnson and opposing Kaplan. The original YIMBY
16 volunteers with Bair's committee were not informed about this plan until after it was already
17 in motion. Some of them even quit in protest rather than accept money from Lyft. The TV ad
18 campaign would not have been possible without this money from Lyft. The TV ads were also
19 the only campaign activity engaged in by the campaign committee, other than fundraising and
20 donating to the SMO (which also supported Johnson, among other candidates in Oakland and
21 Berkeley).

22 After Mayor Schaaf became involved with the committee, Bair met several times with
23 her, David, an OAKPAC representative, and Muir, to discuss each organization's support for
24 candidates in various council races. Subsequently, the Mayor continued to meet with Muir,
25 Bair, and David where evidence suggests that strategy, messaging and fundraising for the
26 campaign committee were discussed. These meetings occurred separately from the meetings
27

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1 that Bair was also holding with the YIMBY volunteers with whom he was working. Consultant
2 Muir also attended the weekly meetings with Mayor Schaaf. However, she did not attend the
3 separate meetings that Bair held with his fellow YIMBY volunteers, even though the latter
4 was the official committee.

5 Outside of the meetings, Mayor Schaaf was also in contact with Bair, Muir, David, and
6 others, via email and text message, concerning fundraising, strategy, and messaging. Muir
7 sent advance drafts of the campaign committee's television ads to Mayor Schaaf and others
8 for their feedback. Mayor Schaaf provided messaging sources that were directly incorporated
9 into the ads for the campaign committee. Mayor Schaaf also provided Muir with a copy of
10 polling results, with messaging that later appeared in a campaign committee TV ad for
11 Johnson. Mayor Schaaf also solicited more than 80% of the monetary contributions raised by
12 the campaign committee.

13 In sum, the evidence shows that the totality of Mayor Schaaf's participation rose to
14 the FPPC's definition of "significant influence" over the decisions and activities of the
15 campaign committee.

16 17 *The Campaign Committee Failed to Publicly Identify Itself as Candidate Controlled*

18
19 All committees must register with the appropriate filing officer²³ and file periodic
20 campaign forms itemizing their contributions and expenditures.²⁴ For committees that are
21 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
22 a candidate in an Oakland election, their filing officer is the PEC.²⁵ The forms they must file
23 (including any amendments to those forms) include:

24 _____
25 ²³ Cal. Govt. Code § 84101.

26 ²⁴ Cal. Govt. Code § 84215.

27 ²⁵ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).

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- the committee’s initial registration and termination statements (Form 410)²⁶
- its pre-election and semi-annual campaign statements (form 460)²⁷
- its 24-hour contribution reports (Form 497)²⁸, and
- its 24-hour independent expenditure reports (Form 496).²⁹

Each of those reports, including amendments, must include the committee’s full name.³⁰ For a candidate-controlled committee, its name must include the last name of its controlling candidate³¹ (e.g. “...a controlled committee of Mayor Smith”). The Form 410 and Form 460 must also be signed by the controlling candidate, under penalty of perjury.³²

Element 1: Candidate-controlled committee

The first element to establish whether the campaign committee failed to file campaign forms identifying Mayor Schaaf as their controlling candidate, is to show that Mayor Schaaf did indeed control the committee. As demonstrated above, the campaign committee was a

²⁶ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

²⁷ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

²⁸ Cal. Govt. Code § 84203; OMC §§ 3.12.240, 3.12.260.

²⁹ Cal. Govt Code §§ 84204(c), 84215(d); OMC §§ 3.12.240, 3.12.260.

³⁰ Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b) (full name required on late independent expenditure report).

³¹ Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

³² Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

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1 candidate-controlled committee of Mayor Schaaf, an Oakland elected official. It was therefore
2 required to file the above-listed forms with the PEC.

3
4 **Element 2: Failure to Disclose Candidate-Controlled Status on Forms**

5
6 The next element to establish whether the campaign committee failed to file
7 campaign forms identifying Mayor Schaaf as its controlling candidate is to demonstrate that
8 it filed forms that lacked the required disclosure particular to each form.

9
10 *Form 410*

11
12 A Form 410 must include the committee’s full name. For a candidate-controlled
13 committee, its name must include the last name of its controlling candidate (e.g. “...a
14 controlled committee of Mayor Smith”). The Form 410 must also expressly disclose that it is a
15 controlled committee and identify its controlling candidate. The controlling candidate must
16 sign the form under penalty of perjury.

17 Here, the campaign committee filed a Form 410 with the PEC on the following dates in
18 2020: September 10, September 18, September 22, September 25 (twice), and September 30
19 (twice). None of those forms disclosed that the campaign committee was a controlled
20 committee, identified Mayor Schaaf as its controlling candidate, or included Mayor Schaaf’s
21 last name in the committee name. Mayor Schaaf did not sign any of the forms.

22
23 *Form 460*

24
25 A Form 460 must include the committee’s full name. For a candidate-controlled
26 committee, its name must include the last name of its controlling candidate (e.g. “...a
27

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1 controlled committee of Mayor Smith”). The Form 460 must also expressly disclose that it is
2 a controlled committee, and identify its controlling candidate. The controlling candidate must
3 sign the form under penalty of perjury.

4 On the following dates, the campaign committee filed a Form 460 with the PEC, in
5 which it did not disclose that it was a controlled committee, did not identify Schaaf as its
6 controlling candidate, and failed to include Schaaf’s last name in its committee name:
7 September 24, 2020 (covering January 1 – September 19, 2020); October 22, 2020 (covering
8 September 20 – October 17, 2020); and January 30, 2021 (covering October 18 – December 31,
9 2020). Mayor Schaaf did not sign any of the forms.

10 11 Form 497

12
13 A Form 497 must include the committee’s full name. For a candidate-controlled
14 committee, its name must include the last name of its controlling candidate (e.g. “...a
15 controlled committee of Mayor Smith”).

16 On the following dates in 2020, the campaign committee filed a Form 497 with the PEC,
17 in which it failed to include Schaaf’s last name in its committee name: September 22,
18 September 30, October 1, October 2, October 14, October 15, October 19, October 21, October
19 22, and October 29.

20 21 Form 496

22
23 A Form 496 must include the committee’s full name. For a candidate-controlled
24 committee, its name must include the last name of its controlling candidate (e.g. “...a
25 controlled committee of Mayor Smith”).

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1 On the following dates in 2020, the campaign committee filed a Form 496 with the
2 PEC, in which it failed to include Mayor Schaaf's last name in its committee name: September
3 23 (twice), October 1 (twice), October 9, October 13 (twice), October 20, October 22, and
4 October 28.

The Campaign Committee Received Contributions Over the Legal Limit

5
6
7
8 In the 2020 election, candidate-controlled committees in Oakland were prohibited
9 from receiving contributions in excess of nine hundred dollars (\$900.00) from any person
10 other than broad-based committees such as labor union campaign committees, for which
11 the contribution limit was one-thousand eight hundred dollars (\$1,800.00).³³ The campaign
12 committee was a candidate-controlled committee that received contributions in excess of
13 this amount, as demonstrated immediately below.

Element 1: Candidate-controlled committee

14
15
16
17 The first element to establish whether a violation of the contribution limit took place,
18 is to show that the committee in question was candidate-controlled. As demonstrated above,
19 the campaign committee (Committee For An Affordable East Bay) was a candidate-controlled
20 committee of Mayor Schaaf.

21 When it comes to determining whether the committee in question received
22 contributions over the legal limit, it also becomes relevant to determine not just whether, but
23 when the committees became candidate-controlled. In other words, it must be determined
24 when Mayor Schaaf's influence over the committee became significant. This matters because

25
26
27 ³³ OMC §§ 3.12.050(B), 3.12.060(B).

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1 any contributions over \$900 received before Mayor Schaaf became the controlling candidate,
2 would not violate the contribution limit.

3 Based on the evidence, Mayor Schaaf's influence over the campaign committee
4 became significant at least as early as August 24, and as late as August 29, 2020. By that point,
5 the campaign committee had received only one contribution by late August 2020 (\$1,251.61
6 from Victoria Fierce for Alameda County Democratic Central Committee, on August 24, 2020).
7 It can be assumed that the decision to make this contribution was made at least one day
8 earlier than the date it was received (August 24); therefore it will be excluded from further
9 consideration of the contribution limit violation. All other contributions received by the
10 campaign committee were received in September 2020 and onward. For the sake of simplicity,
11 we shall place the date of the campaign committee's status as a candidate-controlled
12 committee as September 2, 2020 (when it first received total contributions in the amount of
13 \$2,000 or more, specifically through the in-kind contribution of polling data on September 2,
14 thereby qualifying as a committee).

15 16 **Element 2: Receiving contributions over the legal limit**

17
18 The next element to establish whether a violation of the contribution limit took place,
19 is to show that the committee received contributions in excess of \$900 during the period in
20 which it was candidate-controlled.

21 As demonstrated above, the campaign committee became a candidate-controlled
22 committee on or around September 1, 2020, when it first received contributions totaling
23 \$2,000 or more. The following table shows all contributions received by the campaign
24 committee in excess of \$900 on or after September 1, 2020:

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All Contributions in Excess of \$900 Received by the Campaign Committee as of 9/1/2020			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of \$900
Derreck Johnson For Oakland City Council 2020	09/02/2020	\$38,760 (in-kind of polling data)	\$37,860
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000	\$100
Cestra Butner	09/21/2020	\$5,000	\$4,100
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000	\$99,100
Edward Gerber	09/21/2020	\$1,000	\$100
Alvin Attles	09/22/2020	\$1,000	\$100
Erik Moore	09/22/2020	\$1,000	\$100
Charles Freiberg	09/29/2020	\$2,500	\$1,600
David Roe	09/29/2020	\$2,000	\$1,100
Martha Siegel	09/29/2020	\$10,000	\$9,100
Robert Spears	09/29/2020	\$2,500	\$1,600
Reuben, Junius & Rose LLP	09/30/2020	\$9,999	\$9,099
Alexander Riaz Taplin	10/13/2020	\$10,000	\$9,100
Adelin Cai	10/14/2020	\$8,000	\$7,100
Michael Yang	10/15/2020	\$7,000	\$6,100
Jennifer Pahlka	10/17/2020	\$2,500	\$1,600
William Witte	10/21/2020	\$7,500	\$6,600
Ron Conway ³⁴	10/22/2020	\$15,000	\$14,100

³⁴ This contributor also made a \$15,000 contribution to this committee on 10/16/2020, and the committee returned that contribution on 10/21/2020. We are choosing not to include the contribution of 10/16/2020 here, even though it technically qualifies as a contribution over the limit, because the contributor appears to have only intended to make a single contribution of \$15,000, and the committee ultimately only kept that amount.

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1	East Bay Rental Housing Association PAC	10/29/2020	\$3,000	\$2,100
2	Total = \$227,759			
3				
4	Total Over The Contribution Limit = \$210,659			
5				

6 In conclusion, the campaign committee was a candidate-controlled committee that
7 received contributions in excess of \$900. The campaign committee received a total of
8 \$210,659 over the legal limit.

9
10 *The Campaign Committee Received Contributions From City Contractors*

11
12 City contractors are prohibited from making a contribution, in any amount, to a
13 candidate-controlled committee during what is informally known as the blackout period.³⁵

14 A “city contractor” is defined as an individual or entity who contracts or proposes to
15 contract with or who amends or proposes to amend such a contract with the City for (among
16 other things) the rendition of services, for the furnishing of any material, supplies,
17 commodities or equipment to the City, or for purchasing or leasing any land or building from
18 the City, whenever the value of such transaction would require approval by the City Council.³⁶
19 “Services” means and includes labor, professional services, consulting services, or a
20 combination of services and materials, supplies, commodities and equipment which shall
21 include public works projects.³⁷

22 If the alleged contractor is a business entity, the restriction applies to all of the entity’s
23 principals, including, but not limited to, the entity’s board chair, president, chief executive

24 _____
25 ³⁵ OMC § 3.12.140(A).

26 ³⁶ OMC § 3.12.140(A).

27 ³⁷ OMC § 3.12.140(D).

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1 officer (CEO), and any individual who serves in the functional equivalent of one or more of
2 those positions.³⁸

3 The blackout period is any time between commencement of negotiations and one
4 hundred eighty (180) days after the completion or the termination of negotiations for such
5 contract.³⁹

6 7 **Element 1: Candidate-Controlled Committee**

8
9 The first required element to establish a violation of the contractor contribution ban,
10 is to show that the receiving committee (here, the campaign committee) was candidate-
11 controlled. It has already been established above that the PAC was a candidate-controlled
12 committee of Mayor Schaaf.

13 14 **Element 2: City Contractor**

15
16 The second required element to establish a violation of the contractor contribution
17 ban, is to show that the donors in question qualified as “contractors.”

18 The first donor in question is Lyft, Inc., which made a \$100,000 contribution to the
19 campaign committee on September 21, 2020, via its sponsored committee “Californians For
20 Independent Work.” At the time it made its donation, Lyft had submitted proposed terms for
21 the renegotiation of its bike-sharing contract with the City. That contract specifically
22 concerned Lyft’s administration of the bike-share program, as well as the equipment it would
23 provide in conjunction with that program. The City Council voted on the matter at its meeting
24 of November 10, 2020 (the Council rejected Lyft’s proposed terms). As such, Lyft was

25
26 ³⁸ OMC § 3.12.140(C).

27 ³⁹ OMC § 3.12.140(A).

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1 proposing to amend a contract with the City for the rendition of services and the furnishing
2 of material and equipment to the City, in an amount that required approval by the City Council.
3 It therefore qualified as a contractor and was prohibited from donating to the campaign
4 committee in this case during the blackout period.

5 The second donor in question is William Witte, who gave \$7,500 to the campaign
6 committee on October 21, 2020. At the time he made his donation, Witte was the part-owner
7 of a subsidiary company (95th & International Housing Partners, L.P.) that was seeking to
8 lease City-owned land in East Oakland for purposes of an affordable housing and commercial
9 retail development. (The City Council approved the proposed lease on September 15, 2020).
10 As such, Witte was the principal (Chairman and CEO) of an entity that was proposing to lease
11 City-owned land, in an amount that required approval by the City Council. He therefore
12 qualified as a contractor and was prohibited from donating to the PAC in this case during the
13 blackout period.

14 15 **Element 3: Blackout period**

16
17 The third and final required element to establish a violation of the contractor
18 contribution ban, is to show that the donations in question were made during the blackout
19 period, which is anytime after the commencement and negotiations up until six months after
20 the contract has been executed.

21 The first donor in question, Lyft, Inc., made its contribution on September 21, 2020, via
22 its sponsored committee “Californians For Independent Work.” At the time it made its
23 donation, Lyft had submitted proposed terms for the renegotiation of its bike-sharing
24 contract with the City. The City Council voted on the matter at its meeting of November 10,
25 2020 (the Council rejected Lyft’s proposed terms). As such, Lyft was engaged in contract
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1 negotiations with the City at the time it made its contribution to the controlled campaign
2 committee. Its contribution therefore fell within the blackout period.

3 The second donor in question, William Witte, made his contribution on October 21,
4 2020. At the time he made his donation, his company (95th & International Housing Partners,
5 L.P.) had just received City Council approval to negotiate a lease agreement with the City on
6 September 15, 2020. As such, Witte's company was engaged in contract negotiations with the
7 City at the time he made his contribution to the controlled campaign committee. His
8 contribution therefore fell within the blackout period.

9 In sum, both contributions at issue here – the \$100,000 contribution from Lyft, and the
10 \$7,500 contribution from Witte – violated the contractor contribution ban because they were
11 made to a candidate-controlled committee.

The PAC Coordinated an Expenditure with the Johnson Campaign

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14
15 An independent expenditure is an expenditure made by a committee in connection
16 with a communication (e.g. a television ad) which expressly advocates the election or defeat
17 of a clearly identified candidate, but which is not made to or at the behest of the affected
18 candidate or their campaign committee.⁴⁰

19 A committee wishing to make independent expenditures to support or oppose a
20 candidate (e.g., by running a TV ad or sending out a mailer) may not do so in coordination with
21 the candidate it is supporting. Any such expenditures made in coordination with the affected
22 candidate or their campaign committee must be reported as a contribution to that candidate,
23 and are subject to the contribution limit.⁴¹ This includes the cost of any coordinated
24 expenditures attacking that candidate's opponent.

25 ⁴⁰ Cal. Govt. Code § 82031.

26 ⁴¹ See 2 Cal. Code of Regulations § 18225.7(g) (coordinated expenditures shall be treated as contributions).

