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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 B.

- E. 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.
- F. 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.
- G. 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 Democracy Dollar 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:
    - i. 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.
    - ii. 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.
    - iii. Personally delivering the Democracy Dollar to the Commission.
    - iv. Assigning the Democracy Dollar on a secure online portal created by the Commission for the purpose of assigning a Democracy Dollar, when such a portal becomes available pursuant to Section 3.15.050(C)(5)(f).
  - 4. As used in subsection (ii), 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.
  - 5. Only the following individuals may be registered as a “representative of the candidate” under this section:
    - i. Unpaid volunteers for the candidate’s campaign; and
    - ii. Members of the candidate’s campaign staff that are regularly employed by the campaign.
- B. An eligible resident may not do any of the following:

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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.
3. Assign a Democracy Dollar in a manner other than as provided under Subsection A.
4. Assign a Democracy Dollar later than thirty (30) days after the day of the election.

C. A Democracy Dollar is expired and may not be assigned if 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)(4)(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. In the month immediately prior to the month in which an election occurs and until the election occurs, the Commission shall disburse Democracy Dollar proceeds to certified candidates at least once per week.

### **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, subject to adjustment under Section 3.15.200, as follows:
  1. For Mayor: four hundred thousand dollars (\$400,000).
  2. For City Auditor: one hundred fifty thousand dollars (\$150,000).

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3. For City Attorney: one hundred fifty thousand dollars (\$150,000).
  4. For City Councilmember-at-large: one hundred fifty thousand dollars (\$150,000).
  5. For District City Councilmember: one hundred thousand dollars (\$100,000).
  6. For School Board Director: fifty thousand dollars (\$50,000).
- 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.

### 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: four hundred seventy thousand dollars (\$470,000).
  2. For City Auditor: two hundred thousand dollars (\$200,000).
  3. For City Attorney: two hundred thousand dollars (\$200,000).
  4. For City Councilmember-at-large: two hundred thousand dollars (\$200,000).
  5. For District City Councilmember: one hundred fifty thousand dollars (\$150,000).
  6. For School Board Director: seventy-five thousand dollars (\$75,000).
- B. An applicant or certified candidate may petition the Executive Director, on a means developed by the Commission, to release the candidate from the applicable expenditure limit under Subsection A.
- C. The Executive Director shall release a candidate who has submitted a petition under Subsection B from the applicable expenditure limit if the candidate 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.

**Commented [BW13]:** There should be two tracks that can lead to a release:

1. A candidate contacts the Commission with information required in (C), or
2. Commission staff or ED sees that IE's have been made (without any candidate submitting a petition)

My edits here make either of the above work by taking out the requirement that a candidate be the one to demonstrate and instead just says that the evidence (either submitted by the candidate or found by Commission staff) demonstrates what is needed.

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- D. 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.
- E. Within ~~two~~<sup>five</sup> (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.
  - 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.
- F. 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.
- G. 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, in the aggregate during an election cycle, ten thousand dollars (\$10,000), indexed to inflation, and subject to adjustment under Section 3.15.200.

## **3.15.160 – Use of Campaign Funds.**

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- A. An applicant or certified candidate may only use campaign funds, including Democracy Dollar proceeds or contributions, for making qualified campaign expenditures, as defined by applicable state law.
- 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, ~~as defined by rule of the Commission.~~
  - 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.
  - 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 or office holder 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 Surplus Funds.**

After paying campaign debts and obligations, incurred before election day, a certified candidate shall return to the Commission, for deposit into the Fund, any remaining campaign funds of the candidate up to the amount of Democracy Dollar proceeds received by the candidate no later than three (3) months after any of the following:

- A. The Executive Director or Commission revokes the candidate's certification in the program under Section 3.15.080(F) or (H).
- B. The candidate withdraws from the election or dies.
- C. The date of the election.

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

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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).
- 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.

## 3.15.190 - Enforcement.

A. Any person who violates this Act is subject to 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.

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.

~~A.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 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 the maximum penalty amount allowed under the Commission's penalty guidelines~~ 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.
- 2. If two (2) or more persons are responsible for a violation of this Act, they shall be jointly and severally liable.

