

City of Oakland  
**Public Ethics Commission**



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**Oakland Campaign Reform Act  
Guide**

**2020**

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# ATTACHMENT 3

## CONTENTS

<b>INTRODUCTION .....</b>	<b>3</b>
<b>THE OAKLAND CAMPAIGN REFORM ACT .....</b>	<b>4</b>
LOCAL OFFICES COVERED UNDER OCRA.....	4
<b>REPORTING OF CAMPAIGN ACTIVITIES .....</b>	<b>4</b>
ELECTRONIC FILING REQUIREMENT.....	4
<b>VOLUNTARY SPENDING LIMITS.....</b>	<b>5</b>
ACCEPTING SPENDING LIMITS .....	5
WHEN SPENDING LIMITS ARE LIFTED.....	5
<b>CONTRIBUTION LIMITS .....</b>	<b>6</b>
CONTRIBUTIONS TO CANDIDATES WHO AGREE TO LIMIT SPENDING .....	6
CONTRIBUTIONS TO CANDIDATES WHO DO NOT AGREE TO LIMIT SPENDING .....	6
NO LIMIT ON PERSONAL CONTRIBUTIONS.....	6
AGGREGATION OF CONTRIBUTIONS .....	7
WHEN LOANS AND UNPAID BILLS BECOME CONTRIBUTIONS.....	8
VOLUNTEER SERVICES AND TRAVEL EXPENSES .....	9
SOLICITING, RECEIVING, AND RETURNING CAMPAIGN CONTRIBUTIONS: REQUIRED NOTICE ON ALL FUNDRAISING MATERIAL .....	9
ONE COMMITTEE/ONE CHECKING ACCOUNT RULE .....	10
IDENTIFICATION OF CONTRIBUTOR .....	10
<b>PROHIBITION ON CONTRACTOR CONTRIBUTIONS .....</b>	<b>10</b>
APPLICABLE CONTRACTS .....	11
WHEN THE PROHIBITION APPLIES .....	12
CONTRACTOR ACKNOWLEDGMENT.....	12
<b>CONTRIBUTIONS SOLICITED BY CITY STAFF AND OFFICIALS .....</b>	<b>12</b>
HOW TO DISCLOSE SOLICITATIONS .....	13
WHAT MUST BE DISCLOSED? .....	13
<b>INDEPENDENT EXPENDITURES.....</b>	<b>13</b>
SPECIAL NOTICE REQUIREMENTS FOR PERSONS MAKING INDEPENDENT EXPENDITURES.....	13
<b>BALLOT MEASURE COMMITTEES CONTROLLED BY CANDIDATES OR ELECTED CITY OFFICIALS.....</b>	<b>14</b>
<b>BALLOT MEASURE COMMITTEES CONTROLLED BY NON-CANDIDATES .....</b>	<b>15</b>
<b>OFFICEHOLDER COMMITTEES AND LEGAL DEFENSE FUNDS.....</b>	<b>15</b>
OFFICEHOLDER COMMITTEE .....	15
LEGAL EXPENSE FUND.....	17
DONATION OF OFFICE SPACE .....	17
<b>ENFORCEMENT .....</b>	<b>18</b>
LIABILITY .....	18
PENALTIES.....	18
INJUNCTIVE RELIEF .....	18
DISQUALIFICATION .....	18
<b>APPENDIX I: CAMPAIGN CONTRIBUTION AND VOLUNTARY CAMPAIGN SPENDING LIMITS.....</b>	<b>19</b>

# ATTACHMENT 3

**APPENDIX II: OFFICEHOLDER COMMITTEES FACT SHEET.....20**  
**APPENDIX III: SAMPLE CONTRIBUTOR CARD .....24**

## INTRODUCTION

The Oakland Campaign Reform Act (OCRA) adds local rules and restrictions that apply to Oakland candidates and political committees in addition to the requirements and regulations of the California Political Reform Act (Gov. Code Sec. 81000 *et seq.*). Candidates for Oakland elective office must comply with both California and Oakland campaign laws.

This *Oakland Campaign Reform Act Guide* is intended to provide an overview of the Oakland Campaign Reform Act and is **advisory only**. To the extent the *Guide* conflicts with the actual ordinance, administrative regulation or interpretation by the Public Ethics Commission (Commission), those authorities govern the implementation and enforcement of the ordinance. All legal citations are to the Oakland Municipal Code (O.M.C.) unless otherwise noted.

The Oakland Public Ethics Commission is the administrative enforcement body for OCRA. If you have questions about this guide or your obligations under the law, contact Commission staff.

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Questions regarding the California Political Reform Act should be directed to the Fair Political Practices Commission (FPPC) at (866) 275-3772 or [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov).

## THE OAKLAND CAMPAIGN REFORM ACT

The Oakland Campaign Reform Act (OCRA), as amended in 2019,<sup>1</sup> establishes local contribution limits, optional campaign expenditure limits, and electronic filing requirements for Oakland candidates and committees. OCRA also bars contributions from persons negotiating certain contracts with the City. It regulates the process by which contributions can be received or returned, how contributions from closely related entities must be attributed and sets forth certain disclosure requirements for the distribution of independent mass mailings.

### Local Offices Covered Under OCRA

OCRA applies to local candidates for “city office,” which includes the office of Mayor, City Attorney, City Auditor, District and At-Large City Councilmembers, and elected Oakland School Board Directors. [Oakland Municipal Code (OMC) §3.12.040].

## REPORTING OF CAMPAIGN ACTIVITIES

Most reporting requirements are imposed by the California Political Reform Act, and candidates, committees, treasurers, and officers should refer to the *Campaign Disclosure Manual 2* for local candidates, published by the California Fair Political Practices Commission (FPPC) and available on their website at [www.fppc.ca.gov](http://www.fppc.ca.gov). The FPPC also provides informal legal advice to candidates and committees via its advice-line (866) ASK-FPPC (866-275-3772) or by emailing FPPC staff at [advice@fppc.ca.gov](mailto:advice@fppc.ca.gov).