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1 State law defines coordination as any expenditure (e.g. payment for an ad) made “at
2 the behest of the affected candidate or committee.”⁴² “At the behest” is further defined as
3 being “made at the request, suggestion, or direction of, or in cooperation, arrangement,
4 consultation, concert or coordination with, the candidate or committee on whose behalf, or
5 for whose benefit the expenditure is made.”⁴³ It is also defined as an expenditure funding a
6 communication (e.g. an ad) that is created, produced or disseminated after the candidate or
7 their committee has made or participated in making any decision regarding (among other
8 things) the content of the communication.⁴⁴

9 There is a rebuttable presumption that an expenditure has been coordinated or made
10 at the behest of the affected candidate if the expenditure is based on information about the
11 candidate's or committee's campaign needs or plans that the candidate or committee
12 provided to the expending committee directly or indirectly, such as information concerning
13 campaign messaging or polling data.⁴⁵

14 Here, the campaign committee coordinated an expenditure with the Derreck Johnson
15 campaign, as demonstrated immediately below.

16 17 **Element 1: Expenditure for a communication expressly advocating the election or** 18 **defeat of a clearly identified candidate**

19
20 The expenditure in question was a television ad that unambiguously advocated the
21 election of Derreck Johnson and the defeat of Rebecca Kaplan. The total cost of the ad was
22 \$40,000, according to the PAC’s campaign finance reports.

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24 ⁴² Cal. Govt. Code § 82031.

25 ⁴³ 2 Cal. Code of Regulations § 18225.7(c)(1).

26 ⁴⁴ 2 Cal. Code of Regulations § 18225.7(c)(2)(A).

27 ⁴⁵ 2 Cal. Code of Regulations § 18225.7(d)(1)-(2).

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Element 2: Expenditure made at the behest of the affected candidate

Regarding the campaign committee’s television ad, the language and messaging of the ad re was substantially similar to the language of polling results and analysis that had been provided to the campaign committee by Michelle Hailey, Johnson’s campaign manager. There is a rebuttable presumption that an expenditure is made at the behest of the affected candidate when it is based on polling data provided by a candidate to the expending committee, which is the case here.

As such, the expenditure in question was coordinated with the Johnson campaign, and was therefore a contribution to Johnson.

*Failure to Report an In-Kind Contribution or Expenditure Relating to the Police Union Poll;
Exceeding the Contribution Limit*

All campaign committees must publicly and accurately report their contributions (i.e., the money they raised) and expenditures (i.e., how they spent their money). Contributions and expenditures of \$100 or more must be specifically itemized on the committee’s campaign finance reporting forms.⁴⁶ In addition, contributions of \$1,000 or more made to a candidate-controlled committee within 90 days of the election must be reported by the sender and the recipient within 24 hours on a Form 497.⁴⁷ This includes contributions by a “major donor” (a person/entity who makes contributions or expenditures totaling \$10,000 or more in a calendar

⁴⁶ Cal. Govt. Code § 82011.

⁴⁷ Cal. Govt. Code § 84203.

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1 year), who must also file a Form 461 in addition to the Form 497 (which must be filed within
2 24 hours).⁴⁸

3 In addition to reporting its monetary contributions and expenditures, a committee
4 must also report any non-monetary (in-kind) contributions it makes or receives.⁴⁹ In-kind
5 contributions include things such as the receipt of non-public polling data.⁵⁰ All contributions
6 (including in-kind contributions) received by a person acting as an agent of a committee shall
7 be reported promptly to the committee's treasurer or any of the treasurer's designated
8 agents. "Promptly" as used here means not later than the closing date of any campaign
9 statement the committee or candidate for whom the contribution is intended is required to
10 file.⁵¹

11 Here, the OPOA never reported contributing the polling results and analysis to the
12 Johnson campaign, despite the value of that contribution being well in excess of the \$10,000
13 threshold requiring the OPOA to file as a major donor. The contribution also occurred within
14 the 90 days before the relevant election, thereby triggering the 24-hour reporting
15 requirement; but the OPOA did not file a Form 497 as required. This contribution (\$38,760)
16 was well in excess of the \$900 limit for contributions from the OPOA to a candidate-controlled
17 committee.⁵²

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20 ⁴⁸ See Cal. Govt. Code sections 82013; 82036; 82046; 84200(b); 84203; 84215(d).

21 ⁴⁹ Cal. Govt. Code § 82015.

22 ⁵⁰ Cal. Govt. Code § 82015; FPPC Winkler advice letter, No. A-86-035.

23 ⁵¹ Cal. Govt. Code § 84306.

24 ⁵² While the OPOA's associated campaign committee qualified as a broad-based committee and therefore had a
25 higher contribution limit (\$1,800), this contribution came from the OPOA itself (not its campaign committee).
26 The OPOA did not qualify as a broad-based committee and therefore was subject to the \$900 limit. See OMC
27 section 3.12.140(A) for the definition of a "broad-based committee."

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1 For its part, the campaign committee never reported receiving the contribution of
2 polling results and analysis. This was despite the knowledge of key campaign committee
3 personnel about this contribution. And while it did report making the television ad opposing
4 Rebecca Kaplan, it reported it as an independent expenditure rather than as an in-kind
5 contribution to the Johnson campaign (as coordinated expenditures are required to be
6 reported). The contribution also occurred within the 90 days before the relevant election,
7 thereby triggering the 24-hour reporting requirement; but the campaign committee did not
8 file a Form 497 as required (it instead filed a Form 496, as is required for “independent
9 expenditures”). This contribution (\$40,000) was well in excess of the \$900 limit.

Liability

12 Any person who violates any provision of the Oakland Campaign Reform Act, who
13 causes any other person to violate any provision of this Act, or who aids and abets any other
14 person in the violation of the Act, may be found liable for an administrative violation by the
15 PEC. If two or more persons are responsible for any violation, they shall be jointly and severally
16 liable.⁵³

17 "Person" means an individual, proprietorship, firm, partnership, joint venture,
18 syndicate, business, trust, company, corporation, association, committee, and any other
19 organization or group of persons acting in concert.⁵⁴

20 The principal officer of a committee is any individual primarily responsible for
21 approving the political activity of the committee including, but not limited to authorizing the
22 content of the communications made by the committee, the committee’s contributions or
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25
26 ⁵³ OMC 3.12.270(C)

27 ⁵⁴ OMC 3.12.040(J)

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1 expenditures, or the committee's campaign strategy. If more than one individual shares in the
2 primary responsibility for those activities, each such individual is a principal officer.⁵⁵

3 In addition to a committee itself, persons who qualify as principal officers of the
4 committee are jointly and severally liable for violations by the committee. For committees
5 controlled by a candidate, the candidate and the committee's treasurers are deemed to be
6 principal officers.⁵⁶ In addition, an agent acting on behalf of a person is jointly and severally
7 liable for a violation that arises out of the agent's actions. There is a rebuttable presumption
8 that "agents" of a committee include any current or former officer of the committee; any
9 person who has received compensation or reimbursement from the committee; and any
10 person who holds or has held a position within the committee organization that reasonably
11 appears to be able to authorize expenditures for committee activities.⁵⁷

12 "Aiding and abetting" is not itself a violation but rather a legal rule that allows the
13 Enforcement Unit to charge anyone who participated in the underlying violation, even if they
14 were not the direct perpetrator. The test of whether a person aided or abetted in the
15 commission of a violation is whether that person in any way, directly or indirectly, aided the
16 perpetrator(s) by acts or encouraged the perpetrator(s) by words or gestures, instigated or
17 advised the commission of the violation, or was present for the purpose of assisting in its
18 commission.⁵⁸ An aider and abettor must have knowledge of the illegal purpose of the
19 perpetrator(s) and have intentionally assisted them in the violation. The aider and abettor is
20 not only liable for the particular violation that to their knowledge their confederates were

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23 ⁵⁵ 2 Cal. Code of Regulations § 18402.1.

24 ⁵⁶ OMC 3.12.230(A)

25 ⁵⁷ OMC 3.12.230(B)

26 ⁵⁸ *People v. Villa*, 156 Cal. App. 2d 128, 133, 134 (1957) (applying California Penal Code section 31, which contains a
27 similar "aiding and abetting" provision to that found under OMC 3.12.270(C)).

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1 contemplating committing, but they are also liable for the natural and reasonable or probable
2 consequences of any act that they knowingly aided or encouraged.⁵⁹

VIOLATIONS:

COMMITTEE FOR AN AFFORDABLE EAST BAY; ERNEST BROWN; MAYOR SCHAAF;

JONATHAN BAIR

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8 Respondents, Committee For An Affordable East Bay; its treasurer (Ernest Brown);
9 Mayor Schaaf (its controlling candidate), and Jonathan Bair (its principal officer, who also
10 caused, aided and/or abetted the violations), violated the following Oakland Municipal
11 Code(s):

Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms

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15 Respondents collectively organized a campaign committee, “Committee For An
16 Affordable East Bay,” at a time when Mayor Schaaf’s participation amounted to “significant
17 influence” over the committee.

18 On the following dates, Respondent committee filed a Statement of Organization
19 (“Form 410”) with the PEC, in which it did not disclose that it was a controlled committee, did
20 not identify Schaaf as its controlling candidate, and failed to include Schaaf’s last name in its
21 committee name. Schaaf did not sign any of the forms.

Form 410s Filed by the PAC While Mayor Schaaf Was Controlling Candidate	
Date Filed	Committee Name Given on Form
September 10, 2020	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

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27 ⁵⁹ Id. at 134.

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1 2	September 18, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
3 4	September 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
5 6	September 25, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
7 8	September 25, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
9 10	September 30, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020, Sponsored by Lyft, Inc.”
11 12	September 30, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

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As the controlling candidate, Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Schaaf was required to be identified as the controlling candidate on the committee’s Form 410, and she was required to sign the committee’s Form 410.

On the following dates, Respondent committee filed a Recipient Committee Campaign Statement (“Form 460”) with the PEC, in which it gave its name as “Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.” It failed to include Schaaf’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Schaaf as its controlling candidate. Schaaf did not sign any of the forms as its controlling candidate:

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Form 460s Filed by the Campaign Committee While Mayor Schaaf Was Controlling Candidate		
Date Filed	Dates Covered	Committee Name Given on Form
September 24, 2020	January 1 – September 19, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
October 22, 2020	September 20 – October 17, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”
January 30, 2021	October 18 – December 31, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”

As the controlling candidate, Schaaf’s last name was required to be included as part of the committee’s name for all purposes. Also, Schaaf was required to be identified as the controlling candidate on the committee’s Form 460, and she was required to sign the committee’s Form 460.

On the following dates, Respondent committee filed a Contribution Report (“Form 497”) with the PEC, in which it failed to include Schaaf’s last name in its committee name:

Form 497s Filed by the Campaign Committee While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 22, 2020	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$109,000 in contributions received
September 30, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$17,000 in contributions received
October 1, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and	\$9,999 in contributions received

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1		opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
2		“Committee for an Affordable East Bay	\$2,000 in contributions
3	October 2,	supporting Derreck Johnson and	received
4	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
5		“Committee for an Affordable East Bay	\$10,000 in contributions
6	October 14,	supporting Derreck Johnson and	received
7	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
8		“Committee for an Affordable East Bay	\$15,000 in contributions
9	October 15,	supporting Derreck Johnson and	received
10	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
11		“Committee for an Affordable East Bay	\$15,000 in contributions
12	October 19,	supporting Derreck Johnson and	received
13	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
14		“Committee for an Affordable East Bay	\$7,500 in contributions
15	October 21,	supporting Derreck Johnson and	received
16	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
17		“Committee for an Affordable East Bay	\$15,000 in contributions
18	October 22,	supporting Derreck Johnson and	received
19	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	
20		“Committee for an Affordable East Bay	\$3,000 in contributions
21	October 29,	supporting Derreck Johnson and	received
22	2020	opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	

23
24 As the controlling candidate, Schaaf’s last name was required to be included as part of
25 the committee’s name for all purposes.
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1 On the following dates, Respondent committee filed an Independent Expenditure
2 Report (“Form 496”) with the PEC, in which it failed to include Schaaf’s last name in its
3 committee name:

Form 496s Filed by the Campaign Committee While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
September 23, 2020 (1)	“Oaklanders for more housing, supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$16,000 of TV ads opposing Rebecca Kaplan \$109,251.61 in contributions received
September 23, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$64,000 of TV ads supporting Derreck Johnson
October 1, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$4,000 of digital ads opposing Rebecca Kaplan
October 1, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$16,000 of digital ads supporting Derreck Johnson \$26,999 in contributions received
October 9, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	(amendment to above) \$25,000 of digital ads and production supporting Derreck Johnson \$26,999 in contributions received
October 13, 2020 (1)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$8,000 of digital ads supporting Derreck Johnson

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1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	October 13, 2020 (2)	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$2,000 of digital ads opposing Rebecca Kaplan
	October 20, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$7,100 slate mailer supporting Derreck Johnson \$42,500 in contributions received
	October 22, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$29,000 slate mailer supporting Derreck Johnson \$22,500 in contributions received \$15,000 in contributions returned
	October 28, 2020	“Committee for an Affordable East Bay supporting Derreck Johnson and opposing Rebecca Kaplan for Oakland City Council At-Large 2020.”	\$10,600 slate mailer opposing Rebecca Kaplan

Once it became a candidate-controlled committee, Schaaf’s last name was required to be included as part of the committee’s name for all purposes.

In this way, Respondents violated Oakland Municipal Code (OMC) section 3.12.240, incorporating Cal. Govt. Code sections 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and 2 California Code of Regulations sections 18402(c)(1) and 18410(a)(13).

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VIOLATIONS:

COMMITTEE FOR AN AFFORDABLE EAST BAY

Count 2: Receiving Contributions in an Amount Over the Legal Limit (Monetary Contributions)

Respondent committee was a candidate-controlled committee subject to the local contribution limit. On the following dates, Respondent committee received monetary contributions in excess of \$900, which was the contribution limit for candidate-controlled committees in 2020, and in excess of \$1,800, which was the contribution limit for broad-based political committees:

All Monetary Contributions in Excess of \$900 received by The Committee For An Affordable East Bay While it Was a Controlled Committee			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of \$900
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000	\$100
Cestra Butner	09/21/2020	\$5,000	\$4,100
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000	\$99,100
Edward Gerber	09/21/2020	\$1,000	\$100
Alvin Attles	09/22/2020	\$1,000	\$100
Erik Moore	09/22/2020	\$1,000	\$100
Charles Freiberg	09/29/2020	\$2,500	\$1,600
David Roe	09/29/2020	\$2,000	\$1,100
Martha Siegel	09/29/2020	\$10,000	\$9,100
Robert Spears	09/29/2020	\$2,500	\$1,600
Reuben, Junius & Rose LLP	09/30/2020	\$9,999	\$9,099
Alexander Riaz Taplin	10/13/2020	\$10,000	\$9,100
Adelin Cai	10/14/2020	\$8,000	\$7,100
Michael Yang	10/15/2020	\$7,000	\$6,100
Jennifer Pahlka	10/17/2020	\$2,500	\$1,600

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1	William Witte	10/21/2020	\$7,500	\$6,600
2	Ron Conway ⁶⁰	10/22/2020	\$15,000	\$14,100
3	East Bay Rental Housing Association PAC	10/29/2020	\$3,000	\$1,200
4	Total Amount of Contributions Received = \$188,999			
5	Total Over The Contribution Limit = \$171,899			

6
7 As a controlled committee, Respondent committee was prohibited from receiving
8 contributions from a single source in excess of \$900 during the 2020 election, except for
9 broad-based political committees for which the contribution limit was \$1,800.

10 In this way, Respondent violated OMC sections 3.12.050 and 3.12.060.

11 12 **Count 3: Contribution From a City Contractor to a Candidate-Controlled Committee**

13
14 In late August and early September, 2020, Respondent committee solicited and
15 facilitated a contribution from a sponsored committee of a City contractor (Californians for
16 Independent Work, Sponsored by Lyft, Inc.) to a candidate-controlled committee (Committee
17 For An Affordable East Bay Supporting Derreck Johnson and Opposing Rebecca Kaplan for
18 Oakland City Council At-Large 2020) in the amount of \$100,000.

19 In this way, Respondent committee caused and/or aided and abetted a violation of
20 OMC section 3.12.140(A).

21
22
23 _____
24 ⁶⁰ This contributor also made a \$15,000 contribution to this committee on 10/16/2020, and the committee
25 returned that contribution on 10/21/2020. We are choosing not to include the contribution of 10/16/2020 here,
26 even though it technically qualifies as a contribution over the limit, because the contributor appears to have
27 only intended to make a single contribution of \$15,000, and the committee ultimately only kept that amount.