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Commented [BW14]: Adding Statute of Limitations language from the Oakland Campaign Reform Act.

Commented [BW15]: This is language taken from our Government Ethics Act section on civil actions, with minor modifications for the types of activities that may occur under this Act.

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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.

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 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 ~~the maximum penalty amount allowed under the Commission's penalty guidelines~~ 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.

D. The Commission may sue for injunctive relief to enjoin violations or to compel compliance under this Act.

~~D.E.~~ 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.

~~E.F.~~ 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, ~~require forfeiture of funds, including Democracy Dollars,~~ or impose other remedial measures to enforce and oversee compliance with this Act.

**Commented [BW16]:** Same as above, with the addition of warnings and other remedial measures, which also comes from the Gov Ethics Act for administrative actions.

**Commented [BW17]:** This is the same forfeiture provision from our Oakland Campaign Reform Act that allows us to collect illegally obtained funds from a person who did not commit the actual violation but who reaped a financial benefit from the other person's illegal conduct.

**Commented [BW18]:** This forfeiture part should be in its own section, above, and separate from "remedial measures."

## 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(A)-(B) by the percent increase, if any, in the Consumer Price Index, rounding to the nearest one thousand dollar (\$1,000) 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 one thousand dollar (\$1,000) value.
3. The limits on use of personal funds under 3.15.150(C) by the percent increase, if any, in the Consumer Price Index, rounding to the nearest five hundred (\$500) value.

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- 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.

### **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.

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**SEC. 2. AMENDS CHAPTER 3.12 TITLED “THE CITY OF OAKLAND CAMPAIGN REFORM ACT” AS FOLLOWS, WHERE LANGUAGE THAT HAS BEEN STRUCK THROUGH IS REMOVED AND LANGUAGE WITH AN UNDERLINE HAS BEEN ADDED:**

## **Article I. - Findings and Purpose.**

### **3.12.010 - Title.**

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.

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- 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 the Oakland Fair Elections Act and 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.
- J. The integrity of the governmental process, the competitiveness of campaigns and public confidence in local officials are all diminishing.
- 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 political 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

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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 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.~~
- 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:

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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.
3. "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)~~ four hundred dollars (\$400.00), adjusted bi-annually pursuant to Subsection (F), 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 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 hundred dollars (\$500.00)~~ three hundred and fifty dollars (\$350.00) four hundred dollars (\$400.00), adjusted bi-annually pursuant to Subsection (F), 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. This Section is not intended to prohibit or regulate contributions to persons or ~~broad-based political committees~~ small contributor 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

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(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. ~~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 small contributor committees ~~broad-based political committees.~~

- A. No ~~broad-based political committee~~ small contributor committees 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 small contributor committee ~~broad-based political committee~~, a contribution or contributions totaling more than ~~two hundred fifty dollars (\$250.00)~~ eight hundred dollars (\$800.00), adjusted bi-annually pursuant to Subsection (F), 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 small contributor committees 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 small contributor committees, a contribution or contributions totaling more than one thousand dollars (\$1,000.00) seven hundred dollars (\$700.00) eight hundred dollars (\$800.00), adjusted bi-annually pursuant to Subsection (F), 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 ~~broad-based political committee~~ small contributor committees 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.

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- D. This Section is not intended to prohibit or regulate contributions to persons or ~~broad-based political committee~~ small contributor committees for the purpose of influencing elections for offices other than City offices.
- E. A ~~broad-based political committee~~ small contributor committees 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~~ small contributor committees has separately accounted for such contributions and expenditures for such elections for City office, contributors to that ~~broad-based political committee~~ small contributor committees may contribute more than the amounts set forth in Subsection A. of this Section, so long as no portion of the contribution in excess of the set forth amounts is used to influence elections for City office.
- F. ~~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.

### **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:

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- 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-subsidiary 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~~ small contributor committees 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~~ small contributor committees shall act in concert with, or solicit or make contributions on behalf of, any other committee or ~~broad-based political committee~~ small contributor committees. 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.
- ~~B. Every loan to a candidate or the candidate's controlled committee shall be by written agreement and shall be filed with the candidate's or committee campaign statement on which the loan is first reported.~~
- C. The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limitations of this Act.