### Electronic Filing Requirement

OCRA requires any candidate or committee that is required by state or local law to file a campaign statement with the City of Oakland filing officer to file that

### Filing Campaign Disclosure Statements Online



Electronic filing of campaign disclosure statements is **mandatory** in Oakland for all campaign committees required to file campaign statements with the City of Oakland under the California Political Reform Act. This includes candidate-controlled committees, ballot measure committees, and general purpose political action committees, as well as organizations or entities such as major donors required to file late contribution or independent expenditure reports with the City of Oakland.

The City of Oakland provides a free, online filing system called NetFile to complete and e-file disclosure statements and reports. Getting set up is easy:

#### Step 1: Register

Register with the Public Ethics Commission by filing your committee’s FPPC Form 410 Statement of Organization. We will set up an account so you can create a NetFile User Account to file electronic disclosure statements. You will automatically receive notifications in advance of filing deadlines as well as updates about changes to campaign rules. Links are provided for free training.

#### Step 2: E-File

Log in to your NetFile User Account to file statements. You can use NetFile’s free software to record your committee’s financial transactions and keep committee information up-to-date, or upload your campaign statements from third-party software. Contact PEC staff for advice and technical support. We’re here to help!

#### Step 3: E-Sign

The City of Oakland requires candidates and campaign treasurers to have a signature card on file with the Public Ethics Commission. Once your signature card is approved, you can e-sign campaign statements using your Signer ID and PIN.

<sup>1</sup> In June 2019, City Council adopted amendments to the Oakland Campaign Reform Act (OCRA) to increase transparency and support the public’s right to know who is directing and who is paying for campaign activities. In addition, the recent changes were intended to provide transparency to significant campaign-related activities by City staff who are in a position to leverage their City position to benefit a candidate, ballot measure, or another committee.

information in an electronic format with the Public Ethics Commission. [Oakland Charter §603(b)(5)]. Once a candidate or committee is subject to the electronic filing requirement, the candidate or committee must continue to file all subsequent campaign statements electronically, regardless of the amount of contributions or expenditures made in other reporting periods. Contact the Public Ethics Commission for information about electronic filing of campaign activity. [OMC §3.12.240].

## VOLUNTARY SPENDING LIMITS

All candidates have a choice of whether to limit their campaign spending within pre-set “expenditure ceilings,” or spending limits. An “expenditure” is generally defined as any payment made to influence a voter’s support or opposition to a candidate (or ballot measure). **Candidates who agree to limit their campaign spending are permitted to receive contributions in greater amounts than those who do not.**

OCRA establishes a formula that sets voluntary spending limits for each City office. Every year, the Public Ethics Commission adjusts the limits to account for changes in the cost of living (as measured by the Consumer Price Index for the San Francisco Bay Area). The Commission publishes the voluntary spending limits for all City offices on its website.

### File Your OCRA Form 301

Be sure to file your Form 301 before accepting any contribution at the higher contribution limit. The Form 301 declares that the candidate agrees to the voluntary expenditure ceiling and allows the candidate to accept the higher contribution limit. Failing to timely file the form will result in a monetary penalty from the Public Ethics Commission.

### Accepting Spending Limits

Candidates must agree to the spending limit in writing **before** accepting contributions at the higher amounts (see discussion of contribution limits below). Candidates agree to the spending limit by submitting [OCRA Form 301](#) (submit online or contact the Public Ethics Commission office). OCRA Form 301 must be submitted before a candidate accepts contributions at the higher limit, and no later than the date the candidate files papers for candidacy for City office (generally 88 days before the election). [OMC §3.12.190]

### When Spending Limits Are Lifted

There are two situations in which a candidate who has chosen to voluntarily limit their campaign spending may nevertheless exceed the voluntary spending limit:

1. The first situation occurs if a candidate who agrees to limit spending is opposed by a candidate who does not. If the candidate who does not agree to limit their spending either makes expenditures or receives contributions equal to 50 percent of the voluntary spending limit applicable to that race, then the candidate who agreed to limit spending is no longer bound by the expenditure ceiling.
2. The second situation occurs if a political committee or individual spends more than \$27,000 on independent expenditures related to a City Council or School Board district election, or \$125,000 on independent expenditures related to a City Attorney, Auditor, City Council At-Large, or Mayoral election.<sup>2</sup>

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<sup>2</sup> Spending limit amounts noted here are as adjusted for inflation, effective January 2020.



If either situation occurs, the spending limit is no longer binding on any candidate running for that same office. After the spending limit is lifted, a candidate who accepted the voluntary spending limit is still permitted to raise contributions at the higher amounts. [OMC §3.12.220]

## CONTRIBUTION LIMITS

Once a candidate submits OCRA Form 301 agreeing to accept voluntary limits on campaign spending, the candidate may accept contributions in greater amounts than if they chose not to limit campaign spending. Oakland contribution limits are adjusted annually to account for cost of living increases.

### Contributions to Candidates Who Agree to Limit Spending

For candidates agreeing to limit their spending, the most a candidate may receive from any **person** is \$900 per election, as of January 2020. [OMC §3.12.050(B)] A person is broadly defined as any individual, business entity, committee or other organization or group of persons acting in concert. [OMC §3.12.040]

For candidates agreeing to limit their spending, the most a candidate may receive from any **broad-based political committee** is \$1,700 per election (as of January 2020) [OMC §3.12.060(B)]. A “broad-based political committee” is any committee of persons which 1) has been in existence for more than six months, 2) receives contributions from 100 or more persons, and 3) acting in concert makes contributions to five or more candidates [OMC §3.12.040].

#### Broad-Based Political Action Committee

At the time OCRA was initially enacted, so-called “broad-based political committees” existed and had the same meaning under state law. This term is no longer used under state law but continues to have meaning and applicability under OCRA.

While political committees are no longer called or organized as “broad-based political committees,” some political committees, such as the recently created “small contributor committees,” may still qualify as “broad-based political committees” under OCRA. To help determine whether a political committee qualifies as a “broad-based political committee,” candidates can search the filings of state registered political committees using the California Secretary of State's website at [www.sos.ca.gov](http://www.sos.ca.gov).