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Count 4: Contribution From a City Contractor to a Candidate-Controlled Committee

In October 2020, Respondent committee solicited a contribution from William Witte to a candidate-controlled committee (Committee For An Affordable East Bay Supporting Derreck Johnson and Opposing Rebecca Kaplan for Oakland City Council At-Large 2020) in the amount of \$7,500. The contribution was made on October 21, 2020.

In this way, Respondent committee caused and/or aided and abetted a violation of OMC § 3.12.140(A).

VIOLATIONS:

ERNEST BROWN, MAYOR SCHAAF, JONATHAN BAIR

Respondents Ernest Brown (treasurer), Mayor Schaaf (controlling candidate), and Jonathan Bair (principal officer, who also caused and/or aided-and-abetted the violations) violated the following Oakland Municipal Code(s):

Count 5: Receiving Contributions in an Amount Over the Legal Limit (Monetary Contributions) and Contribution From a City Contractor to a Candidate-Controlled Committee

Respondents created and/or operated a candidate-controlled committee subject to the local contribution limit. On the following dates, Respondents' committee received monetary contributions in excess of \$900, which was the contribution limit for candidate-controlled committees in 2020, and in excess of \$1,800, which was the contribution limit for broad-based political committees:

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All Monetary Contributions in Excess of \$900 received by The Committee For An Affordable East Bay While it Was a Controlled Committee			
Donor	Date Received	Total Amount of Contribution	Amount of Contribution In Excess of \$900
Bay Area Housing Advocacy Coalition	09/21/2020	\$1,000	\$100
Cestra Butner	09/21/2020	\$5,000	\$4,100
Californians for Independent Work, Sponsored by Lyft, Inc.	09/21/2020	\$100,000	\$99,100
Edward Gerber	09/21/2020	\$1,000	\$100
Alvin Attles	09/22/2020	\$1,000	\$100
Erik Moore	09/22/2020	\$1,000	\$100
Charles Freiberg	09/29/2020	\$2,500	\$1,600
David Roe	09/29/2020	\$2,000	\$1,100
Martha Siegel	09/29/2020	\$10,000	\$9,100
Robert Spears	09/29/2020	\$2,500	\$1,600
Reuben, Junius & Rose LLP	09/30/2020	\$9,999	\$9,099
Alexander Riaz Taplin	10/13/2020	\$10,000	\$9,100
Adelin Cai	10/14/2020	\$8,000	\$7,100
Michael Yang	10/15/2020	\$7,000	\$6,100
Jennifer Pahlka	10/17/2020	\$2,500	\$1,600
William Witte	10/21/2020	\$7,500	\$6,600
Ron Conway ⁶¹	10/22/2020	\$15,000	\$14,100
East Bay Rental Housing Association PAC	10/29/2020	\$3,000	\$1,200
Total Amount of Contributions Received = \$188,999			
Total Over The Contribution Limit = \$171,899			

⁶¹ This contributor also made a \$15,000 contribution to this committee on 10/16/2020, and the committee returned that contribution on 10/21/2020. We are choosing not to include the contribution of 10/16/2020 here, even though it technically qualifies as a contribution over the limit, because the contributor appears to have only intended to make a single contribution of \$15,000, and the committee ultimately only kept that amount.

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1 Respondents also created and/or operated a candidate-controlled committee subject
2 to the local ban on contributions by City contractors to candidate-controlled committees.
3 Respondents' committee received the following contributions from City contractors:
4 \$100,000 from Californians for Independent Work, Sponsored by Lyft, Inc. (a sponsored
5 committee of a City contractor) on September 21, and \$7,500 from William Witte (principal of
6 a City contractor) on October 21, 2020.

7 In this way, Respondents violated OMC sections 3.12.050, 3.12.060, and 3.12.140(A).

8
9 **VIOLATIONS:**

10 **OAKLAND POLICE OFFICERS ASSOCIATION**

11
12 Respondent Oakland Police Officers Association violated the following Oakland
13 Municipal Code(s):

14
15 **Count 6: Making a Contribution Over the Legal Limit**

16
17 On or around September 1, 2020, the OPOA made an in-kind contribution of polling
18 results and analysis totaling \$38,760.00 to the campaign committee "Derreck Johnson For
19 City Council 2020," which was a candidate-controlled committee.

20 Respondent was prohibited from making contributions in excess of \$900 to a
21 candidate-controlled committee during the 2020 election. This contribution described above
22 exceeded the contribution limit by \$37,860.00

23 In this way, Respondent violated OMC section 3.12.050.

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Count 7: Failure to File a Major Donor Statement & Late Contribution Report

On or around September 1, 2020, the OPOA made an in-kind contribution of polling results and analysis totaling \$38,760.00 to the campaign committee “Derreck Johnson For City Council 2020.” OPOA was required to report this contribution on a Form 497 within 24 hours, as well as on a Form 461; but did not do so.

In this way, Respondent violated OMC section 3.12.240, incorporating Cal. Govt. Code sections 82013; 82036; 82046; 84200(b); 84203; 84215(d).

VIOLATIONS:

COMMITTEE FOR AN AFFORDABLE EAST BAY

Respondent, Committee For An Affordable East Bay, violated the following Oakland Municipal Code(s):

Count 8: Receiving a Contribution in an Amount Over the Legal Limit (Police Union Poll) & Failure to Report Receiving a Contribution (Police Union Poll)

On or around September 2, 2020, Respondent committee received an in-kind contribution of \$38,760.00, in the form of polling results and analysis, which was in excess of the \$900 contribution limit for candidate-controlled committees in 2020, in the amount of \$37,860, from the committee “Derreck Johnson For City Council 2020.”

In addition, Respondent did not file a late contribution report (Form 497) regarding this contribution. As a primarily-formed and candidate-controlled committee, Respondent was required to report this contribution within 24 hours by filing a Form 497.

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1 Respondent was also required to report this contribution on their Form 460 covering
2 July 1, 2020 – September 19, 2020, but did not.

3 In this way, Respondent violated OMC sections 3.12.050 and 3.12.240, incorporating
4 Cal. Govt. Code sections 84203, 84211, 84215.

5
6 **Count 9: Making a Contribution Over the Legal Limit (TV Ad Supporting Johnson and**
7 **Opposing Kaplan) & Failure to Report Making a Contribution (TV Ad Supporting**
8 **Johnson and Opposing Kaplan)**

9
10 On or around September 23, 2020, Respondent committee published a television
11 advertisement supporting Derreck Johnson and opposing Rebecca Kaplan. The total cost of
12 the ad was \$40,000.

13 Respondent committee was prohibited from making contributions in excess of \$900
14 to a candidate-controlled committee during the 2020 election. This contribution described
15 above exceeded the contribution limit by \$39,100.

16 Respondent committee was required to report the cost of the ad as an in-kind
17 contribution to the Johnson campaign, on a Contribution Report (Form 497). Instead,
18 Respondent committee filed a pair of Independent Expenditure Reports (Form 496) reporting
19 the ad as an IE supporting Johnson (in the amount of \$24,000, excluding the cost of a second
20 television ad supporting Johnson which it was reporting on the same form) and opposing
21 Kaplan (in the amount of \$16,000).

22 Respondent committee was also required to report this contribution on its Form 460
23 covering September 20, 2020 – October 17, 2020. On October 22, 2020, Respondent
24 committee filed a Form 460 covering September 20, 2020 – October 17, 2020. That report did
25 not include the contribution described above. Instead, it reported the ad as an independent
26 expenditure.

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1 In this way, Respondent committee violated OMC sections 3.12.050 and 3.12.240,
2 incorporating Cal. Govt. Code sections 84203, 84211, 84215.

3
4 **VIOLATIONS:**

5 **BARBARA LESLIE; MAYOR SCHAAF**

6
7 Respondents, Mayor Schaaf (controlling candidate) and Barbara Leslie (who caused
8 the violation), violated the following Oakland Municipal Code(s):

9
10 **Count 10: Receiving a Contribution in an Amount Over the Legal Limit (Police Union**
11 **Poll) & Failure to Report Receiving a Contribution (Police Union Poll) (No Contest)**

12
13 On or around September 2, 2020, the campaign committee received an in-kind
14 contribution of \$38,760.00, in the form of polling results and analysis, which was in excess of
15 the \$900 contribution limit for candidate-controlled committees in 2020, in the amount of
16 \$37,860, via the committee “Derreck Johnson For City Council 2020.”

17 In addition, the campaign committee did not file a late contribution report (Form 497)
18 regarding this contribution. As a primarily-formed and candidate-controlled committee, the
19 campaign committee was required to report this contribution within 24 hours by filing a Form
20 497. The campaign committee was also required to report this contribution on their Form 460
21 covering July 1, 2020 – September 19, 2020, but did not.

22 In this way, Respondents violated OMC sections 3.12.050 and 3.12.240, incorporating
23 Cal. Govt. Code sections 84203, 84211, 84215.

24 Respondents are not admitting liability to this count but are agreeing to settle (no
25 contest).

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PENALTY ANALYSIS

Oakland’s Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms	1	\$1,000	\$5,000
Making or Receiving Contributions Over The Legal Limit	2, 5-6, 8-10	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.
Failure to Report Making or Receiving a Contribution	7-10	\$1,000, plus 1% of the all financial activity not timely reported	\$5,000 or three times the amount not properly reported, whichever is greater
Contractor Contribution Prohibition	3-4	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.⁶²

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following

⁶² OMC § 3.12.270(C).

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1 factors:

- 2
- 3 1. The seriousness of the violation, including, but not limited to, the extent of the public
- 4 impact or harm;
- 5 2. The presence or absence of any intention to conceal, deceive, or mislead;
- 6 3. Whether the violation was deliberate, negligent, or inadvertent;
- 7 4. Whether the violation was isolated or part of a pattern;
- 8 5. Whether the respondent has a prior record of violations and/or demonstrated
- 9 knowledge of the rule or requirement at issue;
- 10 6. The extent to which the respondent voluntarily and quickly took the steps necessary
- 11 to cure the violation (either independently or after contact from the PEC);
- 12 7. The degree to which the respondent cooperated with the PEC's enforcement activity
- 13 in a timely manner;
- 14 8. The relative experience of the respondent;
- 15 9. The respondent's ability to pay the contemplated penalty without suffering undue
- 16 financial hardship. This factor shall not apply to the portion of a penalty that
- 17 constitutes a repayment or disgorgement of the unlawful amount, except in cases of
- 18 extreme financial hardship.
- 19

20 The PEC has broad discretion in evaluating a violation and determining the appropriate
21 penalty based on the totality of circumstances. This list of factors to consider is not an
22 exhaustive list, but rather a sampling of factors that could be considered. There is no
23 requirement or intention that each factor – or any specific number of factors - be present in
24 an enforcement action when determining a penalty. As such, the ability or inability to prove
25 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an
26 enforcement action or impose a penalty.

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1 The circumstances of the Respondents' conduct establish the following aggravating
2 and mitigating factors that should be taken into account when determining an appropriate
3 penalty in this case.

4 5 *Analysis of the Present Case*

6
7 The Respondents' violations in this case are serious. The strict rules applying to
8 candidate-controlled committees go directly to the very purpose of campaign finance law.
9 Candidates for office, and particularly high-ranking officeholders such as the Mayor, have a
10 disproportionate ability to bring in campaign money. This includes donations from sources
11 whose business interests could benefit from being in a candidate or official's good favor, even
12 if that relationship never rises to a formal quid pro quo. Here, there is no evidence of any quid
13 pro quo. However, the contribution restrictions serve to reduce the actuality or appearance
14 of corruption, and (in the case of officeholders) to reduce the unfair fundraising benefits that
15 can come with political power.

16 In this case, Mayor Schaaf used the fundraising power that came with her office. This
17 is evidenced by her stating to Jonathan Bair that she could raise enough money to make such
18 a campaign viable. She was also able to personally contact the president of Lyft and
19 successfully solicit a \$100,000 contribution.

20 In an interview with PEC staff, Mayor Schaaf conveyed that she believed at the time
21 that she had an understanding of the rules concerning what makes a committee "candidate-
22 controlled." Specifically, she said the rules would have required her to only have a "supporting
23 role" and "limited involvement" on the committee, and "being more responsive or reactive
24 to requests that people make for your help." Mayor Schaaf informed the PEC that she did
25 receive advice from a consultant in an earlier campaign (Doug Linney) regarding what he
26 believed his attorneys had told him regarding permissible activities that would not constitute
27

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1 “significant activity.” However, the advice as conveyed by Mr. Linney was not accurate and
2 articulated a greater level of permissible activity than that permitted under FPPC Advice
3 Letters. Mayor Schaaf guided her behavior based on this erroneous information.

4 To be clear, candidates and officeholders are allowed to fundraise for existing
5 committees, including independent expenditure committees. What they cannot do is create
6 or repurpose an existing committee, and then exercise significant influence over the
7 committee. Here, Mayor Schaaf was negligent in determining her obligations to avoid
8 “significantly influencing” the campaign committee, resulting in the listed violations related
9 to this influence.

10 In further mitigation, Mayor Schaaf publicly reported soliciting both the Lyft and the
11 Witte contractor contributions during the time of the events in question. The public therefore
12 at least knew that Mayor Schaaf was affiliated with the campaign committee in some way,
13 even if they were unaware of the full extent of her role. This indicates that Mayor Schaaf was
14 not trying to obscure her connection to the campaign committee, though it did not satisfy all
15 of her legal obligations with regard to disclosing the extent of her involvement.

16 As for the other individual respondents, while it is understandable that relatively
17 inexperienced activists such as Bair and Brown might defer to more experienced players such
18 as Mayor Schaaf, they were still aware of the Mayor’s outsized role with the campaign
19 committee and took no steps to mitigate it or raise concerns. Even after several original
20 YIMBY members of the group quit after learning of the Lyft contribution, neither Bair nor
21 Brown took the opportunity to reassess the situation or ask questions about how this new
22 situation might affect their legal obligations.

23 Barbara Leslie was also generally aware of Mayor Schaaf’s role with the campaign
24 committee when she provided the OPOA polling results to her, and had enough prior polling
25 experience to know that there might be legal issues with receiving and passing on non-public
26 polling data. In mitigation, Leslie informed the PEC that she believed that the poll was public,
27

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1 given that she received it from a candidate's campaign, and did not intend to be making a
2 contribution to the campaign committee when she gave the poll results to Mayor Schaaf.

3 As for the OPOA, it is also an experienced political player and therefore should have
4 known that it could not provide private polling results to a candidate without exceeding the
5 contribution limit and incurring reporting obligations. The OPOA is a significant actor in City
6 operations, making full reporting of its campaign activity and compliance with the
7 contribution limit a matter of significant public interest.

8 As a result of respondents' actions, the Johnson campaign benefited from an
9 expensive ad campaign (funded in part by City contractors). Voters were also not informed
10 that this campaign was significantly influenced by their City's mayor and supported in part by
11 the police union. Instead, the campaign committee was presented to the public and most
12 donors as an effort run solely by YIMBY pro-housing activists, which was misleading to the
13 public.

14 In further aggravation, the Mayor's actions could be considered as part of a pattern.
15 This is evidenced by PEC cases #19-01 and #22-09, concerning similar activity in the 2018
16 election, and which are also being brought to the PEC at the same time as this case. However,
17 the Mayor contends she was acting under the same mistaken advice provided to her by Mr.
18 Linney in these matters. The Mayor has also been involved in a prior PEC case (though not as
19 a respondent) involving contributions from a City contractor to one of her committees (PEC
20 #18-19).

21 In mitigation, the Mayor and other respondents were forthcoming when providing
22 documents to PEC investigators. This included documents that evidenced the violations in this
23 case. The Mayor and other witnesses also voluntarily provided interviews to PEC staff without
24 a subpoena. Schaaf's actions appear to have been motivated by a misunderstanding of the
25 law.

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1 None of the respondents in this case have prior PEC or FPPC violations in which they
2 were named individually. Finally, respondents are now admitting liability to most of the
3 violations in this agreement and/or agreeing to settle, thereby taking responsibility for what
4 occurred and working with the PEC to redress any harm caused.

5 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
6 finances of Mayor Schaaf, Bair, Brown, and Leslie, and found that the penalties contemplated
7 in this settlement agreement are sufficiently large to act as a deterrent to future violations,
8 without being so large as to cause an undue financial burden for them. PEC staff has also
9 reviewed the finances of the OPOA and determined that the penalty contemplated here is
10 sufficiently large to act as a deterrent to future violations, without being so large as to cause
11 an undue financial burden for the OPOA in light of recent changes to its overall revenue and
12 expenses that would make a higher penalty unreasonably burdensome.

