

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION
1112 I Street #100
Sacramento, California 95814
(916) 874-6458

November 7, 2007

TO: Sacramento Local Agency Formation Commission
FROM: Peter Brundage, Executive Officer
RE: Proposed LAFCo Lobbying & Disclosure Policies

RECOMMENDATION

1. Consider the attached LAFCo Lobbying and Disclosure Policies.
2. Provide direction to staff to finalize policies and forms for consideration on December 5, 2007.

BACKGROUND

The Provisions in the Political Reform Act requiring registration and reporting by individuals and entities that make or receive payments for the purpose of influencing decisions of state agencies did not apply to LAFCo's prior to the adoption of the Hertzberg legislation (AB 2838). The Commission on Local Governance initially proposed these changes as a result of the proposal for San Fernando Valley secession from the City of Los Angeles. The final version adopted by the Legislature is much broader and applies to both supporters and opponents of all proposals (annexation, reorganization, district formations, sphere of influence amendments, and incorporations).

Cortese Knox Hertzberg Legislation currently allows the Commission, through the adoption of written policies, to require lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by commissioners, staff, or consultants. Disclosure under these policies shall be made either to the Commission's Executive Officer and posted on the web site, or the Recorder, Registrar of Voters, or Clerk of the Board of Supervisors in the County in which the Commission is located.

DISCUSSION

On March 7, 2001, Commission Counsel provided a staff report and a draft policies (attached) providing a number of options relating to the Disclosure of Contributions Made in Support of or in Opposition to a Proposal and to Lobbying Disclosure requirements. Assembly Bill 2838 (Hertzberg Amendments to Cortese Knox Government Code) permitted the Commission discretion to enact disclosure requirements for annexations, reorganizations, formation of new districts, sphere of influence amendments, and incorporations.

The Commission held a public hearing on this matter on March 7, 2001. However, the Commission decided not to implement the proposed policies requiring proponents and opponents to make various disclosures of financial contributions. Recently, Assembly Bill 745 was adopted which clarifies financial disclosure requirements. AB 745 did not make any substantive changes to the current law; however, it did broaden the time period to be considered. For example, it appears that contributions and expenditures made to gather signatures could now be subject to the disclosure requirements once the petition is filed with the Executive Officer. In addition, disclosure is now required through completion of the Conducting Authority/Protest proceedings.

Disclosure requirements are still discretionary and under either AB 2838 or AB 745 are only applicable if the Commission adopts written policies. If Lobbying and Disclosure Policies are adopted, reporting and disclosure would be the same as required for local initiative measures under the Political Reform Act, Government Code Section 81000 et seq., and the regulations of the Fair Political Practices Commission (FPPC).

The California Association of Local Agency Formation Commissions has also prepared the attached draft policies that could be adopted by the Commission. CALAFCo Policies are advisory and may be amended to meet specific needs of each Local Agency Formation Commission. At a minimum, the policies, if adopted, must comply with the FPPC law. However, LAFCo policies can be more extensive.

Enforcement

At this time, AB 745 did not amend the Political Reform Act. Consequently, the Fair Political Practices Commission has no jurisdiction to enforce the requirements for disclosure until a LAFCo matter is placed on the Ballot and becomes a "measure" within the meaning of the Political Reform Act. Therefore, enforcement will be up to LAFCo and, absent cooperation of the person obligated to make disclosure, enforcement may require a lawsuit.

Commission counsel has also proposed a condition in the Draft Policies that would delay or terminate action by the Commission until proper disclosure has been filed with the Executive Officer.

Summary of Proposed Disclosure Policies

The Draft Policies provide for the following terms and conditions related to disclosure requirements:

Definitions

The definitions are summarized below and are set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) and will govern the construction and meaning of these policies.

“Contribution” means contribution as defined in Government Code Section 82015, and shall include loans to the extent that loans are considered pursuant to Government Code Section 84216.

“Entity” means any person or organization, as those terms are defined herein, other than an individual.