### Contributions to Candidates Who Do Not Agree to Limit Spending

For candidates who do **not** agree to limit their spending, the most a candidate may receive from any person is \$200 per election as of January 2020. [OMC §3.12.050(A)] The most such candidates may receive from any broad-based political committee is \$400 per election as of January 2020. [OMC §3.12.060(A)]

### No Limit on Personal Contributions

Regardless of whether a candidate accepts or rejects voluntary limits on campaign spending, a candidate is free to contribute to or loan their campaign **any** amount of money from their own personal funds. The United States Supreme Court ruled that the First Amendment prohibits any restriction on a candidate's ability to contribute or loan personal funds to their campaign.

**Campaign Tip:** Oakland offers a program that provides limited public financing to candidates in council district races. Candidates who choose to participate in the program voluntarily agree not to contribute or



loan more than a specified amount of their personal funds as a condition of eligibility. For more information about Oakland's Limited Public Financing Program, contact the Public Ethics Commission.

## Aggregation of Contributions

OCRA sets forth several circumstances in which the contributions by two or more entities are treated as coming from one person. This “aggregation” of contributions can have important consequences when determining whether contribution limits have been exceeded.

Contributions from two or more entities are aggregated (treated as coming from the same person) when one or more of the following conditions are present:

- The entities share a majority of members on their respective boards of directors;
- The entities share three or more, or a majority of, officers;
- The entities are owned or controlled by the same majority shareholder or shareholders;
- The entities are in a parent-subsidary relationship; or
- One entity finances, maintains, or controls the other entity’s contributions or expenditures [OMC §3.12.080(A)].

Aggregation also occurs in the following situations:

- 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 [OMC § 3.12.080(B)].
- 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 [OMC § 3.12.080(C)].
- If two 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 [OMC § 3.12.080(D)].

**Campaign Tip:** Candidates and their committees have a responsibility to ensure that they are not receiving prohibited contributions. Use of the sample contributor card, located in Appendix IV, can help ensure that contributors are aware of the aggregation rules and acknowledge that they are not contributing more than the allowable contribution limit.

OCRA also prohibits any committee that supports or opposes any candidate from having as officers any individuals who serve as officers on any other committee that supports or opposes the same candidate. This restriction does not apply to campaign treasurers so long as the treasurers do not participate in or control in any way decisions on which candidates receive a contribution. [OMC §3.12.080(E)]

Finally, contributions by two individuals married to each other are treated as separate contributions and are not aggregated. However, contributions by a minor child are treated as a contribution from the parent and are attributed proportionately to each one. [OMC §3.12.100]

## Examples:

- The law firm of Howard, Fine & Howard wants to contribute money to Candidate Doe. Candidate Doe has agreed to expenditure ceilings and is therefore entitled to receive up to \$800 in contributions from any person. Knowing that the law firm, as an entity, is restricted from giving Candidate Doe more than \$800, the firm directs each of its ten attorneys to contribute \$800 each, and then reimburses the attorneys from the law firm's operating account. Is there a problem here?
  - A. Yes. The \$8,000 in contributions from its ten members will be attributed to the law firm since the members' contributions were financed and controlled by the firm. Thus, the firm has violated OCRA's \$800 contribution limit. In addition, the firm and its members may also be guilty of the serious crime of “money laundering” under State and local law if the true source of the contributions is not disclosed. In addition, Candidate Doe may be required to pay or “disgorge” the \$8,000 portion of the contribution to the City and State.
  
- MiniCorp USA makes gadgets within the City of Oakland. MicroCorp America is a nationwide finance company with branch offices in Oakland. Neither MiniCorp nor MicroCorp have anything to do with the other except that they are both majority-owned by the same holding company, MegaCorp International. Both MiniCorp and MicroCorp have received separate invitations to a \$800 a plate fundraiser from Candidate Doe. Can both companies contribute the full amount?
  - A. Since both companies are majority owned by MegaCorp their contributions will be treated as coming from one person and thus the most both companies can contribute to Candidate Doe is \$800 combined, unless the entities act independently in their decisions to make contributions.
  
- Castaway Enterprises is a small company in Oakland equally owned by five members. Two of its owners, MaryAnn and Ginger, want to attend Candidate Doe's \$900 a plate fundraiser. Unknown to them, the other three owners have already authorized a \$900 contribution on behalf of the company. Can MaryAnn and Ginger contribute to the fundraiser?
  - A. Yes. Since MaryAnn and Ginger do not individually or collectively represent a majority interest in Castaway Enterprises, they may contribute their own personal funds and not have their contributions aggregated with any contribution by their company.

## When Loans and Unpaid Bills Become Contributions

Except for secured or guaranteed loans from commercial lending institutions made in the ordinary course of business and on terms available to everyone else, all loans to Oakland candidates are treated as **contributions**

### Extension of Credit Can Count as a Contribution

Be careful of a loan automatically becoming a “contribution” under OMC §3.12.090(D). It is not unusual for candidates to spend more money than they raise before the election. Candidates often hold fundraisers after the election to pay consultants, printers, caterers and others who provided them with campaign services.

What OMC §3.12.090(D) says is that if a candidate owes a vendor more than \$1,500 for more than 90 days, then that extension of credit will be treated as a contribution under OCRA. And since the permissible contribution limit is \$800 from any person, that extension of credit (read: unpaid bill) of more than \$1,500 will automatically constitute a violation of OCRA's contribution limits unless the candidate has established a set payment schedule with the vendor.

from the maker and guarantor (if any) and may not exceed the applicable contribution limits. [OMC §3.12.090(A)(C)]

All loans must be made in writing and noted on the campaign statement on which the loan is first reported. [OMC §3.12.090(B)]

Other than commercial loans, any extension of credit in excess of \$1,500 for a period of more than 90 days also is treated as a contribution subject to the applicable contribution limits **unless** the candidate can demonstrate good faith evidence of an intent to repay through a set payment schedule that is being adhered to through repayment of the extension of credit on a regular basis. [OMC §3.12.090(D)]

**Campaign Tip:** OCRA creates a strong incentive to pay all outstanding bills within 90 days. If this is not possible, arrange a payment schedule in which all vendors are paid something on a regular basis. Although the amount and frequency of payments may depend on the amount of the debt and financial solvency of the campaign, payments should be great enough to dispel any reasonable allegation that the payments are merely a sham to avoid compliance with the law.