13 It should also be noted that other parties to the violations in this case have already
14 paid or are seeking to pay separate penalties. Lyft paid \$50,000 (see PEC case # 20-41.2) and
15 William Witte is proposing to pay \$2,500 (see PEC case # 20-41.3). These amounts should be
16 taken into account when determining if the penalties proposed in this agreement are
17 satisfactory to the Commission.

18 Based on the foregoing, PEC staff and Respondents recommends that the Commission
19 approve their stipulated agreement and impose the following financial penalties:

20 21 **RECOMMENDED PENALTIES**

22
23 In light of the above factors, PEC staff and respondents have mutually agreed upon
24 the following penalties and recommend that the Commission vote to approve them:

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Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Failure to Disclose Controlling Candidate Relationship on Campaign Forms	Committee For An Affordable East Bay; Ernest Brown; Mayor Schaaf; Jonathan Bair	-	\$5,000
2	Receiving Contributions in an Amount Over The Legal Limit (Monetary Contributions)	Committee For An Affordable East Bay	\$171,899	\$87,450
3	Contractor Contribution Prohibition	Committee For An Affordable East Bay	\$100,000	\$50,000
4	Contractor Contribution Prohibition	Committee For An Affordable East Bay	\$7,500	\$5,000
5	Receiving Contributions in an Amount Over The Legal Limit (Monetary Contributions) & Contractor Contribution Prohibition	Ernest Brown, Mayor Schaaf, Jonathan Bair	(Same as Counts 2-4 above)	\$5,000
6	Making a Contribution Over The Legal Limit (Poll Results)	Oakland Police Officers Association	\$37,860	\$18,930
7	Failure to File a Major Donor Statement	Oakland Police Officers Association	\$38,760	\$5,000
8	Receiving a Contribution in an Amount Over The Legal Limit (Poll Results) & Failure to Report Receiving a Contribution	Committee For An Affordable East Bay	\$38,760 (\$37,860 over limit)	\$38,760
9	Making a Contribution in an Amount Over The Legal Limit (TV ad) &	Committee For An Affordable East Bay	\$40,000	\$45,000

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	Failure to Report Making a Contribution			
10	Receiving a Contribution in an Amount Over The Legal Limit (Poll Results) & Failure to Report Receiving a Contribution	Barbara Leslie; Mayor Schaaf	(Same as Count 8 above)	\$7,000 no contest/without admitting liability

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1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 20-41.3

14 WILLIAM WITTE,

) **STIPULATION, DECISION AND**
) **ORDER**

15 Respondent.
16
17
18
19

20 **STIPULATION**

21
22 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
23 respondent WILLIAM WITTE, agree as follows:

- 24
25 1. This Stipulation will be submitted for consideration by the City of Oakland Public
26 Ethics Commission (Commission) at its next regularly scheduled meeting;
27 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
28 the final resolution to this matter without the necessity of holding an administrative

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1 hearing to determine the liability of, or penalties and/or other remedies to be imposed
2 upon, Respondent;

- 3 3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland
4 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
5 Procedures, and all other sources of procedural rights applicable to this PEC
6 enforcement action. These procedural rights include, but are not limited to, the right to
7 personally appear at an administrative hearing held in this matter, to be represented by
8 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
9 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 10 4. Respondent represents that they have accurately furnished to the Commission all
11 discoverable information and documents that are relevant to the Commission's
12 determination of a fair and comprehensive resolution to this matter;
- 13 5. Upon approval of this Stipulation and full performance of the terms outlined in this
14 Stipulation, the Commission will take no future action against Respondent, including
15 any officer, director, employee, or agent of Respondent, regarding the activities
16 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
17 complete resolution of all claims by the Commission against Respondent, including any
18 officer, director, employee, or agent of Respondent, related to such activities and any
19 associated allegations;
- 20 6. If Respondent fail to comply with the terms of this Stipulation, then the Commission
21 may reopen this matter and prosecute Respondent to the full extent permitted by law,
22 except that the Statute of Limitations shall be waived for any violations that were not
23 discoverable or actionable by the Commission due to non-compliance with any
24 provision of this Stipulation;
- 25 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
26 does not preclude the Commission or its staff from cooperating with, or assisting any
27 other government agency with regard to this matter, or any other matter related to it;
28 except that neither the Commission nor its staff shall refer this matter, or any other

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1 matter related to it, as pertains to any alleged violation by Respondents, to any other
2 government agency;

3 8. Respondent admits no violation of, nor any liability under, the provision(s) of the
4 Oakland Municipal Code specified in Exhibit #1 to this Stipulation, nor any other
5 provision(s) of the Oakland Municipal Code. Respondent nevertheless seeks to resolve
6 this matter via this Stipulation and is not contesting the allegation(s) described in
7 Exhibit #1 to this Stipulation;

8 9. The Commission will impose upon Respondent the penalties and/or other remedies
9 specified in Exhibit #1 to this Stipulation;

10 10. Respondent will pay the amount specified in Exhibit #1 to this Stipulation to the City of
11 Oakland general fund within sixty (60) calendar days of the date on which the
12 Commission votes to accept this Stipulation. Commission staff may extend the payment
13 deadline at its discretion;

14 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
15 void, and within fifteen business days after the Commission meeting at which the
16 Stipulation is rejected, any payments already tendered by Respondent in connection
17 with this Stipulation will be reimbursed to them;

18 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
19 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
20 and neither any member of the Commission, nor the Executive Director or any member
21 of PEC staff, shall be disqualified from that hearing because of prior consideration of
22 this Stipulation;

23 13. This Stipulation may not be amended orally. Any amendment or modification to this
24 Stipulation must be in writing duly executed by all parties and approved by the
25 Commission at a regular or special meeting, except for any extension to the payment
26 deadline described in paragraph 10, which Commission staff may grant at its sole
27 discretion and which need only be in writing not requiring execution;

28

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14. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California and the City of Oakland. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable; and

15. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document. Verified electronic signatures shall have the same effect as wet signatures. The parties need not sign this agreement until after the Commission has voted to accept it.

So agreed:

Simon Russell, Chief of Enforcement
City of Oakland Public Ethics Commission, Petitioner

Dated

William Witte, Respondent

Dated

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DECISION AND ORDER

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The foregoing Stipulation of the parties to “In the Matter of WILLIAM WITTE,” PEC Case No. 20-41.3, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

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ANALYSIS & RECOMMENDATION7

INTRODUCTION & FACTUAL SUMMARY

This case concerns a campaign contribution made by William Witte on October 21, 2020, to an Oakland political committee called the Committee for an Affordable East Bay (FPPC ID # 1428904; “campaign committee”). At the time Witte made his donation he was the part-owner of a subsidiary company (95th & International Housing Partners, L.P.) that was seeking to lease City-owned land in East Oakland for purposes of an affordable housing and commercial retail development. (The City Council approved the proposed lease on September 15, 2020). City contractors are prohibited from making campaign contributions to candidate-controlled committees at certain times, as set forth in more detail below.

The City of Oakland Public Ethics Commission (“PEC”) contends that the campaign committee was actually a “candidate-controlled” committee of then-Mayor Libby Schaaf. Witte takes no position regarding the PEC’s allegation that the campaign committee was

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1 candidate-controlled.¹ The parties to this Stipulation, however, acknowledge and agree that
2 the campaign committee was not registered as candidate-controlled at the time Witte made
3 his contribution or at any time thereafter, nor was Witte ever informed that the campaign
4 committee was candidate-controlled.

5 PEC staff and Respondent have agreed to settle this matter without an administrative
6 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
7 analysis to the PEC for its approval. Together, PEC staff and Respondents recommend
8 approval of their agreement, including a settlement payment totaling \$2,500 (Two Thousand
9 Five Hundred Dollars) as described in more detail below.

SUMMARY OF LAW & LEGAL ANALYSIS

12 All statutory references and discussions of law pertain to the referenced statutes and
13 laws as they existed at the time of the violations.

14 All definitions of terms are the same as those set forth in the California Political Reform
15 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
16 is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter
17 3.12) or the contrary is stated or clearly appears from the context.²

18 Provisions of the California Political Reform Act relating to local elections, including
19 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
20 (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.³

23
24 ¹ The PEC, the Committee For An Affordable East Bay, and Libby Schaaf and pursuing a separate settlement
25 regarding these allegations; see PEC case # 20-41.1.

26 ² OMC § 3.12.040.

27 ³ OMC § 3.12.240(d).

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Oakland’s Ban on Contributions From City Contractors at Certain Times

City contractors are prohibited from making a contribution, in any amount, to a candidate-controlled committee during what is informally known as the blackout period.⁴

Relevant here, OCRA’s “city contractor” prohibition applies to an individual or entity who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for (among other things) the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City, or for purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council.⁵

If the alleged contractor is a business entity, the restriction applies to all of the entity’s principals, including, but not limited to, the entity’s board chair, president, chief executive officer (CEO), and any individual who serves in the functional equivalent of one or more of those positions.⁶

The blackout period is any time between commencement of negotiations and one hundred eighty (180) days after the completion or the termination of negotiations for such contract.⁷

⁴ OMC § 3.12.140(A).

⁵ OMC § 3.12.140(A).

⁶ OMC § 3.12.140(C).

⁷ OMC § 3.12.140(A).

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Element 1: Candidate-Controlled Committee

The first required element of the contractor contribution ban is to show that the receiving committee was candidate-controlled.

Here, the PEC asserts that the campaign committee was a candidate-controlled committee. For purposes of this settlement agreement, Respondent can neither confirm nor deny that the campaign committee was a candidate-controlled committee.

Element 2: City Contractor

The second required element to establish a violation of the contractor contribution ban, is to show that the donor in question qualified as a “contractor.”

Here, Witte made a \$7,500 contribution to the campaign committee on October 21, 2020. At the time Witte made his donation he was the part-owner of a subsidiary company (95th & International Housing Partners, L.P.) that was seeking to lease City-owned land in East Oakland for purposes of an affordable housing and commercial retail development. (The City Council approved the proposed lease on September 15, 2020). As such, Witte was the principal of an entity that was proposing to lease City-owned land, in an amount that required approval by the City Council. He therefore qualified as a contractor and was prohibited from donating to the PAC in this case during the blackout period.

Element 3: Blackout period

The third and final required element to establish a violation of the contractor contribution ban, is to show that the donations in question were made during the blackout

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1 period, which is anytime after the commencement and negotiations up until six months after
2 the contract has been executed.

3 As stated above, Witte made his contribution on October 21, 2020. At the time he made
4 his contribution, his company (95th & International Housing Partners, L.P.) had just received
5 City Council approval to negotiate a lease agreement with the City on September 15, 2020. As
6 such, Witte’s company was engaged in contract negotiations with the City at the time he
7 made his contribution to the candidate controlled campaign committee. His contribution
8 therefore fell within the blackout period.

COUNTS:

WILLIAM WITTE

9
10
11
12
13 Respondents, William Witte, has reached a proposed settlement with the PEC
14 regarding activity that implicates the following Oakland Municipal Code(s):

15
16 **Count 1: Contribution from a City Contractor to a Candidate-Controlled Committee**

17
18 On or around October 21, 2020, Respondents William Witte made a contribution in the
19 amount of \$7,500 to a committee (Committee For An Affordable East Bay Supporting Derreck
20 Johnson and Opposing Rebecca Kaplan for Oakland City Council At-Large 2020 (the
21 “campaign committee”)) that the PEC maintains was candidate-controlled.

22 As a principal of a City contractor, Witte was prohibited from making contributions to
23 a candidate-controlled committee. Without taking a position on the question of whether the
24 PAC was candidate-controlled, Respondent is prepared to reach a settlement agreement with
25 the PEC on this count.

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EXHIBIT
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PEC 20-41.3

AVAILABLE REMEDIES

The PEC's Guidelines

Oakland's Campaign Reform Act authorizes the Commission to impose the following base-level and maximum remedies for the following types of activity:

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Contractor Contribution Prohibition	1	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary settlement payments, the Commission may issue warnings or require other remedial measures.⁸

The PEC will consider all relevant mitigating and aggravating circumstances surrounding the facts of a case when deciding on a settlement agreement, including, but not limited to, the following factors:

1. The seriousness of the activity, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the activity was deliberate, negligent, or inadvertent;
4. Whether the activity was isolated or part of a pattern;

⁸ OMC § 3.12.270(C).

Item 12 - 20-41.3 Proposed Settlement Agreement

EXHIBIT

In the Matter of William Witte

PEC 20-41.3

- 1 5. Whether the respondent has a prior record of violations and/or demonstrated
2 knowledge of the rule or requirement at issue;
- 3 6. The extent to which the respondent voluntarily and quickly took the steps necessary
4 to cure any alleged violation (either independently or after contact from the PEC);
- 5 7. The degree to which the respondent cooperated with the PEC's enforcement activity
6 in a timely manner;
- 7 8. The relative experience of the respondent;
- 8 9. The respondent's ability to pay the contemplated settlement without suffering undue
9 financial hardship. This factor shall not apply to the portion of a settlement that
10 constitutes a repayment or disgorgement of the allegedly unlawful amount, except in
11 cases of extreme financial hardship.

12
13 The PEC has broad discretion in evaluating a case and determining the appropriate
14 settlement based on the totality of circumstances. This list of factors to consider is not an
15 exhaustive list, but rather a sampling of factors that could be considered. There is no
16 requirement or intention that each factor – or any specific number of factors - be present in
17 an enforcement action when determining a settlement. As such, the ability or inability to
18 prove or disprove any factor or group of factors shall in no way restrict the PEC's power to
19 bring an enforcement action or agree to a settlement.

20 21 **ANALYSIS & RECOMMENDATION**

22
23 The circumstances of the Respondent's conduct establish mitigating factors that
24 should be considered.

25 Respondent's contribution was not made with the intention to conceal, deceive, or
26 mislead. The PAC's Statement of Organization did not identify the PAC as a candidate-

Item 12 - 20-41.3 Proposed Settlement Agreement

EXHIBIT

In the Matter of William Witte

PEC 20-41.3

1 controlled committee, nor was Respondent ever otherwise informed that Libby Schaaf (or
2 any other candidate) controlled it.

3 Respondent recognizes the City of Oakland's interest in enforcing its ban on
4 contributions from City contractors. Respondent cooperated fully with the PEC's
5 investigation. Respondent is also cooperating with the PEC in settling this matter without an
6 administrative hearing.

7 For its part, PEC staff believes that a settlement payment in the amount of \$2,500 is
8 appropriate in light of the facts of this case and the purposes of the law. Although he could
9 not have known at the time his contribution was made, the size of Respondent's
10 contribution was relatively small in light of the total amount of funds raised by the campaign
11 committee during the 2020 election. PEC staff also believes it would be unfair to demand a
12 higher settlement payment from Respondent in light of the fact that the information
13 publicly reported by the campaign committee at the time indicated that it was not
14 candidate-controlled. Respondent further consulted legal counsel regarding the making of
15 this contribution as part of his due diligence. The PEC is also pursuing claims against Schaaf
16 and others responsible for the campaign committee who may have caused, aided or abetted
17 the contribution.

18 The situation here is comparable to PEC # 20-41.2, involving a contribution from
19 another City contractor (Lyft, Inc.) to the same campaign committee as in this case. In that
20 case, Lyft had also been largely unaware that the PAC was controlled by a candidate. Lyft
21 agreed to settle for 50% of the value of its contribution (\$100,000). However, unlike in that
22 case, there are further mitigating factors present here: (1) Respondent's contribution was
23 far smaller than Lyft's; (2) Respondent was not aware of facts that should have reasonably
24 given rise to a suspicion that the committee was candidate-controlled to the same degree
25 that Lyft was; and (3) Respondent exercised due diligence in consulting with his legal
26 counsel before making the contribution.