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

### **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 and attributed proportionately to each parent (one-half (1/2) to each parent or the total amount to a single custodial parent).

### **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, 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, 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 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.**

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- 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.
- B. 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.

### **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.
- 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.

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## **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:
  - 1. Contracts for the procurement of services that are professional or consulting services exceeding fifteen thousand dollars (\$15,000.00).

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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.~~

Commented [BW19]: Require copy submitted to PEC.

- 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 \_\_\_\_\_

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Signature \_\_\_\_\_

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;

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2. Expenditures for office equipment, furnishings and office supplies;
3. Expenditures for office rent;
4. Expenditures for salaries of part-time or full-time staff employed by the 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;

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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;
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~~ small contributor 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

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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.

### 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 a 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 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~~

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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 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 VI. - Independent Expenditures**

### **3.12.230 - Independent expenditures for mass mailings, slate mailings or other campaign materials.**

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- A. Any person who makes independent expenditures for a mass mailing, slate mailing or other campaign materials which support or oppose any candidate shall place the following statement on the ~~mailing communication~~ in typeface of no smaller than fourteen (14) points:

Notice to Voters

(Required by the City of Oakland)

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

It is paid for

by (name) \_\_\_\_\_

\_\_\_\_\_ (address, city, state)

Total cost of this mailing is: (amount)

- B. A committee must disclose the names of persons from whom the committee received its ~~two (2)~~ three (3) highest cumulative contributions of five thousand dollars (\$5,000.00) or more in the same manner as required by ~~the~~ California Political Reform Act ~~Section 84506~~ on all ~~mass mailings and television advertisements~~ mass mailings and advertisements that are independent expenditures supporting or opposing a candidate or measure being voted upon only in the City.

## **3.12.235 – Disclosure of Independent Expenditure Communications.**

- A. A person shall notify the Commission of an independent expenditure communication when either of the following occurs:
- The person makes or incurs expenditures with an actual or fair market value of \$1,000 or more for one or more communications.
  - Once a notification threshold is met, every subsequent \$100 in expenditures made or incurred regarding that measure or candidate shall also be disclosed as required by Subsections (B).
- B. The notification shall be submitted to the Commission within the following time frames:
- From the first date an individual may file a Declaration of Intention to Become a Candidate with the City Clerk through the date of the associated general election; during the 90 days prior to an election if no City candidates will be on the ballot; within 72 hours after making or incurring the expenditures; or within 24 hours when within one week from the date of the general election.
  - At all other times, within five business days after making or incurring the expenditures provided, however, in no event later than the first date an individual may file a Declaration of Intention to Become a Candidate.
  - The notification shall include the following:

**Commented [BW20]:** This section is outdated, particularly in relation to electronic communications and also social media. I am working on edits to this section, similar to LA Muni Code sections 49.7.33, and 49.7.34.

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- a. A declaration under penalty of perjury signed by the person and, if applicable, the committee treasurer, specifying the following:
  - i. Each candidate or measure supported or opposed by the communication;
  - ii. The dates and amounts of the expenditure and the amount spent to support or oppose each candidate or measure;
  - iii. For disclosure under Subsection A.2., the number of distributions;
  - iv. Whether each candidate or measure was supported or opposed;
  - v. That the communication was not behested by any of the candidates who benefited from it;
  - vi. The dates the communication was distributed or displayed, if applicable;
  - vii. A description of the type of communication;
  - viii. The name and address of the person making, or incurring the expenditures or causing the communication to be distributed or displayed;
  - ix. The name and address of the payee, if applicable, and any vendor or subvendor that provided service for the communication;
  - x. For committees, contributions of \$100 or more received by the committee since the later of the day after the close of the filing period for the last campaign or independent expenditure statement filed by the committee or the first day of the current calendar year. This disclosure requirement does not apply to contributions that are earmarked for a non-City candidate or ballot measure; and
  - xi. Contributions of \$100 or more that the person made in the current calendar year to City candidates, City controlled committee, City ballot measure committees, City recall committees, committees primarily formed to support or oppose City candidates or measures, and City general purpose recipient committees.
- b. A copy of the communication.
  - i. If the communication is a telephone call or similar communication, a copy of the script and, if the communication is recorded, the recording shall be provided.
  - ii. If the communication is audio or video, a copy of the script and an audio or video file shall be provided.