## Volunteer Services and Travel Expenses

Volunteer personal services are not considered contributions or expenditures under OCRA and are not subject to its contribution limits or expenditure ceilings. Neither are travel expenses that the individual incurs without reimbursement from the campaign. [OMC §3.12.180]

**Example:** Candidate Doe's roommate is an accountant who charges \$150 per hour for tax preparation professionally. She recently volunteered 10 hours of time preparing Ms. Doe's campaign statements. Candidate Doe has not received a contribution exceeding OCRA's contribution limit, nor has the campaign incurred a \$1,500 expense that would be counted against the voluntary spending limit.

## Soliciting, Receiving, and Returning Campaign Contributions: Required Notice on All Fundraising Material

All candidates for local office must include a notice on all campaign fundraising material with the following language:

**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).**

The above notice must be made in the equivalent of eight-point roman boldface type as shown above. The notice must also be in a color or print that contrasts with the background, so it is easily legible and contained in a printed or drawn box that is set apart from the rest of the text. [OMC §3.12.140(P)]

The notice should appear on any printed or electronic medium that solicits or instructs people how to make a campaign contribution. The notice is not required on campaign material that engages **solely** in election advocacy or the presentation or discussion of issues.

## One Committee/One Checking Account Rule

A candidate may only maintain one campaign committee and one campaign checking account for each election and City office being sought. Both OCRA and state law require that all expenditures for that office be paid from that account. [OMC §3.12.110]

**Example:** Candidate Doe has formed and registered her campaign committee and opened a campaign checking account at a local bank. During the campaign, she occasionally receives small cash contributions that she keeps in an envelope at campaign headquarters. When small expenses are incurred, such as ordering pizza for her precinct volunteers, she uses the money in the envelope. Is this practice okay?

No. While this example does not seem like an unreasonable practice, state and local law require that **all** contributions be deposited into the campaign account before being spent. State law does permit expenditures of less than \$100 to be made in cash, but the cash must be obtained from the campaign account and not taken directly from cash contributions. State law also requires that no more than \$100 be deposited in a petty cash fund at any one time.

**Campaign Tip:** It is essential to establish sound record-keeping procedures for your campaign. For example, state law requires candidates to keep a record of all contributions and expenditures of more than \$25 — even if those contributions and expenditures are not required for disclosure on FPPC campaign statements!

## Identification of Contributor

No contribution of \$100 or more can be deposited into a campaign checking account unless a record of the name, address, occupation and employer of the contributor is kept by the candidate. Cash contributions of \$100 or more are prohibited. [OMC §3.12.130]

State law requires candidates to itemize single or cumulative contributions over \$100 from a single contributor on their campaign statements. For individuals who contribute more than \$100 in total, the contributor's name, street address, occupation and employer must be given. If the contributor is self-employed, the campaign must provide the name of the contributor's business.

Under OCRA, local candidates may not even **deposit** a contribution without a record of the name, street address, occupation and employer of the contributor for any contribution of \$100 or more. If the campaign does not obtain the required contributor information, state law requires the contribution be returned or forfeited within 60 days.

**Campaign Tip:** It is a good idea to create a contribution form that includes the above information to be filled out at the time the contribution is received. See Appendix IV for sample contributor card.

## PROHIBITION ON CONTRACTOR CONTRIBUTIONS

OCRA contains an extensive prohibition on contributions by persons negotiating certain contracts with the City of Oakland or Oakland Unified School District Board. OCRA prohibits contractors that meet certain OCRA criteria from making **any** contribution to candidates for local office between the time negotiations on the affected contracts begin and 180-days after the completion or termination of negotiations on the contract.

## Applicable Contracts

The prohibition on contractor contributions to Oakland candidates, or “contractor ban,” applies to contracts that require City Council or School Board approval including, but not limited to the following:

1. Contracts for the procurement of professional or consulting services exceeding \$15,000;
2. Contracts for the procurement of materials, supplies, commodities, equipment or services, other than professional or consulting services, exceeding \$50,000;
3. Contracts for the sale or lease of any building or land to or from the City;
4. Amendments to any of the contracts listed above.

The list above is not exhaustive. In addition, recent changes to City Council and City Administrator purchasing authority increased the financial thresholds for contracts that require approval by Council. [OMC §2.04, §2.41, and §2.42] Ultimately, regardless of the contract amount, the contractor ban applies to any contract that requires approval by the City Council. If you have a contract moving through the City Council process, you are likely prohibited from contributing to candidates for local office, including both incumbents and candidates running against incumbents. Please seek Commission advice if you have questions about this prohibition.

OCRA further provides a list of contracts that require School Board approval including, but not limited to the following:

1. Contracts for the procurement of professional or consulting services exceeding \$25,000;
2. Contracts requiring School Board approval under Public Contract Code Section 20111;
3. Construction contracts exceeding \$25,000;
4. Contracts for the sale or lease of any building or land to or from the School District;
5. Amendments to any of the contracts listed above.

Again, the list above is not exhaustive. Therefore, regardless of the contract amount, the contractor ban applies to any contract that requires approval by the School Board.

If the contractor is an entity, such as a corporation, partnership, or LLC, the contribution ban also applies to all 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 that serves in the functional equivalent of one or more of those positions;
2. Any individual who holds an ownership interest in the entity of 20 percent or more; and
3. An individual employee, independent contractor, or agent of the entity authorized to represent the entity before the City regarding the contract.