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In the Matter of William Witte
PEC 20-41.3

1 Based on the foregoing, PEC staff and Respondent recommend that the Commission
2 approve their stipulated agreement, consisting of the following:

Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Contractor Contribution Prohibition	William Witte	\$7,500	\$2,500

Item 13 - 19-01.1 Proposed Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 19-01.1

14 THE OAKLAND FUND FOR MEASURE
15 AA; LIBBY SCHAAF,

) **STIPULATION, DECISION AND
ORDER**

16 Respondents.
17
18
19
20
21

22
23 **STIPULATION**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondents THE OAKLAND FUND FOR MEASURE AA; and LIBBY SCHAAF agree as
27 follows:
28

Item 13 - 19-01.1 Proposed Settlement Agreement

- 1 1. This Stipulation will be submitted for consideration by the City of Oakland Public
2 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 3 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
4 the final resolution to this matter without the necessity of holding an administrative
5 hearing to determine the liability of, or penalties and/or other remedies to be imposed
6 upon, Respondents;
- 7 3. Respondents knowingly and voluntarily waive all procedural rights under the Oakland
8 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
9 Procedures, and all other sources of procedural rights applicable to this PEC
10 enforcement action. These procedural rights include, but are not limited to, the right to
11 personally appear at an administrative hearing held in this matter, to be represented by
12 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
13 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 14 4. Respondents represent that they have accurately furnished to the Commission all
15 discoverable information and documents that are relevant to the Commission's
16 determination of a fair and comprehensive resolution to this matter;
- 17 5. Upon approval of this Stipulation and full performance of the terms outlined in this
18 Stipulation, the Commission will take no future action against Respondents, including
19 any officer, director, employee, or agent of Respondents, regarding the activities
20 described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute the
21 complete resolution of all claims by the Commission against Respondents, including
22 any officer, director, employee, or agent of Respondents, related to such activities and
23 any associated alleged violations;
- 24 6. If Respondents fail to comply with the terms of this Stipulation, then the Commission
25 may reopen this matter and prosecute Respondents to the full extent permitted by law,
26 except that the Statute of Limitations shall be waived for any violations that were not
27 discoverable or actionable by the Commission due to non-compliance with any
28 provision of this Stipulation;

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- 1 7. This Stipulation is not binding on any other law enforcement or regulatory agency, and
2 does not preclude the Commission or its staff from cooperating with, or assisting any
3 other government agency with regard to this matter, or any other matter related to it;
4 except that neither the Commission nor its staff shall refer this matter, or any other
5 matter related to it, as pertains to any alleged violation by Respondents, to any other
6 government agency;
- 7 8. Respondents admit no violation of, nor any liability under, the provision(s) of the
8 Oakland Municipal Code specified in Exhibit #1 to this Stipulation, nor any other
9 provision(s) of the Oakland Municipal Code. Respondents nevertheless agree to settle
10 this matter without admitting liability, according to the terms as described in Exhibit #1
11 to this Stipulation;
- 12 9. The Commission will impose upon Respondents the penalties and/or other remedies
13 specified in Exhibit #1, as they pertain to each of the named Respondents;
- 14 10. Respondents will pay the amount specified in Exhibit #1 to this Stipulation to the City
15 of Oakland general fund within sixty (60) calendar days of the date on which the
16 Commission votes to accept this Stipulation. Commission staff may extend the payment
17 deadline at its discretion;
- 18 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
19 void, and within fifteen business days after the Commission meeting at which the
20 Stipulation is rejected, any payments already tendered by Respondents in connection
21 with this Stipulation will be reimbursed to them;
- 22 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
23 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
24 and neither any member of the Commission, nor the Executive Director or any member
25 of PEC staff, shall be disqualified from that hearing because of prior consideration of
26 this Stipulation;
- 27 13. This Stipulation may not be amended orally. Any amendment or modification to this
28 Stipulation must be in writing duly executed by all parties and approved by the

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1 Commission at a regular or special meeting, except for any extension to the payment
2 deadline described in paragraph 10, which Commission staff may grant at its sole
3 discretion and which need only be in writing not requiring execution;

4 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws
5 of the State of California and the City of Oakland. If any provision of the Stipulation is
6 found to be unenforceable, the remaining provisions shall remain valid and enforceable;
7 and

8 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
9 have the same effect as though all parties had signed the same document. Verified
10 electronic signatures shall have the same effect as wet signatures. The parties need not
11 sign this agreement until after the Commission has voted to accept it.

12
13 So agreed:

14
15
16 _____
17 Simon Russell, Chief of Enforcement
18 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

19
20 _____
21 The Oakland Fund For Measure AA, Respondent

_____ Dated

22
23 _____
24 Libby Schaaf, Respondent

_____ Dated

Item 13 - 19-01.1 Proposed Settlement Agreement

DECISION AND ORDER

1
2 The foregoing Stipulation of the parties to “In the Matter of THE OAKLAND FUND
3 FOR MEASURE AA; LIBBY SCHAAF” PEC Case No. 19-01.1, including all attached
4 Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public
5 Ethics Commission, effective upon execution below by the Chair.

6
7 So ordered:

8
9
10 _____
11 Ryan Micik, Chair

12 City of Oakland Public Ethics Commission

13 _____
14 Dated

Item 13 - 19-01.1 Proposed Settlement Agreement

EXHIBIT # 1

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PEC # 19-01.1 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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9		
10	RECOMMENDED SETTLEMENT	27
11		

INTRODUCTION

14 This case concerns a ballot measure campaign committee active in the November 2018
15 election in Oakland. that was called “The Oakland Fund For Measure AA,” It supported a ballot
16 measure meant to levy a parcel tax for purposes of funding pre-school and college access
17 programs.

18 Any campaign committee over which an elected official exercises “significant
19 influence” must be registered as a candidate-controlled committee. In this case, the
20 committee’s campaign filings did not state that it was a “candidate controlled” committee
21 due to the significant participation by a candidate, Oakland Mayor Schaaf, as required by law.

22 PEC staff and Respondents have agreed to settle this matter without an administrative
23 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
24 analysis to the City of Oakland Public Ethics Commission for its approval. Together, PEC staff
25 and Respondents recommend approval of their agreement and proposed settlement totaling
26 \$9,500, as described in more detail below.

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FACTUAL SUMMARY

Mayor Schaaf's Office Designs a Ballot Measure Campaign for Approval by the City and Selects its Key Personnel

Over the course of 2017, Mayor Schaaf and her mayoral office staff planned a ballot measure campaign that they referred to as “The Children’s Initiative.” Its purpose was to levy a tax in order to raise funds for pre-school and college access programs. The Children’s initiative was intended to be placed on the Oakland ballot by the City of Oakland in November 2018. Ultimately, however, the City did not decide to place the measure on the ballot itself and a campaign was undertaken to place the measure on the ballot via citizen signature qualification.

The Mayor and her staff divided the work into two parts, policy planning and campaign development. The policy planning involved drafting the actual legislation that would appear on the ballot. The campaign development involved preparations for convincing voters to support the legislation in the 2018 election. Both functions were kept separate and there is no evidence that any public funds were used for campaign activity, nor is that issue the subject of this stipulation.

The campaign work began with the selection of a consulting firm to advise on the strategy and logistics. Mayor Schaaf had suggested using SCN Consulting, a firm owned by Ace Smith (who had worked on her first mayoral campaign in 2014) to advise on drafting the legislation and a provisional campaign plan; the firm was subsequently selected to also run the campaign. Mayor Schaaf’s staff took the lead in coordinating with SCN and acting as project managers for laying the legislative and campaign groundwork, in consultation with the Mayor. These staffers included David Silver (the Mayor’s Director of Education) and Kyra Mungia (a policy fellow and program manager in the Mayor’s office, who worked under

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1 Silver). Also involved was Michael George who had participated in a 7-week summer policy
2 fellowship sponsored by the Mayor’s office, but was later retained by a foundation to help
3 develop the measure’s policy and legislation, and eventually hired to assist with the campaign.

4 The Mayor and her staff were careful to follow City laws requiring the separation of
5 policy planning from the campaign development work. Meetings to work on the campaign
6 development were held outside City Hall and outside of paid City time. A separate funding
7 stream was also used to cover the costs associated with the campaign-related planning. In
8 this way, the Mayor’s staff carefully avoided the prohibition on using City resources (including
9 paid staff time) for campaign-related work.

10 However, the Mayor and her staff still significantly participated in the selection of
11 campaign personnel and implementation of campaign strategy. The same consulting firm
12 with whom the Mayor’s office worked to prepare the ballot measure legislation (SCN
13 Strategies) was also selected to be the consultant on the ballot measure campaign. And the
14 budget that was shared with the Mayor and her staff became the actual budget for the
15 campaign in 2018. Moreover, as described below, the Mayor and her staff continued to
16 perform an advisory role on the public campaign in 2018.

Setting Up a Committee: “The Oakland Fund For Measure AA”

17
18
19
20 The Children’s Initiative eventually qualified to be placed on the November 2018
21 Oakland ballot. It was given the official designation of “Measure AA” on the ballot.

22 When it came time to create an official ballot measure committee to run the
23 campaign, Mayor Schaaf accepted a suggestion to use an already-existing committee called
24 The Oakland Fund to be the official committee of the campaign.

25 According to an email from Eugene Zahas to Mayor Schaaf, the Oakland Fund had
26 initially been set up in an earlier election at the request of a different candidate to support
27 different City of Oakland ballot measures over the years. In the run-up to the Measure AA
28

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1 campaign, Mayor Schaaf contacted the treasurer and principal officer of the Oakland Fund
2 (Eugene Zahas and Susan Montauk, respectively) and asked if the Oakland Fund could be
3 used to collect contributions to fund the campaign for Measure AA. The committee's
4 officers also understood that the preferred accounting firm of the Children's Initiative team
5 would handle all of the necessary behind-the-scenes paperwork, and that the Oakland Fund
6 would receive a large initial donation from the East Bay Community Foundation and Kaiser
7 Permanente to cover the campaign salary of George and others.

8 Despite some initial reluctance from Montauk, the three board members of the
9 Oakland Fund then met and agreed to let their committee be used for the new ballot
10 measure, and changed the committee's name to "The Oakland Fund For Measure AA." The
11 name did not mention Mayor Schaaf's involvement, nor did any of the committee's
12 campaign forms. Zahas volunteered to serve as the campaign's Treasurer.

13 Meanwhile, the same consulting firm (SCN Strategies) that had advised the Mayor
14 and her staff when developing the Children's Initiative and its associated campaign
15 prepwork, became the actual managers of the Measure AA campaign now being handled
16 under the auspices of The Oakland Fund. Mayor Schaaf's staff also encouraged SCN to hire
17 Michael George to help run the Measure AA campaign. Silver and Mungia, both former
18 educators without any campaign or political experience, also remained in contact with the
19 Measure AA campaign and were active volunteers during non-city hours.

20 A "campaign committee" was also set up for the Measure AA campaign, consisting
21 of five volunteers. These volunteers were mostly teachers and other education
22 professionals, with little to no prior campaign experience. Many of them were
23 recommended for this role by Silver. When interviewed by the PEC, some of these
24 volunteers recalled being confused about their role, which they felt was largely ministerial.

25 In a separate interview with the PEC, Silver stated that a separate "advisory" group
26 (his word) would meet regularly to discuss developing the Children's Initiative in a way most
27 likely "to win" (in his words) Silver said this group included himself, Mayor Schaaf, then-

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1 Assemblymember Rob Bonta, Susan True, George, Mungia, representatives from SCN
2 Strategies and EMC Research. Also according to Silver, after the measure qualified for the
3 ballot, this group met largely to talk about fundraising for the measure and endorsements.
4

The Committee Receives Contributions From a City Contractor

5
6
7 Orton Development, Inc., was a company that had been in negotiations with the City
8 of Oakland since 2014 to lease and redevelop the City-owned Henry J. Kaiser Convention
9 Center on the bank of Lake Merritt. Following Orton Development’s submission of a formal
10 proposal in 2014, the City Council initially voted to enter an Exclusive Negotiating Agreement
11 with the company in 2015. In 2018, the company was continuing to negotiate the terms of a
12 Lease Disposition and Development Agreement.

13 While those negotiations were ongoing, the Oakland Fund For Measure AA received
14 contributions from Julian “Eddie” Orton, the president of Orton Development. On its
15 campaign finance forms, The Oakland Fund reported each contribution as coming directly
16 from Julian Orton, and identified his place of employment and occupation as “President,
17 Orton Development, Inc.”:

All contributions received by The Oakland Fund from Orton Development	
Date	Amount
8/2/2018	\$25,000.00
10/12/2018	\$50,000.00
11/16/2018	\$25,000.00
Total = \$100,000	

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Campaign Forms Filed by The Oakland Fund

Throughout the campaign, The Oakland Fund filed numerous campaign forms with the PEC. No form stated that it was candidate controlled nor included Schaaf in its name.

Form 410

The first type of form that The Oakland Fund filed with the PEC is called a Form 410 (“Statement of Organization”). These are forms that a committee must file when it first registers as a campaign committee, and whenever it changes its name, purpose, or main personnel. It must also disclose on these forms whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. Finally, it is the form on which a committee declares what its name will be. As explained in more detail later in this Exhibit, candidate-controlled committees are required to put the last name of their controlling candidate in the committee’s name (e.g. “Committee X, a Controlled Committee of Oakland Mayor Smith”). The purpose of the form is to inform the public of who is running a particular campaign committee.

The table below shows all of the dates that The Oakland Fund filed a Form 410 in 2018 (i.e., the time period when Schaaf was involved with the committee). It did not disclose that it was a controlled committee, did not identify Schaaf as a controlling candidate, and did not include Schaaf’s last name in its committee name on any of these forms. Schaaf did not sign any of the forms.

Form 410s Filed by The Oakland Fund, March – August 2018	
Date Filed	Committee Name Given on Form
March 23, 2018	“The Oakland Fund”
August 22, 2018	“The Oakland Fund For Measure AA”

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Form 460

The Oakland Fund also filed multiple forms known as a Form 460 (“Recipient Committee Campaign Statement”). These are periodic reports that a committee must file in order to report all of the money that it has raised and spent throughout the campaign. It must use its full committee name on the form, and report whether it is a controlled committee of a candidate or officeholder. The forms must be signed by the controlling candidate, under penalty of perjury. The purpose of the form is to inform the public where committees are getting their money from, and what they are spending it on. The purpose of declaring whether the committee is controlled by an elected official is so that the public can be informed of which donors might be indirectly benefiting from their donations to that official’s committee, as well as allowing the public to check whether any of those donors are City contractors.

The table below shows all of the dates that The Oakland Fund filed a Form 460 with the PEC, reporting the money it had raised and spent from January through December 2018 (i.e. the time period when Schaaf was involved with the committee). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund for Measure AA.” It failed to include Schaaf’s last name in its committee name, did not disclose that it was a controlled committee, and did not identify Schaaf as its controlling candidate on any of these forms. Schaaf did not sign any of the forms as its controlling candidate:

Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018		
Date Filed	Dates Covered	Committee Name Given on Form
April 25, 2018	January 1 – March 31, 2018	“The Oakland Fund”
July 24, 2018	April 1 – June 30, 2018	“The Oakland Fund”
August 10, 2018	April 1 – June 30, 2018 (amendment)	“The Oakland Fund”

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September 27, 2018	July 1 – September 22, 2018	“The Oakland Fund for Measure AA”
October 23, 2018	September 23 – October 20, 2018	“The Oakland Fund for Measure AA”
January 14, 2019	October 21 – December 31, 2018	“The Oakland Fund for Measure AA”
June 11, 2019	October 21 – December 31, 2018 (amendment)	“The Oakland Fund”

Form 497

The Oakland Fund also filed what are known as Form 497s (“Contribution Reports”, sometimes informally referred to as “24-hour contribution reports”). These forms must be submitted within 24 hours, whenever a primarily-formed committee (such as The Oakland Fund) receives \$1,000 or more from a single donor in the 90 days before the election concerning the measure that the committee is supporting. The purpose of the form is to the inform the public -- before the election -- of which donors are making large contributions benefitting certain committees, particularly if they are controlled by a candidate or officeholder.

The table below shows all of the dates that The Oakland Fund filed a Form 497 with the PEC, reporting the contributions over \$1,000 it had raised from August 2018 until the election that same year (when Mayor Schaaf was its controlling candidate). On each of these forms, it gave its name as either “The Oakland Fund” or “The Oakland Fund For Measure AA.” It did not include Schaaf’s last name in its committee name:

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Form 497s Filed by the Oakland Fund While Mayor Schaaf Was Controlling Candidate

Date Filed	Committee Name Given on Form	Activity Reported
August 14, 2018	"The Oakland Fund"	\$77,500 in contributions received
August 29, 2018	"The Oakland Fund For Measure AA"	\$12,000 in contributions received
September 20, 2018	"The Oakland Fund For Measure AA"	\$25,000 in contributions received
September 21, 2018	"The Oakland Fund For Measure AA"	\$1,000 in contributions received
September 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 2, 2018	"The Oakland Fund For Measure AA"	\$20,625 in contributions received
October 12, 2018	"The Oakland Fund For Measure AA"	\$63,000 in contributions received
October 15, 2018	"The Oakland Fund For Measure AA"	\$40,000 in contributions received
October 19, 2018	"The Oakland Fund For Measure AA"	\$102,500 in contributions received
October 23, 2018	"The Oakland Fund For Measure AA"	\$10,000 in contributions received
October 24, 2018	"The Oakland Fund For Measure AA"	\$44,800 in contributions received
October 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 30, 2018	"The Oakland Fund For Measure AA"	\$15,000 in contributions received
November 1, 2018	"The Oakland Fund For Measure AA"	\$35,000 in contributions received
November 5, 2018	"The Oakland Fund For Measure AA"	\$20,000 in contributions received

Throughout the events of this case, The Oakland Fund's treasurer was Eugene Zahas

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1 and its principal officer was listed as Susan Montauk. Zahas and Montauk also discussed
2 Mayor Schaaf's involvement with the committee at the time its filings were made.¹

3 Ultimately, Measure AA received 62% of the vote and was declared as passed
4 following a protracted legal battle.

SUMMARY OF LAW & LEGAL ANALYSIS

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6
7
8 All statutory references and discussions of law pertain to the referenced statutes and
9 laws as they existed at the time of the violations.