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- c. The Commission shall post on its website, without alteration, all copies of independent expenditure communications filed with the Commission within 48 hours of receipt. The Commission may not judge, comment upon, or edit the contents of an independent expenditure communication.
4. This section shall not apply to a news story, commentary, or editorial by a newspaper, radio station, television station, or other recognized news medium, unless the disclaimer is required for a payment or promise of a payment under Section 3.12.230.

## Article VII. - 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, 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 ~~Democracy Dollar Fund pursuant to Section 3.15.060 of the Oakland Fair Elections Act~~ 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.

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.

**Commented [BW21]:** This new disclosure section is taken from LA's Muni Code section 49.7.31, but the intent was to incorporate both LA sections 49.7.31 and 49.7.32 into our Act to cover all committees, not just IE's. I will continue to work on this section.

**Commented [BW22]:** Changing to General Fund to avoid any perception concerns about the PEC's fairness in determining fine amounts.

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## **Article VIII. - 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 IX. - 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:-
- F. Notifying the Public Ethics Commission when a measure qualifies for an upcoming ballot immediately upon qualification:- and

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- G. Notifying the Public Ethics Commission of the dates when a Special Election is scheduled.

## Article ~~IX~~. - 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~~<sup>general fund</sup> ~~Democracy Dollars Fund~~ pursuant to Section 3.15.060 of the Oakland Fair Elections Act up to the amount of the financial benefit received as a result of the violation.

**Commented [BW23]:** Same as above – changing to General Fund to avoid any perception about PEC's consideration of fine amounts.

### 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.

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- 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.
- 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

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Government Code Sections 87100 et seq. and the regulations of the Fair Political Practices Commission shall apply to interpretations of this Section.

## Article XI. - Miscellaneous Provisions

### 3.12.340 - Applicability of other laws.

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

### 3.12.350 - 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.

**Commented [BW24]:** This should allow City Council to make any change to this entire Campaign Reform Act, even after some provisions were adopted by Oakland voters, without taking it back to the voters. This maintains the current status quo that our OCRA can be amended by Council.

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## **SEC. 3. AMENDS SECTION 3.20.190 OF THE OAKLAND MUNICIPAL CODE AS FOLLOWS, WHERE LANGUAGE THAT HAS BEEN STRUCK THROUGH IS REMOVED AND LANGUAGE WITH AN UNDERLINE HAS BEEN ADDED:**

### **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~~ three (3) years after leaving office.

## **SEC. 4. AMENDMENTS; ADDS A NEW ARTICLE VII IN CHAPTER 3.20 OF THE OAKLAND MUNICIPAL CODE AS FOLLOWS:**

### 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.

**Commented [BW25]:** Same as above in OCRA - This allows City Council to continue to make amendments to this Lobbyist Registration Act, even after some provisions were adopted by Oakland voters, without taking it back to the voters.

## **SEC. 5 SEVERABILITY.**

## **SEC. 6 EFFECTIVE DATE.**

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**SEC. 7. AMENDS ARTICLE VI OF THE OAKLAND CITY CHARTER ENTITLED “ADMINISTRATIVE ORGANIZATION” AS FOLLOWS, WHERE LANGUAGE THAT HAS BEEN STRUCK THROUGH IS REMOVED AND LANGUAGE WITH AN UNDERLINE HAS BEEN ADDED:**

## **ARTICLE VI - ADMINISTRATIVE ORGANIZATION**

Section 600. Administrative Organization Authorized. The Council shall by ordinance provide the form of organization through which the functions of the City under the jurisdiction of the City Administrator are to be administered. Any combination of authorized duties, powers and functions which in the judgment of the Council will provide the most efficient and economical service possible, consistent with the public interest and in keeping with accepted principles of municipal administration, may be authorized by such ordinance. All departments or other administrative agencies so created shall be administered by the City Administrator or by a department head or other officer appointed by and responsible to him/her.