## When the Prohibition Applies

No person who proposes a contract that requires City Council or School District approval may make **any** contribution to a candidate for local office or current officeholder of the applicable government body from the **commencement of negotiations** until 180 days after the **completion** or **termination** of negotiations. [OMC §3.12.140(A)(B) & (C)] OCRA defines these periods as follows:

- The **commencement of negotiations** occurs when a contractor or representative formally submits a bid, proposal, qualifications or contract amendment to any elected or appointed... officer or employee or when any elected or appointed... officer or employee formally proposes submission of a bid, proposal, qualifications or contract amendment. [OMC §3.12.140(G) & (I)]
- The **commencement of negotiations** expressly does **not** include the unsolicited receipt of proposal or contract information; requests to be placed on mailing lists; routine requests for information about a particular contract, request for proposals, or any information or documents about them; or the attendance at an informational meeting. [OMC §3.12.140(J)]
- The **completion of negotiations** occurs when the City or School District executes the contract or amendment. [OMC §3.12.140(K)]
- The **termination of negotiations** occurs when 1) the contract or amendment is **not** awarded to the contractor or 2) the contractor files a written withdrawal from the negotiations which is accepted by an appointed or elected officer or employee of the respective public agency. [OMC §3.12.140(L)]

## Contractor Acknowledgment

All potential and current contractors must execute a declaration acknowledging the prohibition on contractor contributions at the time they submit a bid, proposal, qualifications or contract amendment. Contracts may not be awarded to any contractors who have not signed this declaration. The declaration is typically provided by the contracting City department or agency. The Office of the City Clerk (or the School District) is required to receive and file copies of all contractor declarations and make a list of current contractors available for public inspection. [OMC §3.12.140(M)&(N)]

**Campaign Tip:** In addition to the required notice on all fundraising material (covered on page 10), candidates should carefully review all contributions to determine whether the party making it is bidding or negotiating for a City or School Board contract. This may require a call to the contributor or to the appropriate City or School Board staff members. Use of the sample contributor card, located in Appendix IV, can also help ensure contractors are aware of the contractor ban and acknowledge their contract status.

## CONTRIBUTIONS SOLICITED BY CITY STAFF AND OFFICIALS

Effective July 1, 2019, any Oakland public servant required to file a Statement of Economic Interests (Form 700) who successfully solicits a political contribution of \$5,000 or more from any person or entity that contracts or proposes to contract with the official's department **must disclose the solicitation within 30 days to the Public Ethics Commission.** [O.M.C. §3.12.117]



The disclosure requirement applies to the Mayor, members of the Council, or senior staff members to either the Mayor or members of Council when the solicitation is made to a person contracting or proposing to contract with the City of Oakland to illuminate political contributions by those who may desire to influence City action.

## How to Disclose Solicitations

To report a solicitation to the PEC, file [OCRA Form 303](#) (submit online or contact the Public Ethics Commission office).

## What Must Be Disclosed?

OCRA Form 303 requires the following information to be provided:

1. Public official – name, title, agency name, phone, and email
2. Contributor – contributor type (individual or business), and address
3. Recipient – committee name, FPPC ID, and committee address
4. Contribution – date of contribution, amount, type (monetary or in-kind), election date, ballot measure or candidate, and support or oppose position

All submitted information must be signed under penalty of perjury under the laws of the State of California.

## INDEPENDENT EXPENDITURES

### Special Notice Requirements for Persons Making Independent Expenditures

Any person who makes independent expenditures for a mass mailing, slate mailing or other campaign materials that support or oppose any candidate for city office must place the following statement on the mailing in no smaller than 14-point type:

**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].

The requirement only applies to persons who make independent expenditures for a “mass mailing, slate mailing or other campaign materials.” State law defines a “mass mailing” as more than 200 substantially similar pieces of mail. A “slate mailing” is any mass mailing that supports or opposes a total of four or more candidates or ballot measures. While the term “other campaign material” is undefined, it may include other forms of campaign communication that do not total 200 pieces.



## Disclosure of Top Two Donors

A committee, as defined by the California Political Reform Act, must disclose the names of the individuals from whom the committee received its two highest cumulative contributions of \$5,000 or more on all mass mailings and television advertisements that are independent expenditures supporting or opposing a candidate or measure being voted upon only in the City of Oakland.

California law imposes similar disclosure requirements on mass mailings. To facilitate compliance with both state and local law, the Commission has advised (PEC Advice Letter 16-01) that a committee could modify the above disclosure language slightly to read as follows:

Notice to Voters  
(Required by the City of Oakland)  
This mailing was not authorized, approved or paid for by a candidate for City office, a committee controlled by a candidate for City office, or an election official.  
It is paid for by [name, address, city, state]  
Total cost of this mailing is: [amount].

The above language, which merges the language required by the California Political Reform Act with that required by the Oakland Campaign Reform Act, satisfies Oakland's local law.

## BALLOT MEASURE COMMITTEES CONTROLLED BY CANDIDATES OR ELECTED CITY OFFICIALS

A candidate-controlled ballot measure committee is a campaign committee that is established to raise and spend money on behalf of one or more ballot measures in California, and that is under the legal control of a political candidate. According to the State Fair Political Practices Commission, a ballot measure committee is controlled by a candidate if the candidate (or their representative) has significant influence on the actions or decisions of the committee. (See *FPPC Campaign Disclosure Manual 3: Information for Ballot Measure Committees*, available on the FPPC's website at [www.fppc.ca.gov](http://www.fppc.ca.gov).)

Under OCRA, a candidate or elected City Official who controls a ballot measure committee is prohibited from doing the following:

1. Directly or indirectly using, or influencing the use of, ballot measure committee funds to support the candidate's or elected City Official's election;
2. Directly or indirectly using, or influencing the use of, ballot measure committee funds to support or oppose other candidates;
3. Transferring ballot measure committee funds to another committee supporting the candidate's or elected City Official's election or supporting or opposing other candidates. [OMC §3.12.115]

## **BALLOT MEASURE COMMITTEES CONTROLLED BY NON-CANDIDATES**

All non-candidate-controlled committees, including ballot measure and general purpose committees, required to file campaign statements in the City of Oakland must disclose principal officers of the committee on their Statement of Organization (FPPC Form 410), a copy which must be submitted to the Public Ethics Commission. [O.M.C. §3.12.116]

A principal officer of a committee is the individual primarily responsible for approving the political activity of the committee including, but not limited to, the following activities:

1. Authorizing the content of the communications made by the committee;
2. Authorizing expenditures, including contributions, on behalf of the committee;
3. Determining the committee's campaign strategy.

If more than one individual shares in the primary responsibility for approving the political activities of the committee, each person is a principal officer.