10 All definitions of terms are the same as those set forth in the California Political Reform
11 Act (California Government Code Sections 81000 through 91014), as amended, unless the term
12 is specifically defined in Oakland's Campaign Reform Act (Oakland Municipal Code Chapter
13 3.12) or the contrary is stated or clearly appears from the context.²

14 Provisions of the California Political Reform Act relating to local elections, including
15 any subsequent amendments, are incorporated into the Oakland Campaign Reform Act
16 (OCRA), except as otherwise provided in, or inconsistent with, or other provisions of local
17 law.³

The Oakland Fund Was A Candidate-Controlled Committee

18
19
20
21 All of the alleged violations in this matter hinge on whether The Oakland Fund was
22 "candidate-controlled" during the events in question. Being a candidate-controlled
23

24 ¹ After the events of this case, Zahas passed away and was replaced as treasurer of The Oakland Fund by John
25 Bliss. Susan Montauk settled separately with the PEC; see case # 19-01.2.

26 ² OMC § 3.12.140.

27 ³ OMC § 3.12.240(d).

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1 committee is not a violation in-and-of itself; but candidate-controlled committees have
2 different disclosure requirements, and restrictions on the contributions they can accept.
3 Therefore, to determine whether The Oakland Fund violated any of the laws applicable to
4 candidate-controlled committees, it must first be established that it was indeed “candidate-
5 controlled.”

6 A committee is candidate-controlled if a candidate or elected official has a significant
7 influence on the actions or decisions of the committee.⁴

8 9 **Element 1: Committee**

10
11 The first element to establish is whether The Oakland Fund For Measure AA qualified
12 as a “committee.” A “committee” is any person or combination of persons who directly or
13 indirectly receives campaign contributions totaling two thousand dollars (\$2,000) or more in
14 a calendar year, or who makes independent expenditures totaling one thousand dollars
15 (\$1,000) or more in a calendar year.⁵

16 Here, The Oakland Fund For Measure AA received contributions in 2018 well in excess
17 of \$2,000, according to its sworn campaign reporting forms. It was also registered as a
18 campaign committee during all of the events in this case.

19 20 **Element 2: Candidate or Elected Official**

21
22 The second element to establish if a committee is candidate-controlled is whether the
23 person alleged to have controlled the committee was a candidate or elected official. The term
24

25
26 _____
27 ⁴ OMC § 3.12.040; Cal. Govt. Code § 82016.

28 ⁵ Cal. Govt. Code § 82013.

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1 “candidate” includes an elected officer.⁶ “Elected officer” means any person who holds an
2 elective office.⁷

3 Here, Mayor Schaaf was a candidate or elected official because she was serving as
4 Mayor of Oakland at the time of her involvement with The Oakland Fund For Measure AA,
5 having been elected to that position in 2014 and re-elected in 2018. She was also a candidate
6 for re-election to the office of Mayor that year. Additionally, she had two other open
7 committees at the time, *Libby Schaaf for Mayor 2018* and *Mayor Libby Schaaf 2014 Officeholder*
8 *Committee*, for which she was registered as the controlling candidate.

9 10 **Element 3: Significant Influence on the Actions or Decisions of the Committee**

11
12 Finally, to establish that a committee is candidate-controlled, there must be sufficient
13 facts to show that a candidate or elected official had “significant influence” on the actions or
14 decisions of the committee.⁸

15 Neither the Political Reform Act, FPPC Regulations, or the Oakland Municipal Code
16 define the term “significant influence.” The applicable standard for determining when a
17 candidate exercises “significant influence” over a campaign committee can only be found in
18 advice letters published by the FPPC, one of which states, “The definition of “controlled
19 committee” has been interpreted broadly to include any significant participation in the
20 actions of a committee by a candidate... [including] extensive involvement in a committee’s
21 fundraising activity.”⁹

22
23
24 _____
25 ⁶ OMC § 3.12.040(B); Cal. Govt. Code § 82007.

26 ⁷ OMC § 3.12.040; Cal. Govt. Code § 82020.

27 ⁸ Cal. Govt. Code § 82016.

28 ⁹ FPPC Lyman Advice Letter No. I-19-163

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1 Such influence can be direct or indirect.¹⁰ Reading the FPPC Advice Letters and legal
2 precedent as a whole, examples of the type of behavior that might constitute significant
3 influence include communicating with a committee about its campaign strategy, messaging,
4 or advertising or making substantial fundraising efforts for a committee.¹¹ However,
5 fundraising alone is not sufficient to constitute “significant influence unless a candidate has
6 extensive involvement in the committee's fundraising activities by actively participating in its
7 solicitations, fundraising events and fundraising strategy.”¹²

8 Actions that do not constitute significant influence include things such as publicly
9 supporting a campaign, making donations from the official's own personal funds to a
10 campaign, or appearing on a committee's advertisements without working on the messaging
11 of those advertisements.¹³ It also does not include providing ministerial or administrative
12 support to a campaign (e.g. bookkeeping).¹⁴ It does not matter whether the candidate has an
13 official title or role on the campaign: “[P]ractical operational realities, rather than job title,
14 determine whether a committee is controlled.”¹⁵

15 Here, The Oakland Fund would not have been involved at all with the Measure AA
16 campaign were it not for Mayor Schaaf's participation. Mayor Schaaf contacted the Oakland
17 Fund and asked them to become the vehicle for the Measure AA campaign.

18 Mayor Schaaf was also fundamental in selecting the key personnel and consultants
19 that worked on The Oakland Fund's Measure AA campaign and raising its funds. Mayor Schaaf
20 recommended SCN Strategies to develop and advise on the campaign plan, and SCN remained
21

22 ¹⁰ Id.

23 ¹¹ *Travis v. Brand*, 62 Cal. App. 5th 240, 251, 261-262 (2021).

24 ¹² *Barker Advice Letter*, FPPC # A-97-478 (1997); *FPPC Pirayou Advice Letter*, No. 1-10-159.

25 ¹³ *Travis v. Brand*, 62 Cal. App. 5th 240, 261-262 (2021).

26 ¹⁴ *Lacy Advice Letter*, FPPC #1-03-076 (2003).

27 ¹⁵ *Lacy Advice Letter*, FPPC #1-03-076 (2003) at 2 (internal quotation marks omitted).
28

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1 in that role throughout the entire campaign. Initial budget and strategy meetings with SCN
2 took place at the Mayor’s initiative and with her key mayoral staff present, including Silver.
3 Silver recommended the members of the “campaign committee,” advocated for George to
4 be brought on as a key campaign manager/consultant, and continued to help with fundraising.
5 The Mayor was also responsible for raising a major portion of the campaign’s funds.

6 Once the official Measure AA campaign began, Mayor Schaaf attended meetings to
7 discuss the campaign. She helped to raise a substantial amount of the campaign funds. That
8 included five- and six-figure contributions that she secured through her personal solicitation,
9 and which would not likely have been forthcoming had the Mayor not been attached to the
10 campaign. Those large donations were crucial to the existence of the Measure AA campaign,
11 having been budgeted by the Mayor and her staff long before the campaign itself even began.

12 In sum, the totality of Mayor Schaaf’s participation rose to the FPPC’s standard for
13 “significant influence” over the decisions and activities of Measure AA, making it a candidate
14 controlled committee.

The Oakland Fund Failed to Publicly Identify Schaaf as Its Controlling Candidate

15
16
17
18 All committees must register with the appropriate filing officer¹⁶ and file periodic
19 campaign forms itemizing their contributions and expenditures.¹⁷ For committees that are
20 controlled by an Oakland elected officer, or which are primarily-formed to support or oppose
21 a candidate in an Oakland election, their filing officer is the PEC.¹⁸ The forms they must file
22 (including any amendments to those forms) include:

23
24
25 ¹⁶ Cal. Govt. Code § 84101.

26 ¹⁷ Cal. Govt. Code § 84215.

27 ¹⁸ OMC §§ 3.12.240, 3.12.260, Cal. Govt. Code §§ 84101, 84215(d).
28

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- 1 • the committee’s initial registration and termination statements (Form 410); and¹⁹
- 2 • its pre-election and semi-annual campaign statements (form 460).²⁰

3

4 Each of those reports, including amendments, must include the committee’s full

5 name.²¹ For a candidate-controlled committee, its name must include the last name of its

6 controlling candidate²² (e.g. “...a controlled committee of Mayor Smith”). The Form 410 and

7 Form 460 must also be signed by the controlling candidate, under penalty of perjury.²³

8

9 **Element 1: Candidate-controlled committee**

10

11 The first element to establish whether The Oakland Fund failed to file campaign forms

12 identifying Mayor Schaaf as its controlling candidate, is to show that Mayor Schaaf did indeed

13 control that committee. As demonstrated above, The Oakland Fund was a candidate-

14 controlled committee of Mayor Schaaf, an Oakland elected official. It was therefore required

15 to file the above-listed forms with the PEC.

16

17 **Element 2: Failure to Disclose Candidate-Controlled Status on Forms**

18

19 The next element to establish whether The Oakland Fund failed to file campaign forms

20

21 ¹⁹ Cal. Govt. Code § 84101; Cal. Code of Regulations §18410(a)(3); OMC §§ 3.12.240, 3.12.260.

22 ²⁰ Cal. Govt. Code §§ 82006, 84200, 84200.8; OMC §§ 3.12.240, 3.12.260.

23 ²¹ Cal. Govt. Code §§ 84102, 84106.5 (full committee name required on Form 410); § 84211(o) (full committee name required on Form 460); § 84203(a) (full committee name required on late contribution report); 84204(b) (full name required on late independent expenditure report).

26 ²² Cal. Govt. Code § 84106.5; Cal. Code of Regulations § 18402(c)(1).

27 ²³ Cal. Govt. Code §§ 84101, 84213(a); Cal. Code of Regulations §18410(a)(13).

28

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1 identifying Mayor Schaaf as its controlling candidate, is to demonstrate the committee filed
2 forms that lacked the required disclosure particular to each form.

3 4 Form 410

5
6 A Form 410 must include the committee's full name. For a candidate-controlled
7 committee, its name must include the last name of its controlling candidate (e.g. "...a
8 controlled committee of Mayor Smith"). The Form 410 must also expressly disclose that it is a
9 controlled committee, and identify its controlling candidate. The controlling candidate must
10 sign the form under penalty of perjury.

11 Here, The Oakland Fund For Measure AA filed a Form 410 with the PEC on March 23
12 and August 22, 2018. Neither of those forms stated that it was a controlled committee,
13 identified Mayor Schaaf as its controlling candidate, or included Mayor Schaaf's last name in
14 the committee name. Mayor Schaaf did not sign any of the forms.

15 16 Form 460

17
18 A Form 460 must include the committee's full name. For a candidate-controlled
19 committee, its name must include the last name of its controlling candidate (e.g. "...a
20 controlled committee of Mayor Smith"). The Form 460 must also expressly disclose that it is
21 a controlled committee, and identify its controlling candidate. The controlling candidate must
22 sign the form under penalty of perjury.

23 On the following dates, The Oakland Fund filed a Form 460 with the PEC, in which it
24 did not state that it was a controlled committee, did not identify Mayor Schaaf as its
25 controlling candidate, and did not include Mayor Schaaf's last name in its committee name:
26 April 25, 2018 (covering January 1 – March 31, 2018); July 24, 2018 (covering April 1 – June 30,
27 2018); August 10, 2018 (covering April 1 – June 30, 2018 (amendment)), September 27, 2018
28

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1 (covering July 1 – September 22, 2018); October 23, 2018 (covering September 23 – October
2 20, 2018); January 14, 2019 (covering October 21 – December 31, 2018); and June 11, 2019
3 (covering October 21 – December 31, 2018 (amendment)). Mayor Schaaf did not sign any of
4 the forms.

The Oakland Fund Received Contributions From a City Contractor

8 City contractors are prohibited from making a contribution, in any amount, to a
9 candidate-controlled committee during what is informally known as the blackout period.²⁴

10 A “city contractor” is defined as an individual or entity who contracts or proposes to contract
11 with or who amends or proposes to amend such a contract with the City for (among other
12 things) the purchasing or leasing any land or building from the City, whenever the value of
13 such transaction would require approval by the City Council.²⁵ If the alleged contractor is a
14 business entity, the restriction applies to all of the entity's principals, including, but not limited
15 to, the entity's president.²⁶

16 The blackout period is any time between commencement of negotiations and one
17 hundred eighty (180) days after the completion or the termination of negotiations for such
18 contract.²⁷

Element 1: Candidate-Controlled Committee

22 The first required element to establish a violation of the contractor contribution ban,

24 ²⁴ OMC § 3.12.140(A).

25 ²⁵ OMC § 3.12.140(A).

26 ²⁶ OMC § 3.12.140(C).

27 ²⁷ OMC § 3.12.140(A).

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1 is to show that the receiving committee (here, The Oakland Fund) was candidate-controlled.
2 It has already been established above that The Oakland Fund was a candidate-controlled
3 committee of Mayor Schaaf.

4 5 **Element 2: City Contractor**

6
7 The second required element to establish a violation of the contractor contribution
8 ban, is to show that the donor in question qualified as a “contractor.” The donor in question
9 is Julian “Eddie” Orton, who made the following contributions in his own name to the Oakland
10 Fund in 2018:

11
12

All contributions made by Julian Orton to the Oakland Fund in 2018	
Date	Amount
8/2/2018	\$25,000.00
10/12/2018	\$50,000.00
11/16/2018	\$25,000.00
Total = \$100,000	

13
14
15
16
17

18 The Oakland Fund identified Orton as “President, Orton Development, Inc.” on its
19 campaign finance reporting forms (Form 460).

20 At the time these contributions were made, Orton Development had recently been
21 awarded an Exclusive Negotiating Agreement (ENA) by the City Council for purposes of
22 negotiating the lease and redevelopment of the City-owned Henry J. Kaiser Convention
23 Center. Orton had originally submitted a response to a formal RFP for this project in 2015, and
24 had been in negotiations with the City ever since. The City Council voted on the lease and
25 associated tax credits and community benefits in July 2019, after Orton’s president had
26 contributed to the Oakland Fund in 2018.

27
28

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1 Orton Development therefore qualified as a City contractor and was prohibited from
2 donating to candidate-controlled committees during the blackout period. The ban also
3 applied to the company's principals, including its President Julian Orton.

4 5 **Element 3: Blackout period**

6
7 The third and final required element to establish a violation of the contractor
8 contribution ban, is to show that the donations in question were made during the blackout
9 period, which is anytime after the commencement of negotiations up until six months after
10 the contract has been executed. "Commencement of negotiations" occurs when a contractor
11 formally submits a proposal, or when a City Official formally proposes submission of proposals
12 from contractors.²⁸

13 Here, Orton Development submitted a proposal to the City in response to an RFP in
14 2015, and was in continuous negotiations with the City through 2019. Meanwhile, it made the
15 contributions in question in 2018. As such, Orton Development's contributions fell within the
16 blackout period.²⁹

17 18 *Liability*

19
20 Any person who violates any provision of the Oakland Campaign Reform Act, who
21 causes any other person to violate any provision of this Act, or who aids and abets any other

22 _____
²⁸ OMC 3.12.140(G).

23 ²⁹ Although ballot measure committees that are controlled by an elected official are required to comply with
24 the prohibition on contributions from City contractors, they are not subject to the City's general contribution
25 limit. This is in contrast to candidate-controlled committees that primarily support or oppose other candidates
26 rather than ballot measures, which are subject to the general contribution limit in addition to the prohibition
27 on contractor contributions. (see PEC cases ## 20-41 and 22-09).