“Expenditure” means expenditures as defined in Government Code Section 82025.

“Independent Expenditure” means independent expenditure as defined in Government Code Section 82031.

“Influencing Pending Decision” means promoting, supporting, influencing, modifying, opposing or delaying any pending decision to be made by Commission members, staff, or consultants by any means, including but not limited to, the provision or use of information, statistics, studies, or analyses.

“Lobbyist” means any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing pending decisions made by Commission members, staff, or consultants.

“Person” means an individual, proprietorship, labor union, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, political action committee, committee, and any other organization or group of persons acting in concert.

“Proposal” means a request or statement of intention made by petition or by resolution of application of a legislative body or of a school district proposing proceedings for the change of organization or reorganization described in the request or statement of intention.

General Disclosure Requirements

- Disclosure would be required when the spending thresholds are reached.
- Disclosure shall be made to the Executive Officer and it shall be posted on the Commission Website.
- Disclosure is required for any pending application and applies to contributions and expenditures prior to submittal of an application only if the application is filed and would continue through the Conducting Authority/Protest Hearing.
- Failure to comply with the disclosure and reporting requirements set forth in adopted policies may result in the disapproval, postponement or rejection of the proposal, at the reasonable discretion of the Commission.

Disclosure Requirements for Contributions and Expenditures

- Contributions in the amount of \$5,000
- Expenditures in excess of \$1,000

Disclosure Requirements for Lobbying

- Lobbyists in the Amount of \$2,000

Table Summarizing Disclosure Options

Issue	Contributions	Expenditures	Lobbying
Monetary Levels Triggering Disclosure	\$5,000	\$1,000	\$2,000
Type of Project	All or Some	All or Some	All or Some
Who	Any person, entity, or organization	Any person, entity, or organization	Any person, entity, or organization
Effective	Upon submittal of application Includes contributions incurred prior to submittal	Upon submittal of application Includes contributions incurred prior to submittal	Upon submittal of application Includes contributions incurred prior to submittal

The Commission has the discretion to modify the monetary levels, the types of projects that would require disclosure, who is to provide disclosure and the time period for which disclosure is required.

If policies are adopted the Commission has the discretion to make these policies effective for pending projects for any project submitted after a date certain.

Trigger levels

The monetary trigger levels set forth in this report were modeled after disclosure levels established by the City of Sacramento and the State Political Reform Act. The Commission has the discretion to establish higher or lower monetary trigger levels.

Type of Projects Subject to Disclosure

The Commission also has the discretion to require all or only certain applications to be subject to these policies. I believe that all projects and applications which would result in an action or decision by the Commission be subject to these policies including but not limited to annexations, reorganizations, district formations, incorporation, and sphere of influence amendments etc.

Recommendation

The Commission may consider the proposed Disclosure Policies, amend the proposed policies, or not adopt this or any Disclosure Policy.

SACRAMENTO LOCAL AGENCY FORMATION COMMISSION

Respectfully,



Peter Brundage
Executive Officer

Attachments

PB

(LAFCo 2007 Lobbying and Disclosure Policies)

Proposed Sacramento LAFCo Disclosure Policies

DRAFT

RESOLUTION NO. LAFCo _____

**A RESOLUTION OF THE SACRAMENTO LOCAL AGENCY FORMATION
COMMISSION RELATING TO THE DISCLOSURE
OF CONTRIBUTIONS MADE IN SUPPORT OF OR IN
OPPOSITION TO A PROPOSAL AND TO
LOBBYING DISCLOSURES**

WHEREAS, Enactment of AB 2838 (Hertzberg) resulted in a number of major changes to Local Agency Formation Commissions in 2001; and

WHEREAS, AB 2838 authorizes LAFCOs to adopt written policies and procedures regarding the disclosure of contributions, expenditures, independent expenditures, and lobbying activities; and

WHEREAS, the Sacramento Local Agency Formation Commission desires to adopt such written policies and procedures;

**NOW, THEREFORE, the SACRAMENTO LOCAL AGENCY FORMATION
COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1: Recitals

The above recitals are true and correct, and the Sacramento Local Agency Formation Commission (the "Commission") hereby so finds.