Such disclosure must be provided for a minimum of one principal officer, and up to a total of three if applicable. Disclosure information must include the following:

1. Full name;
2. Street address;
3. Telephone number.

## **OFFICEHOLDER COMMITTEES AND LEGAL DEFENSE FUNDS**

OCRA authorizes two additional types of accounts in addition to a campaign account. The first is an officeholder committee that every elected City Official is permitted to establish for those expenses associated with holding public office. [OMC §3.12.150(A)] The second is a legal defense fund which any candidate or elected City Official may establish to defray attorney fees and other legal costs incurred in the defense of any civil, criminal or administrative action arising directly out of a campaign, election process or the performance of governmental activities. [OMC §3.12.170(A)]

The primary significance of these funds is that expenditures can be paid from them without counting against the campaign expenditure ceilings applicable to the office being sought or held. [OMC §§3.12.150(F); 3.12.170(C)]

### **Officeholder Committee**

State law allows local candidates who win the election to continue to maintain their campaign committee after the election to receive contributions and to use campaign funds to offset officeholder expenses. During non-election years, Form 460 is filed on a semi-annual basis if the committee remains open. State law further requires that the committee name include the candidate's last name, office sought, and year of the election, and that this name remain intact until and unless the candidate decides to run for re-

election, in which case the candidate may re-designate the committee or create a new committee for the future office sought. See FPPC *Disclosure Manual 2 – Information for Local Candidates, Superior Court Judges, Their Controlled Committees, and Primarily Formed Committees for Local Candidates*, available on the FPPC’s website at [www.fppc.ca.gov](http://www.fppc.ca.gov).

Oakland law allows each elected City Official to maintain an officeholder committee for expenses associated with holding the office currently held by the elected City Official. Contributions to the officeholder committee must be made by separate check or other separate written instrument, and single contributions may not be divided between the officeholder committee and any other candidate committee. OCRA imposes a limit on the total amount the officeholder committee may receive in contributions per year in office as follows (OMC 3.12.150(A)):

District Councilmembers, City Auditor, and School Board Directors	\$25,000
Councilmember-At-Large	\$30,000
Mayor	\$50,000

Annual contributions received by or made to the officeholder committee are subject to the same contribution limits that apply to candidate committees; this means that an elected City Official may receive contributions from any person or broad-based political committee of up to \$200/400 annually if the candidate did **not** accept voluntary spending limits, or up to \$900/1,700 annually if they accepted spending limits. [OMC §3.12.150(E)]

Contributions to an officeholder committee must be made by check or “other separate written instrument.” The contribution must be earmarked or designated in some way as a contribution to the officeholder committee, such as a note on the “memo” line of a check or with an accompanying note or letter from the contributor.

### Forming an Officeholder Committee

Establishing and using an officeholder committee can be tricky. The reason is that state law permits an elected City Official to receive contributions into only one campaign account – whether for campaign or officeholder purposes.

To accept officeholder contributions under Oakland law, a candidate must establish an “officeholder” committee by re-designating their campaign committee after the election and after all campaign related expenses and debts have been paid.

Officeholder committee funds may NOT be used for an elected City Official’s own campaign-related expenses, nor may they be transferred to another candidate committee (including one’s own).

See Officeholder Committees Fact Sheet (Appendix III) for more information.

The limits on aggregate contributions cap the total amount of contributions an officeholder committee may receive for every year in office. There is no requirement that this money be spent annually, and it may accrue for as long as the elected City Official holds elective office.

Persons and broad-based political committees may contribute, up to their permissible maximum levels, only once per election to a candidate’s campaign committee, but may make annual contributions to an officeholder committee.

**Campaign Tip:** Do not accept or deposit contributions to the officeholder committee unless you have something in writing from the contributor that expressly designates that the money is to be deposited into the officeholder committee.

As stated above, officeholder committees may be used for any “political, governmental or lawful purpose” for those expenses associated with holding the office currently held by the elected city officer. OCRA sets forth a long list of permissible expenditures from the officeholder committee, such as for office furniture, office rent, fundraising for the officeholder committee, donations to tax-exempt organizations, and other expenses incurred in connection with government-related activities. [OMC §3.12.150(B)]

OCRA also expressly **prohibits** officeholder committee funds being used for the following activities or purposes:

- Expenditures in connection with a future election for any city, county, regional, state or federal elective office;
- Expenditures for campaign consulting, research, polling, photographic or similar services for election to other elective office;
- Membership in any athletic, social, fraternal, veteran or religious organization;
- Supplemental compensation for city employees for performing an act that would be required or expected of them in the regular course of their city duties;
- Any expenditure that would violate the California Political Reform Act. [OMC §3.12.150(C)]

Finally, OCRA prohibits officeholder committee funds from being transferred to any candidate committee. [OMC §3.12.150(D)]

## Legal Expense Fund

An elected City Official or candidate for city office may receive contributions for a separate legal expense fund for attorney fees and legal costs incurred to defend against actions arising directly out of the conduct of the campaign or election process, or the performance of the candidate's or elected City Official's governmental activities and duties. [OMC §3.12.170]

All contributions to a legal expense fund must be “earmarked” by the contributor at the time the contribution is made. The contributions must be first deposited into the elected City Official's appropriate bank account before being deposited into the legal expense fund. The legal expense fund may be in the form of certificates of deposit, interest-bearing savings accounts, money market or similar accounts, which shall be established only for the legal expense fund. [OMC §3.12.170(A)]

Unlike officeholder or campaign committees, there is no limit to the amount a person or broad-based political committee may contribute to a legal expense fund. [OMC §3.12.170(B)] There is also no limit on the total amount that a legal expense fund can receive in any given year. Expenditures made from the legal expense fund are not subject to the voluntary campaign expenditure ceilings. [OMC §3.12.170(C)]

## Donation of Office Space

A related provision to officeholder committees and legal expense funds is the provision that permits a person or broad-based political committee to donate office space to elected City Officials in furtherance of their duties and responsibilities. A donation of this kind will not be considered an expenditure by, or non-monetary contribution to, an elected City Official **if** the donation is made to the City and accepted pursuant to Oakland City Charter Section 1203 for use elected City Officials (or to the School District for use by the School District board of directors), **and** the name, address, employer and occupation of the donor, and the current market value of the donated office space, are provided to the City Clerk.

## **ENFORCEMENT**

Persons who violate the Oakland Campaign Reform Act are subject to criminal, civil, administrative, and other penalties. Note: A copy of the Public Ethics Commission's Complaint Procedures and Complaint Forms are available from the Commission and posted on its website.