**(Amended by: Stats. November 1988 and March 2004.)**

Section 601. Boards and Commissions. The Council may create by ordinance such operational, advisory, appellate or rule-making boards and commissions as may be required for the proper operation of any function or agency of the City and prescribe their function, duties, powers, jurisdiction and the number of board and commission members, their terms, compensation and reimbursement for expenses, if any, subject to the provisions of this Article. Members of boards and commissions shall be appointed by the Mayor subject to confirmation by the affirmative vote of five members of the Council and may be removed for cause, after hearing, by the affirmative vote of at least six members of the Council. Vacancies shall be filled for any unexpired term in the same manner as the original appointments were made; provided, however, that if the Mayor does not submit for confirmation a candidate to fill the vacancy within 90 days of the date the vacancy first occurred, the Council may fill the vacancy. If the Mayor does submit for confirmation a candidate to fill a vacancy within the 90-day time frame and the Council does not confirm the candidate, the 90-day period shall commence anew. For purposes of this Section, a seat filled by a holdover appointment will be considered vacant as of the expiration of the holdover's prior term of office.

**(Amended by: Stats. November 1988 and March 2004.)**

Section 602. Continuation. The departments, agencies, boards and commissions heretofore created by prior Charter, ordinance or administrative order, other than those provided for in Articles IV, V, VII, and IX of this Charter, may be modified or discontinued by ordinance adopted pursuant to this Article and are hereby continued until so modified or discontinued.

**(Amended by: Stats. November 1988.)**

### **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,

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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.
  - (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.

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- (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.

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

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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 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 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 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.

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.
- (e) **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:

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- (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 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;

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- (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 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

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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) 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 \$1,2850,000.00 for the purpose of administering the Democracy Dollars Program established by the Oakland Fair Elections Act and no less than \$4,000,000.00 for the purpose of funding Democracy Dollars. Upon receiving notice from the Commission under subsection (b)(4) of this section, the City shall consider additional appropriations to the Oakland Democracy Dollars Fund as requested by the Commission to ensure sufficient funds in the Fund or in the Commission's determination of budget needs are provided to administer the Democracy Dollars Program under subsection (b)(4) of this section. Subsequent to 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 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.
- (3) 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; ~~One Deputy Director~~ Enforcement Chief; ~~One~~ Ethics Investigator; ~~One Ethics Program~~ Analyst I ~~or Operations Support Specialist~~; ~~One Ethics Program~~ Analyst II; ~~One and~~ Administrative

**Commented [BW26]:** 4 staff positions as proposed by BayPEC (or 3 FTEs and 1-2 part-time, seasonal staff) would be \$750,000 annually, or \$1.5 million for the two-year cycle, plus admin costs including mailing costs and any further contracting necessary for IT or other program needs for a total of \$1.85 million every two years (\$925,000 annually).

**Commented [BW27]:** Deleting the DD fund allocation from this so it only appears in the FEA ordinance.

**Commented [BW28]:** In case startup (especially technology implementation) costs continue into the next budget year, adding a carryforward provision so the funds stay with the PEC and don't revert back to the GF if not immediately used.

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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, ~~which shall include~~ but not limited to one full-time Democracy Dollars Program Manager and additional full or part-time positions, funded by the appropriation required by Subsection (g)(2) of this section, to be determined as necessary by the Commission, all of whom shall report -no fewer than four (4) additional full-time positions or their equivalent should their classifications change, reporting to the Executive Director of the Public Ethics Commission. ~~for the purpose of administering the Democracy Dollars Program established by the Fair Elections Act: One Program Director; Two Program Analysts; One Administrative Assistant.~~

**Commented [BW29]:** Amending to better reflect our current staffing.

- (4) The minimum staffing budget set-aside may be suspended, 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.
- (5) 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.
- (6) The ~~Deputy Director Enforcement Chief and Democracy Dollars Program Manager~~ shall serve at the pleasure of the Executive Director. Other than the Executive Director, ~~and Deputy Director Enforcement Chief, and Democracy Dollars Program Manager,~~ 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.
- (7) 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.

**Commented [BW30]:** We no longer have a Deputy Director – that classification was amended to Enforcement Chief in recent years.

- (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 that are

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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 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.