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1 person in the violation of the Act, may be found liable for an administrative violation by the
2 PEC. If two or more persons are responsible for any violation, they shall be jointly and severally
3 liable.³⁰

4 "Person" means an individual, proprietorship, firm, partnership, joint venture,
5 syndicate, business, trust, company, corporation, association, committee, and any other
6 organization or group of persons acting in concert.³¹

COUNTS:

THE OAKLAND FUND FOR MEASURE AA, LIBBY SCHAAF

7
8
9
10
11 Respondents, The Oakland Fund For Measure AA; and Libby Schaaf (its controlling
12 candidate, who also caused the violation), violated the following Oakland Municipal Code(s):

13
14 **Count 1: Failure to Disclose Controlling Candidate Relationship on Campaign Forms**
15 **(No Contest)**

16
17 On the following dates, Respondent committee filed a Statement of Organization
18 (“Form 410”) with the PEC, in which it did not disclose that it was a controlled committee,
19 did not identify Mayor Schaaf as its controlling candidate, and did not include Mayor
20 Schaaf’s last name in its committee name. Mayor Schaaf did not sign any of the forms.

21

Form 410s Filed by The Oakland Fund, March – August 2018	
Date Filed	Committee Name Given on Form
March 23, 2018	“The Oakland Fund”
August 22, 2018	“The Oakland Fund For Measure AA”

22
23
24
25
26 ³⁰ OMC 3.12.270(C).

27 ³¹ OMC 3.12.040(J)

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As the controlling candidate, Mayor Schaaf's last name was required to be included as part of the committee's name for all purposes. Also, Mayor Schaaf was required to be identified as the controlling candidate on the committee's Form 410, and she was required to sign the committee's Form 410.

On the following dates, Respondent committee filed a Recipient Committee Campaign Statement ("Form 460") with the PEC, in which it failed to include Mayor Schaaf's last name in its committee name, did not disclose that it was a controlled committee, and did not identify Mayor Schaaf as its controlling candidate. Mayor Schaaf did not sign any of the forms as its controlling candidate:

Form 460s Filed by The Oakland Fund Covering January 1 – December 31, 2018		
Date Filed	Dates Covered	Committee Name Given on Form
April 25, 2018	January 1 – March 31, 2018	"The Oakland Fund"
July 24, 2018	April 1 – June 30, 2018	"The Oakland Fund"
August 10, 2018	April 1 – June 30, 2018 (amendment)	"The Oakland Fund"
September 27, 2018	July 1 – September 22, 2018	"The Oakland Fund for Measure AA"
October 23, 2018	September 23 – October 20, 2018	"The Oakland Fund for Measure AA"
January 14, 2019	October 21 – December 31, 2018	"The Oakland Fund for Measure AA"
June 11, 2019	October 21 – December 31, 2018 (amendment)	"The Oakland Fund"

As the controlling candidate, Mayor Schaaf's last name was required to be included as part of the committee's name for all purposes. Also, Mayor Schaaf was required to be

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1 identified as the controlling candidate on the committee's Form 460, and she was required to
2 sign the committee's Form 460.

3 On the following dates, Respondent committee filed a Contribution Report ("Form
4 497") with the PEC, in which it failed to include Schaaf's last name in its committee name:

Form 497s Filed by the Oakland Fund While Mayor Schaaf Was Controlling Candidate		
Date Filed	Committee Name Given on Form	Activity Reported
August 14, 2018	"The Oakland Fund"	\$77,500 in contributions received
August 29, 2018	"The Oakland Fund For Measure AA"	\$12,000 in contributions received
September 20, 2018	"The Oakland Fund For Measure AA"	\$25,000 in contributions received
September 21, 2018	"The Oakland Fund For Measure AA"	\$1,000 in contributions received
September 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 2, 2018	"The Oakland Fund For Measure AA"	\$20,625 in contributions received
October 12, 2018	"The Oakland Fund For Measure AA"	\$63,000 in contributions received
October 15, 2018	"The Oakland Fund For Measure AA"	\$40,000 in contributions received
October 19, 2018	"The Oakland Fund For Measure AA"	\$102,500 in contributions received
October 23, 2018	"The Oakland Fund For Measure AA"	\$10,000 in contributions received
October 24, 2018	"The Oakland Fund For Measure AA"	\$44,800 in contributions received
October 25, 2018	"The Oakland Fund For Measure AA"	\$75,000 in contributions received
October 30, 2018	"The Oakland Fund For Measure AA"	\$15,000 in contributions received
November 1, 2018	"The Oakland Fund For Measure AA"	\$35,000 in contributions received
November 5, 2018	"The Oakland Fund For Measure AA"	\$20,000 in contributions received

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1
2 As the controlling candidate, Mayor Schaaf's last name was required to be included as
3 part of the committee's name for all purposes.

4 In this way, Respondents violated OMC § 3.12.240, incorporating Cal. Govt. Code §§
5 84102(f), 84106.5, 84203, 84211(o)-(p), 84213(a), and Regulation 18402(c)(1) and 18410(a)(13).
6 Mayor Schaaf is not admitting liability to this count but is agreeing to settle (no contest).

7 Respondents are not admitting liability to this count but are willing to enter this
8 settlement agreement (no contest).

9
10 **Count 2: Contribution from a City Contractor to a Candidate-Controlled Committee**
11 **(No Contest)**

12
13 From August to November, 2018, Respondents facilitated and received contributions
14 totaling \$100,000 from Julian Orton, the President of Orton Development, Inc., which was a
15 City contractor.

16 As a City contractor, Orton Development was prohibited from making contributions to
17 a candidate-controlled committee. In this way, Respondents caused and/or aided-and-abetted
18 a violation of OMC § 3.12.140(A).

19 Respondents are not admitting liability to this count but are willing to enter this
20 settlement agreement (no contest).

21
22 **SETTLEMENT ANALYSIS**

23
24 Oakland's Campaign Reform Act authorizes the Commission to impose the following
25 base-level and maximum penalties for the following types of violations:
26
27
28

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Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Failure to File and/or Disclose Controlling Candidate Relationship on Campaign Forms	1	\$1,000	\$5,000
Contractor Contribution Prohibition	2	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.³²

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;

³² OMC § 3.12.270(C).

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- 1 8. The relative experience of the respondent;
- 2 9. The respondent's ability to pay the contemplated penalty without suffering undue
- 3 financial hardship. This factor shall not apply to the portion of a penalty that
- 4 constitutes a repayment or disgorgement of the unlawful amount, except in cases of
- 5 extreme financial hardship.

6
7 The PEC has broad discretion in evaluating a violation and determining the appropriate
8 penalty based on the totality of circumstances. This list of factors to consider is not an
9 exhaustive list, but rather a sampling of factors that could be considered. There is no
10 requirement or intention that each factor – or any specific number of factors - be present in
11 an enforcement action when determining a penalty. As such, the ability or inability to prove
12 or disprove any factor or group of factors shall in no way restrict the PEC's power to bring an
13 enforcement action or impose a penalty.

14 *Analysis of the Present Case*

15
16
17 The circumstances of the Respondents' conduct establish the following aggravating
18 and mitigating factors that should be taken into account when determining an appropriate
19 penalty in this case.

20 The Respondents' violations in this case are serious. The strict rules applying to
21 candidate-controlled committees go directly to the very purpose of campaign finance law.
22 Candidates for office, and particularly high-ranking officeholders such as the Mayor, have a
23 disproportionate ability to bring in campaign money. This includes donations from sources
24 whose business interests could benefit from being in a candidate or official's good favor, even
25 if that relationship never rises to a formal quid pro quo. Here, there is no evidence of any quid
26 pro quo. However, the contribution restrictions serve to reduce the actuality or appearance
27
28

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1 of corruption, and (in the case of officeholders) to reduce the unfair fundraising benefits that
2 can come with political power.

3 In this case, Mayor Schaaf used the fundraising power that came with her office. She
4 personally solicited many of The Oakland Fund's contributions, and even made herself
5 available for one-on-one meetings with high-value potential donors.

6 To be clear, candidates and officeholders are allowed to fundraise for existing
7 committees, including independent expenditure committees. What they cannot do is create
8 or repurpose an existing committee, and then exercise significant influence over the
9 committee. Here, Mayor Schaaf was negligent in determining her obligations to avoid
10 "significant participation in" the campaign committee, resulting in the listed violations related
11 to this influence.

12 As a result, the Measure AA campaign benefited from an extra \$100,000 to which it
13 would not have had access had the committee abided by the rules for candidate-controlled
14 committees. They also received the benefit of these campaigning without publicly
15 acknowledging the Mayor's control over the campaign, though this benefit was diminished
16 by Mayor Schaaf and the campaign itself publicly acknowledging her strong support for
17 Measure AA in its ads and other public messaging.

18 In further aggravation, the Mayor's actions could be considered as part of a pattern.
19 This is evidenced by PEC cases #20-41 and #22-09, concerning similar activity in the 2018
20 election, and which are also being brought to the PEC at the same time as this case. However,
21 the Mayor contends she was acting under the same mistaken advice provided to her by Mr.
22 Doug Linney, a campaign consultant, in these other matters. The Mayor has also been
23 involved in a prior PEC case (though not as a respondent) involving contributions from a City
24 contractor to one of her committees (PEC #18-19).

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1 In further mitigation, the Mayor and other respondents were forthcoming when
2 providing documents to PEC investigators. This included documents that evidenced the
3 violations in this case. The Mayor and other witnesses also voluntarily provided interviews to
4 PEC staff without a subpoena. Schaaf's actions appear to have been motivated by a
5 misunderstanding of the law, as well as her understanding from Zahas that The Oakland Fund
6 had previously entered a similar arrangement with another candidate in a prior election
7 without needing to register as candidate controlled

8 None of the respondents in this case have prior PEC or FPPC violations in which they
9 were named individually. Finally, respondents are now agreeing to settle, thereby taking
10 responsibility for what occurred and working with the PEC to redress any harm caused.

11 As an additional mitigating factor, PEC staff notes that it has reviewed the personal
12 finances of Mayor Schaaf and found that the penalties contemplated in this settlement
13 agreement are sufficiently large to act as a deterrent to future violations, without being so
14 large as to cause an undue financial burden.

15 It should also be noted that other parties to the violations in this case have already
16 paid or are seeking to pay separate penalties. Susan Montauk paid \$500 (see PEC case # 19-
17 01.2) and Julian Orton is proposing to pay \$5,000 (see PEC case # 19-01.3, a no contest
18 settlement without admission of liability). These amounts should be taken into account when
19 determining if the penalties proposed in this agreement are satisfactory to the Commission.

20 Based on the foregoing, PEC staff and Respondents recommends that the Commission
21 approve their stipulated agreement and impose the following financial penalties:

RECOMMENDED SETTLEMENT

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25 In light of the above factors, PEC staff and respondents have mutually agreed upon
26 the following penalties and recommend that the Commission vote to approve them:
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Item 13 - 19-01.1 Proposed Settlement Agreement

EXHIBIT # 1

In the Matter of The Oakland Fund For Measure AA, et al.

PEC # 19-01.1 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

Count	Violation	Respondent(s)	Amount at Issue	Recommended Penalty
1	Failure to Disclose Controlling Candidate Relationship on Campaign Forms	The Oakland Fund; Libby Schaaf	-	\$4,500/no contest, without admitting liability
2	Contractor Contribution Prohibition	The Oakland Fund; Libby Schaaf	\$100,000	\$5,000/no contest, without admitting liability

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Item 14 - 19-18 Proposed Settlement Agreement

1 Simon Russell
2 Enforcement Chief
3 CITY OF OAKLAND PUBLIC ETHICS COMMISSION
4 1 Frank Ogawa Plaza, Rm. 104
5 Oakland, CA 94612
6 Telephone: (510) 238-4976

7
8 Petitioner

9
10 BEFORE THE CITY OF OAKLAND
11 PUBLIC ETHICS COMMISSION

12
13 In the Matter of

) Case No.: 19-18

14 JULIAN ORTON,

) **STIPULATION, DECISION AND**
) **ORDER**

15 Respondent.
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22
23 **STIPULATION**

24
25 Petitioner, the Enforcement Unit of the City of Oakland Public Ethics Commission, and
26 respondent JULIAN ORTON (“Respondent”), agree as follows:
27
28

Item 14 - 19-18 Proposed Settlement Agreement

- 1 1. This Stipulation will be submitted for consideration by the City of Oakland Public
2 Ethics Commission (Commission) at its next regularly scheduled meeting;
- 3 2. This Stipulation resolves all factual and legal issues raised in this matter and represents
4 the final resolution to this matter without the necessity of holding an administrative
5 hearing to determine the liability of, or penalties and/or other remedies to be imposed
6 upon, Respondent;
- 7 3. Respondent knowingly and voluntarily waives all procedural rights under the Oakland
8 City Charter, Oakland Municipal Code, the Public Ethics Commission Complaint
9 Procedures, and all other sources of procedural rights applicable to this PEC
10 enforcement action. These procedural rights include, but are not limited to, the right to
11 personally appear at an administrative hearing held in this matter, to be represented by
12 an attorney at their own expense, to confront all witnesses testifying at the hearing, to
13 subpoena witnesses to testify at the hearing, and to have the matter judicially reviewed;
- 14 4. Respondent represents that they have accurately furnished to the Commission all
15 discoverable information and documents that are relevant to the Commission's
16 determination of a fair and comprehensive resolution to this matter;
- 17 5. Upon approval of this Stipulation and full performance of the terms outlined in this
18 Stipulation, the Commission will take no future action against Respondent regarding the
19 activities described in Exhibit #1 to this Stipulation, and this Stipulation shall constitute
20 the complete resolution of all claims by the Commission against Respondent related to
21 such activities and any associated alleged violations;
- 22 6. If Respondent fails to comply with the terms of this Stipulation, then the Commission
23 may reopen this matter and prosecute Respondent to the full extent permitted by law,
24 except that the Statute of Limitations shall be waived for any alleged violations that
25 were not discoverable by the Commission due to a non-compliance with Section 4 of
26 this Stipulation;
- 27 7. This Stipulation is not binding on any other law enforcement or regulatory agency.
28 However, upon approval of this Stipulation and full performance of the terms outlined

Item 14 - 19-18 Proposed Settlement Agreement

1 in this Stipulation, neither the Commission nor its staff shall refer the matter to any
2 other government agency with regard to this matter, or any other matter related to it, as
3 pertains to any alleged violation by Respondent;

4 8. Respondent admits no violation of, nor any liability under, the provision(s) of the
5 Oakland Municipal Code specified in Exhibit #1 to this Stipulation, nor any other
6 provision(s) of the Oakland Municipal Code. Respondent nevertheless seeks to resolve
7 this matter in a responsible manner that acknowledges the Commission's role in
8 ensuring the entire regulated community understands the importance of due diligence
9 when making campaign contributions;

10 9. The Commission will impose upon Respondent the remedies specified in Exhibit #1;

11 10. Respondent will pay the amount specified in Exhibit #1 to this Stipulation to the City of
12 Oakland general fund upon execution of this Stipulation;

13 11. In the event the Commission refuses to accept this Stipulation, it shall become null and
14 void, and within fifteen business days after the Commission meeting at which the
15 Stipulation is rejected, any payments tendered by Respondent in connection with this
16 Stipulation will be reimbursed to them;

17 12. In the event the Commission rejects this Stipulation and a full evidentiary hearing
18 becomes necessary, this Stipulation and all references to it are inadmissible as evidence,
19 and neither any member of the Commission, nor the Executive Director or any member
20 of PEC staff, shall be disqualified from that hearing because of prior consideration of
21 this Stipulation;

22 13. This Stipulation may not be amended orally. Any amendment or modification to this
23 Stipulation must be in writing duly executed by all parties and approved by the
24 Commission at a regular or special meeting;

25 14. This Stipulation shall be construed under, and interpreted in accordance with, the laws
26 of the State of California and the City of Oakland. If any provision of the Stipulation is
27 found to be unenforceable, the remaining provisions shall remain valid and enforceable;

28 and

Item 14 - 19-18 Proposed Settlement Agreement

1 15. The parties hereto may sign different copies of this Stipulation, which will be deemed to
2 have the same effect as though all parties had signed the same document. Verified
3 electronic signatures shall have the same effect as wet signatures.
4

5 So agreed:

6
7
8 _____
9 Simon Russell, Chief of Enforcement
10 City of Oakland Public Ethics Commission, Petitioner

_____ Dated

11
12 _____
13 Julian Orton, Respondent

_____ Dated

Item 14 - 19-18 Proposed Settlement Agreement

DECISION AND ORDER

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The foregoing Stipulation of the parties to “In the Matter of JULIAN ORTON,” PEC Case No. 19-18, including all attached Exhibits, is hereby accepted as the final Decision and Order of the City of Oakland Public Ethics Commission, effective upon execution below by the Chair.