### **Liability**

In addition to a committee itself, all 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. When two or more parties are jointly and severally liable, each party is independently liable for the full extent of the violation.

An agent acting on behalf of a principal officer is also jointly and severally liable for violations that arise out of the agent's actions. The following are presumed to be agents of a committee: 1) a current or former officer of the committee, 2) an employee of the committee, 3) a person who has received compensation or reimbursement from the committee, and 4) 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.

In addition, any person who receives a financial benefit because of a violation of OCRA shall be liable for disgorging to the City's general fund up to the amount of the financial benefit received as a result of the violation.

### **Penalties**

If, after an administrative hearing pursuant to its Complaint Procedures, the Public Ethics Commission determines that a violation under OCRA has occurred, the Commission may administer penalties and fines not to exceed \$5,000 per violation or three times the amount of the unlawful contribution or expenditure, whichever is greater. [OMC §3.12.270(B)]

### **Injunctive Relief**

The Public Ethics Commission, or any individual residing in the City, may seek a court order to stop violations or to compel compliance with certain provisions of OCRA. [OMC §3.12.280] The court may award litigation costs or attorney's fees to a complainant or respondent who prevails in a civil action for injunctive relief. [OMC §3.12.300]

### **Disqualification**

In addition to any other penalty, if an official receives a contribution above the contribution limits, the official shall not be permitted "to make, participate in making or in any way attempt to use their official position to influence a governmental decision in which the contributor has a financial interest." [OMC §3.12.330] This language is borrowed from the California Political Reform Act's provisions on financial conflict of interest. The significant difference is that OCRA prohibits an official from participating in any decision affecting the contributor's financial interests, while state law restricts participation only if the official's financial interests are at stake.

## APPENDIX I: CAMPAIGN CONTRIBUTION AND VOLUNTARY CAMPAIGN SPENDING LIMITS

### CITY OF OAKLAND CAMPAIGN CONTRIBUTION AND VOLUNTARY CAMPAIGN SPENDING LIMITS PER THE OAKLAND CAMPAIGN REFORM ACT 2020

#### LIMITATIONS ON CONTRIBUTIONS FROM PERSONS (§3.12.050)

For candidates who DO NOT agree to limit campaign spending (3.12.050(A))	\$200
For candidates who agree to limit campaign spending (3.12.050(B))	\$900

#### LIMITATIONS ON CONTRIBUTIONS FROM BROAD-BASED POLITICAL COMMITTEES (§3.12.060)

For candidates who DO NOT agree to limit campaign spending (3.12.050(A))	\$400
For candidates who agree to limit campaign spending (3.12.050(B))	\$1,700

#### EXPENDITURE CEILINGS FOR CANDIDATES FOR MAYOR AND OTHER CITYWIDE OFFICES WHO AGREE TO VOLUNTARY SPENDING LIMITS (§3.12.200)

Mayor	\$488,000
City Auditor	\$348,000
City Attorney	\$348,000
Council Member At-Large	\$348,000
District 1 Council Member	\$153,000
District 2 Council Member	\$153,000
District 3 Council Member	\$153,000
District 4 Council Member	\$146,000
District 5 Council Member	\$146,000
District 6 Council Member	\$146,000
District 7 Council Member	\$148,000
District 1 School Board Director	\$102,000
District 2 School Board Director	\$102,000
District 3 School Board Director	\$102,000
District 4 School Board Director	\$97,000
District 5 School Board Director	\$97,000
District 6 School Board Director	\$97,000
District 7 School Board Director	\$99,000

#### INDEPENDENT EXPENDITURE COMMITTEE THRESHOLD/EXPENDITURE CEILINGS LIFTED (§3.12.220)

Citywide offices	\$125,000
District offices	\$27,000

**APPENDIX II: OFFICEHOLDER COMMITTEES FACT SHEET****Officeholder Committees  
FACT SHEET****CA Political Reform Act/FPPC Rules for Officeholder Committees**

State law allows local candidates who win the election to continue to maintain their campaign committee after the election to receive contributions and to use campaign funds to offset officeholder expenses. During non-election years, the Form 460 is filed on a semi-annual basis if the committee remains open. State law further requires that the committee name include the candidate's last name, office sought, and year of the election, and that this name remain intact until and unless the candidate decides to run for re-election, in which case the candidate may re-designate the committee or create a new committee for the future office sought.

See FPPC *Disclosure Manual 2 – Information for Local Candidates, Superior Court Judges, Their Controlled Committees, and Primarily Formed Committees for Local Candidates*, available on the FPPC's website at [www.fppc.ca.gov](http://www.fppc.ca.gov).

**Oakland Campaign Reform Act (OCRA) Rules for Officeholder Committees**

Oakland law allows each elected City Official to maintain an officeholder committee for expenses associated with holding office. Contributions to the officeholder committee must be made by separate check or other separate written instrument, and single contributions may not be divided between the officeholder committee and any other candidate committee. The Oakland Campaign Reform Act (OCRA) imposes a limit on the total amount the officeholder committee may receive in contributions per year in office as follows (OMC 3.12.150A):

District Councilmembers, City Auditor, and School Board Directors	\$25,000
Councilmember-At-Large	\$30,000
Mayor	\$50,000

In addition, annual contributions received by or made to the officeholder committee shall be subject to the contribution limits under OCRA; however, expenditures made from the officeholder committee shall not be subject to the voluntary expenditure ceilings in OCRA (OMC 3.12.150E and 3.12.150F). No funds may be transferred from the officeholder committee of an elected City Official to any other candidate committee (OMC 3.12.150D).

A contributor may contribute up to the contribution limit to the officeholder committee each year it is in existence, in addition to making contributions at the applicable limit to the elected City Official's campaign committee for a future election.



## Transitioning a Campaign Committee into an Officeholder Committee

A candidate may decide to maintain the campaign committee in lieu of creating an officeholder committee; however, the candidate would be limited to the contribution limits that applied to their contributors during the election. In other words, an individual who contributed to the candidate's campaign at the maximum amount would not be able to contribute again to the campaign committee, until and unless the campaign committee is re-designated as a campaign committee for the candidate's re-election. Even then, the contributor would be limited to the maximum contribution limit for the next election.