So ordered:

Ryan Micik, Chair
City of Oakland Public Ethics Commission

Dated

Item 14 - 19-18 Proposed Settlement Agreement

EXHIBIT # 1

In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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13

INTRODUCTION & FACTUAL SUMMARY

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15

16 This case concerns campaign contributions made by Julian “Eddie” Orton

17 (“Respondent”), the principal of a company called Orton Development, Inc. (“ODI”).

18 Respondent made contributions before the 2018 election totaling \$100,000 to a ballot

19 measure committee called “The Oakland Fund For Measure AA” which was supporting a tax

20 measure to increase funding for education-related programs in Oakland. The Oakland Fund

21 ultimately raised a total of about \$1.8 million during the course of the campaign.

22 Respondent’s contributions were made at the time that ODI was negotiating to lease

23 and redevelop the City-owned Henry J. Kaiser Convention Center. The Council voted to

24 approve the proposed deal. City contractors are prohibited from making campaign

25 contributions to candidate-controlled committees at certain times, as set forth in more detail

26 below.

27

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Item 14 - 19-18 Proposed Settlement Agreement

EXHIBIT # 1

In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 The City of Oakland Public Ethics Commission (“PEC”) contends that The Oakland Fund
2 was actually a “candidate-controlled” committee of then-Mayor Libby Schaaf and that
3 therefore, City contractors were prohibited from contributing to the Oakland Fund.
4 Respondent is not taking a position regarding the PEC’s allegation that the PAC was
5 candidate-controlled. The parties to this Stipulation, however, acknowledge and agree that
6 The Oakland Fund was not registered as candidate-controlled at the time Respondent made
7 his contributions or at any time thereafter, and that The Oakland Fund provided no indication
8 to Respondent or the public that it was candidate-controlled. The parties also acknowledge
9 and agree that Respondent was not privy to information that should reasonably have caused
10 him to inquire further into The Oakland Fund’s candidate-controlled status beyond that
11 publicly available on its campaign finance registration forms (Form 410). While Respondent
12 was aware that Mayor Schaaf supported the ballot measure in question, he later told PEC staff
13 that he did not make any contribution based on any solicitation by Mayor Schaaf Respondent
14 was personally involved with the ballot measure from its initial drafting through post-election
15 litigation, because he and his family have focused their personal political and philanthropic
16 efforts on childhood education. All of Respondent’s contributions were made based on this
17 independent personal support of the ballot measure and its goals, and not based on any
18 solicitations.¹

19 PEC staff and Respondent have agreed to settle this matter without an administrative
20 hearing. They are now presenting their stipulated agreement, summary of the facts, and legal
21 analysis to the PEC for its approval. Together, PEC staff and Respondent recommend approval
22 of their agreement, including a settlement payment totaling \$5,000 (Five Thousand Dollars)
23 and certain other terms, as described in more detail below.

24
25 ¹ Respondent contributed another \$25,000 to the Oakland Fund for Measure AA after the 2018 election; but
26 that is not at issue in this case, because by that point Mayor Schaaf no longer controlled the Oakland Fund for
27 Measure AA and therefore the contractor ban did not apply.
28

Item 14 - 19-18 Proposed Settlement Agreement

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In the Matter of Julian Orton

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SUMMARY OF LAW & LEGAL ANALYSIS

All statutory references and discussions of law pertain to the referenced statutes and laws as they existed at the time of the facts of this case.

All definitions of terms are the same as those set forth in the California Political Reform Act (California Government Code Sections 81000 through 91014), as amended, unless the term is specifically defined in Oakland’s Campaign Reform Act (Oakland Municipal Code Chapter 3.12) or the contrary is stated or clearly appears from the context.²

Provisions of the California Political Reform Act relating to local elections, including any subsequent amendments, are incorporated into the Oakland Campaign Reform Act (OCRA), except as otherwise provided in, or inconsistent with, other provisions of local law.³

Oakland’s Ban on Contributions by City Contractors at Certain Times

City contractors are prohibited from making a contribution, in any amount, to a candidate-controlled committee during what is informally known as the blackout period.⁴

Relevant here, OCRA’s “city contractor” prohibition applies to an individual or entity who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for (among other things not relevant here) purchasing or leasing any land or building from the City, whenever the value of such transaction would require approval by the City Council.⁵

² OMC § 3.12.040.

³ OMC § 3.12.240(d).

⁴ OMC § 3.12.140(A).

⁵ OMC § 3.12.140(A).

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PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 If the alleged contractor is a business entity, the restriction applies to all of the entity's
2 principals, including, but not limited to, the entity's board chair, president, chief executive
3 officer (CEO), and any individual who serves in the functional equivalent of one or more of
4 those positions.⁶

5 The blackout period is any time between commencement of negotiations and one
6 hundred eighty (180) days after the completion or the termination of negotiations for a
7 covered contract.⁷

8 9 **Element 1: Candidate-Controlled Committee**

10
11 The first required element of the contractor contribution ban is to show that the
12 receiving committee was candidate-controlled.

13 Here, the PEC asserts that the Oakland Fund was a candidate-controlled committee.
14 For purposes of this settlement agreement, Respondent can neither confirm nor deny that
15 the Oakland Fund was a candidate-controlled committee. The Oakland Fund was not
16 registered as candidate-controlled at the time Respondent made his contributions or at any
17 time thereafter. Furthermore, The Oakland Fund provided no notice to Respondent or the
18 public that it might be candidate controlled, and Respondent therefore was not privy to
19 information that should reasonably have caused him to inquire further into The Oakland
20 Fund's candidate-controlled status. PEC contends that The Oakland Fund was candidate-
21 controlled and is also pursuing a case against Mayor Schaaf and the Oakland Fund to show
22 that it was in fact candidate-controlled.⁸ As Respondent is not contesting this element, the
23 PEC's contention holds for purposes of this settlement.

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25 _____
26 ⁶ OMC § 3.12.140(C).

27 ⁷ OMC § 3.12.140(A).

28 ⁸ PEC case # 19-01.1.

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1 PEC and Respondent here, however, agree that Respondent was not privy to facts that
2 should have reasonably led him to inquire further into The Oakland Fund’s candidate-
3 controlled status.

4 5 **Element 2: City Contractor**

6
7 The second required element of the contractor contribution ban is to show that the
8 donor in question qualified as a “contractor.”

9 Here, Respondent made contributions totaling \$100,000 on August 2; October 12; and
10 November 16, 2018. At the time Respondent made his contributions, ODI (a company of which
11 Respondent was President) was then negotiating to lease and redevelop the City-owned
12 Henry J. Kaiser Convention Center. The proposed deal required City Council approval. As such,
13 Respondent qualified as a contractor subject to the City’s contractor contribution ban.

14 15 **Element 3: Blackout period**

16
17 The third and final required element of the contractor contribution ban is to show that
18 the contributions in question were made during the blackout period, which is in effect at any
19 time between the commencement of negotiations and one hundred eighty (180) days after
20 the completion or the termination of negotiations for a covered contract.

21 As stated above, Respondent made his contributions on or about August – November
22 2018. The proposed contract with ODI was not executed until 2019. As such, ODI was engaged
23 in contract negotiations with the City at the time Respondent made his contributions to The
24 Oakland Fund. Respondent’s contributions therefore fell within the blackout period.

Item 14 - 19-18 Proposed Settlement Agreement

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In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

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VIOLATIONS:

JULIAN ORTON

Respondent, Julian Orton, violated the following Oakland Municipal Code(s):

Count 1: Contribution from a City Contractor to a Candidate-Controlled Committee
(No contest)

From August to November, 2018, Respondent Julian “Eddie” Orton made contributions totaling \$100,000 to The Oakland Fund, a candidate-controlled committee of Mayor Schaaf, while President of Orton Development, Inc., which was a City contractor. Respondent’s contributions fell within the prohibited “blackout” period for contributions from a City contractor to a candidate-controlled committee.

As the principal of a City contractor, Julian Orton was prohibited from making contributions to a candidate-controlled committee. In this way, Respondent violated OMC § 3.12.140(A).

Respondents is not admitting liability to this count but is willing to enter this settlement agreement (no contest).

PENALTIES

Oakland’s Campaign Reform Act authorizes the Commission to impose the following base-level and maximum penalties for the following types of violations:

Item 14 - 19-18 Proposed Settlement Agreement

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In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

Violation	Counts	Base-Level Per Violation	Statutory Limit Per Violation
Contractor Contribution Prohibition	1	\$1,000, plus the unlawful amount	\$5,000 or three times the amount of the unlawful contribution, whichever is greater.

In addition to monetary penalties, the Commission may issue warnings or require other remedial measures.⁹

The PEC will consider all relevant mitigating and aggravating circumstances surrounding a violation when deciding on a penalty, including, but not limited to, the following factors:

1. The seriousness of the violation, including, but not limited to, the extent of the public impact or harm;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent, or inadvertent;
4. Whether the violation was isolated or part of a pattern;
5. Whether the respondent has a prior record of violations and/or demonstrated knowledge of the rule or requirement at issue;
6. The extent to which the respondent voluntarily and quickly took the steps necessary to cure the violation (either independently or after contact from the PEC);
7. The degree to which the respondent cooperated with the PEC's enforcement activity in a timely manner;
8. The relative experience of the respondent.

⁹ OMC § 3.12.270(C).

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In the Matter of Julian Orton

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The PEC has broad discretion in evaluating a violation and determining the appropriate penalty based on the totality of circumstances. This list of factors to consider is not an exhaustive list, but rather a sampling of factors that could be considered. There is no requirement or intention that each factor – or any specific number of factors - be present in an enforcement action when determining a penalty. As such, the ability or inability to prove or disprove any factor or group of factors shall in no way restrict the PEC’s power to bring an enforcement action or impose a penalty.

Similar Cases in the Past

When agreeing to a settlement in a given case, the PEC endeavors to be consistent with its precedent.

The following past cases are similar in some respects to the one here, but none of these cases are perfectly analogous to the case at hand:

In the Matter of Californians For Independent Work, Sponsored by Lyft, Inc., et al. (PEC # 20-41.2)

In this case, Respondent was a City contractor that gave a \$100,000 contribution to an “independent” committee that was in fact candidate-controlled. The money was personally solicited by the controlling candidate and represented the bulk of total funds raised by the committee. The Respondent claimed to have lacked actual knowledge that the committee was candidate-controlled, instead relying upon the committee’s Form 410s and other written materials provided by the committee which stated that it was not candidate-controlled.

Respondent did not admit liability but did settle with the PEC for \$50,000 (half the amount of the contribution). The PEC imposed a penalty below the baseline in light of the Respondent’s reasonable reliance upon the committee’s Form 410s, though the PEC

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In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 maintained that Respondent knew of other facts that should have triggered a deeper inquiry
2 before making the contribution. Other mitigating factors included the possibility of future
3 penalties against other parties involved, as well as the Respondent's full cooperation with the
4 PEC's investigation.

In the Matter of Cypress Security, LLC (PEC # 14-26).

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8 In this case, Respondent was a security company that had a contentious contract
9 coming before the City Council worth \$2 million annually. Respondent gave \$1,000 to a ballot
10 measure committee controlled by a Councilmember (who was also running for Mayor at the
11 time). Before making the contribution, the respondent informed the committee that they
12 were a City contractor but the committee's officer assured Respondent "with 100% certainty"
13 (the officer's words) that contribution was legal because he had personally registered the
14 committee as a county rather than a city committee.

15 The PEC imposed a lesser penalty of \$600, reasoning that the respondent had lacked
16 any intent to deceive in light of the faulty assurance they had sought and received from the
17 committee. The respondent had also fully cooperated with the PEC's investigation.

In the Matter of Lane Partners and Andrew Haydel (PEC # 19-24).

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21 In this case, Respondent was a real estate developer seeking a contract to acquire land
22 owned by the City. The contract was large enough that it required a City Council vote. The
23 respondent contributed \$1,000 to a Councilmember's legal defense fund following the Council
24 vote on the contract. Before making the contribution, the contractor consulted their attorney
25 and was erroneously informed that the contractor ban did not apply to legal defense funds.
26 When a news report came out about the contribution, the contractor self-reported the
27 violation to the PEC.

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In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 The PEC imposed the maximum fine of \$5,000 despite the fact that the respondent
2 had relied upon incorrect legal advice when committing the violation. The PEC reasoned that
3 the respondent was a sophisticated party, and the fact that the contribution was made about
4 two or three months after the relevant Council vote was a serious aggravating factor.

In the Matter of PSAI Realty Partners CAC, et al. (PEC # 14-25)

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8 In this case, respondents were four business entities all controlled by the same person.
9 Each entity gave \$700 each (the contribution limit at the time) to a candidate's committee.
10 Because the companies were all controlled by one person, they needed to be aggregated as
11 one single contribution of \$2,800, which was \$2,100 over the legal limit. When making the
12 contributions, the respondent erroneously told the committee that the four companies were
13 not controlled by the same person. Respondent was not a City contractor, so the violation
14 here was the over-the-limit amount (\$2,100), and the committee was charged along with the
15 contributor.

16 The PEC imposed a fine of \$2,100 on the committee and \$1,800 on the contributor. The
17 PEC reasoned that the committee should have to forfeit the over-the-limit amount, but should
18 not face any additional penalty in light of the erroneous information it had been provided by
19 the contributor. As for the contributor, the PEC imposed a lesser penalty in light of the
20 respondent's cooperation and the fact that they were unaware of the aggregation rule at the
21 time they made the contributions.

ANALYSIS AND RECOMMENDATION

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25 The circumstances of the Respondent's conduct establish mitigating factors that
26 should be considered.
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Item 14 - 19-18 Proposed Settlement Agreement

EXHIBIT # 1

In the Matter of Julian Orton

PEC # 19-18 Stipulated Factual Summary, Legal Analysis, and Recommended Penalty

1 Respondent's contribution was not made with the intention to conceal, deceive, or
2 mislead. When making his contribution, Respondent relied upon the Oakland Fund's publicly-
3 available Statement of Organization (Form 410) indicating that the Oakland Fund was not
4 candidate-controlled. Respondent and the PEC agree that there were not other facts
5 reasonably known to Respondent sufficient to trigger further inquiry into whether The
6 Oakland Fund was in fact controlled by Mayor Schaaf.

7 Respondent recognizes the City of Oakland's interest in enforcing its ban on
8 contributions from City contractors. Respondent has cooperated fully with the PEC's
9 investigation.

10 For its part, PEC staff believes that a settlement payment in the amount of \$5,000 is
11 appropriate in light of the facts of this case and the purposes of the law. PEC staff believes it
12 would be unfair to demand a higher settlement payment from Respondent in light of the fact
13 that they could not reasonably have known that The Oakland Fund was candidate-controlled
14 and relied upon information reported and provided by The Oakland Fund to that effect. PEC
15 retains its ability under this settlement to pursue its claims against Mayor Schaaf and others
16 associated with the Oakland Fund, whom the PEC believes are the main responsible parties
17 for any violation(s) that may have occurred.

18 The situation here is distinguishable from the facts in PEC # 20-41.2, which involved a
19 City contractor making a contribution to a candidate-controlled committee without actual
20 knowledge that it was controlled by a candidate. In that case, PEC staff believed that the
21 respondent was aware of facts sufficient to justify further inquiry into whether the committee
22 receiving funds was candidate-controlled, including the fact that the contribution was
23 personally solicited by the controlling candidate and represented the bulk of the funds raised
24 in that campaign. In the present case, PEC staff and Respondent agree that there was not
25 sufficient indicia that The Oakland Fund was candidate-controlled to reasonably compel
26 Respondent to inquire further into whether Mayor Schaaf controlled it. Mayor Schaaf did not
27 personally solicit Respondent's contributions, and while Respondent give a significant
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1 contribution (\$100,000), this was not the bulk of the \$1.8 million raised in total by The Oakland
2 Fund.

3 This case is also distinguishable from PEC # 19-24 because in that case, the contractor
4 had all of the information necessary to follow the law but relied upon faulty legal advice;
5 whereas here, the contractor relied upon faulty information provided by The Oakland Fund.
6 And, as in case # 14-25, the PEC is still able to pursue enforcement against other respondents
7 who operated The Oakland Fund.

RECOMMENDATION

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11 Based on the foregoing, PEC staff and Respondent recommend that the Commission
12 approve their stipulated agreement and the following settlement:

13 As to respondent JULIAN ORTON, (Count 1), a payment in the amount of **\$5,000.**
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