By establishing an officeholder committee, an elected City Official can receive a new set of contribution limits as outlined above and subject to OCRA's officeholder expenditure rules listed below. The new limits are in addition to the limits allowable for campaign contributions and are applied annually rather than per-election. To trigger the ability to accept officeholder contributions, a candidate must establish an "officeholder" committee by re-designating the campaign committee as follows:

1. After the election, pay all campaign expenses and debts. Do not terminate the campaign committee.
2. After the elected official is sworn into office, file an amended Form 410 pursuant to state rules to add "Officeholder" to the committee name (the name must still include the candidate's last name, the prior office sought, and the year of the election). There is no required deadline for transitioning the committee from a campaign committee to an officeholder committee, except that, once a committee is renamed with "Officeholder," it can no longer accept campaign contributions, pay campaign debts, or make other campaign expenditures. The new "Officeholder" committee can only receive officeholder contributions and make officeholder expenditures per OMC 3.12.150 and is subject to the new annual contribution limit for "Officeholder" committees.
3. Any funds that remain in the account as it becomes an officeholder committee may not exceed the total amount the officeholder committee may receive in contributions per year in office under OMC 3.12.150A.
4. A contributor may not give to the campaign committee for the prior election and to the officeholder committee in the same calendar year; however, if and once the candidate forms a new campaign committee for their re-election or election to another office, a contributor may contribute up to the maximum amount to the officeholder committee and the future campaign committee.

**Note:** In lieu of the above campaign committee re-designation process, an officeholder could instead create a new campaign committee for re-election while in office, designate it with the name "officeholder," and use that committee for officeholder contributions and expenditures; however, the officeholder committee must have a zero balance before the candidate begins to accept campaign

### Creating an Officeholder Committee

Establishing and using an officeholder committee can be tricky. The reason is that state law permits an elected City Official to receive contributions into only one campaign account – whether for campaign or officeholder purposes.

To accept officeholder contributions under Oakland law, a candidate must establish an "officeholder" committee by re-designating their campaign committee after the election and after all campaign related expenses and debts have been paid.

Officeholder committee funds may NOT be used for an elected City Official's own campaign-related expenses, nor may they be transferred to another candidate committee (including one's own).

contributions and make campaign expenditures for the candidate's future re-election, as OCRA prohibits any transfer of officeholder funds to another candidate committee.

## Officeholder Expenditure Rules

Under OCRA section 3.12.150B, expenditures from an officeholder committee may be made for any political, governmental, or other lawful purpose such as the following:

1. Expenditures for fundraising (including solicitations by mail) for the officeholder per statute;
2. Expenditures for office equipment, furnishings and office supplies;
3. Expenditures for office rent;
4. Expenditures for salaries of part-time or full-time staff employed by the officeholder for officeholder activities;
5. Expenditures for consulting, research, polling, photographic or similar services except for campaign expenditures for any city, county, regional, state or federal elective office;
6. Expenditures for conferences, meetings, receptions, and events attended in the performance of government duties by (1) the elected City Official (2) a member of the elected City Official's 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 Official's 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 City Official, any member of their immediate family, or their 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 Official's staff in the performance of their 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 matter pending before the Council, Mayor, or School Board;
14. Expenditures for expressions of congratulations, appreciation or condolences sent to constituents, employees, governmental officials, or other persons with whom the elected City Official communicates in their 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.

OCRA section 3.12.150C specifically prohibits the following expenditures from officeholder committees:

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 their duties as a city official or employee;
5. Any expenditure that would violate the provisions the California State Political Reform Act, including Government Code Sections 89506 and 89512 through 89519.

## **Termination of the Officeholder Committee**

The officeholder committee shall be terminated at the time the elected City Official's term of office ends or they leave that office, whichever is earlier. An officeholder committee may not transfer funds to a campaign committee for a future election or to any other campaign committee. If the elected City Official runs for re-election, the new campaign committee is a separate committee for a separate election and does not impact the existing officeholder committee. If the elected City Official wins re-election, it is advised that the campaign committee for the candidate's re-election become the candidate's new officeholder committee according to the above procedures.

## APPENDIX III: SAMPLE CONTRIBUTOR CARD

[Insert Name of Candidate Committee and FPPC ID#]

### Individual Contributor Verification Card

Amount of the Contribution: \$ \_\_\_\_\_ Date of the Contribution: \_\_\_\_\_

Type of contribution (check one): Monetary \_\_\_\_ In-kind \_\_\_\_

If in-kind contribution, please specify items contributed/services rendered: \_\_\_\_\_

Contributor Name (Print): _____	
Street Address (no P.O. Boxes): _____	
City/State/Zip: _____	
For donors of at least \$100 (cumulatively), the following information is required:	
Occupation: _____	Employer: _____
<small>(If self-employed, provide the name of the business)</small>	

Please verify that your contribution is not a prohibited contribution by marking the box next to each item below:

- I am not contributing more than \$900 for this election. I understand that, for purposes of contribution limits, my personal contributions are aggregated with the contributions of a business in which I own a majority interest, and that contributions from multiple entities also are aggregated when the conditions are such that the entities:
  - 1) share the majority of members of their board of directors;
  - 2) share three or more, or a majority of, officers;
  - 3) are owned or controlled by the same majority shareholder(s);
  - 4) are in a parent-subsidiary relationship; or
  - 5) one entity finances, maintains, or controls the other entity's contributions or expenditures. (OMC 3.12.080)
  
- I am not contracting or proposing to contract with the City or OUSD, currently or within the past 180 days, on a contract requiring approval by City Council, and I do not hold any of the following positions with an entity doing so:
  - 1) board chair, president, chief executive officer, chief operating officer, chief financial officer, or the functional equivalent of one or more of those positions;
  - 2) owner with ownership interest of 20% or more; or
  - 3) employee, independent contractor, or agent of the entity who is authorized to represent the entity before the City or OUSD in regards to the contract. (OMC 3.12.140)

Signature required of all contributors:	
I certify that this contribution is not prohibited under Oakland's Campaign Reform Act as specified above.	
X _____	
Contributor Signature	Date