**SECTION 2: Disclosure of Contributions Made in Support of or in Opposition to a
Proposal**

A. Definitions.

Unless a particular word or phrase is otherwise specifically defined in this section, or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) shall govern the construction, meaning, and application of words and phrases used in this section. References to particular sections of the Government Code or other statutes or laws, including references in this section, shall be deemed to include any changes to such sections, statutes or laws, including any amendments, deletions, additions, re-numberings or re-codifications that may occur subsequent to the enactment of this resolution.

"Contribution" means contribution as defined in Government Code section 82015, and

shall include loans to the extent that loans are considered contributions pursuant to Government Code section 84216.

“**Entity**” means any person or organization, as those terms are defined herein, other than an individual.

“**Expenditure**” means expenditures as defined in Government Code section 82025.

“**Independent Expenditure**” means independent expenditures as defined in Government Code section 82031.

“**Influencing Pending Decisions**” means promoting, supporting, influencing, modifying, opposing or delaying any pending decision to be made by Commission members, staff or consultants by any means, including but not limited to, the provision or use of information, statistics, studies or analyses.

“**Lobbyist**” means any individual who receives two thousand dollars (\$2000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing pending decisions made by Commission members, staff, or consultants.

“**Person**” means an individual, proprietorship, labor union, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, political action committee, committee, and any other organization or group of persons acting in concert.

“**Proposal**” means a request or statement of intention made by petition or by resolution of application of a legislative body or of a school district proposing proceedings for the change of organization or reorganization described in the request or statement of intention.

SECTION 3: Disclosure of Contributions and Expenditures

A. Contributions

Any person or organization who makes contributions of more than \$ _____; or *five thousand dollars (\$5000.00)* (this is the City of Sacramento’s disclosure requirement); in support of or in opposition to any proposal, shall disclose such contribution to the Commission’s executive officer and shall be posted on the Commission’s website. Disclosure shall be made by mailgram, telegram, guaranteed overnight mail through the United States Postal Service or

equivalent private delivery within twenty-four (24) hours. Such notification shall be made each time this threshold of \$ _____; or five thousand dollars (\$5000.00) is met.

Disclosure pursuant to this section shall be in addition to any disclosure required by Title 9 (commencing with section 81000) or by local ordinance.

B. Expenditures

Any person or organization who makes an expenditure of more than \$ _____; or one thousand dollars (\$1000.00) (this is the City of Sacramento's disclosure requirement) in support of or in opposition to any proposal, shall disclose such expenditure to the Commission's executive officer, and be posted on the Commission's website. Disclosure shall be made by mailgram, telegram, guaranteed overnight mail through the United States Postal Service or equivalent private delivery within twenty-four (24) hours. Such notification shall be made each time this threshold of \$ _____; or one thousand dollars (\$1000.00) is met.

Disclosure pursuant to this section shall be in addition to any disclosure required by Title 9 (commencing with section 81000) or by local ordinance.

SECTION 4: Lobbying Disclosures

A. Disclosure Requirements

Any lobbyist who attempts to influence pending decisions made by Commission members, staff, or consultants, in excess of \$ _____; or two thousand dollars (\$2000.00) in support of or in opposition to any proposal, shall disclose such expenditure to the Commission's executive officer, and be posted on the Commission's website. Such disclosure and reporting shall include the following information:

1. The full name, business address and telephone number of the lobbying firm or employer;
2. A list of the lobbyists who are partners, owners officers or employees of the lobbying firm, or lobbyists who are employed by the lobbyist employer; and
3. Information sufficient to identify the nature and interests of the person.

These reporting and disclosure requirements are in addition to any other disclosures that are required by the Political Reform Act.

Disclosure shall be made to the Commission's executive officer, it shall be posted on the Commission website, if applicable.

SECTION 5: Enforcement

A. Penalties

Failure to comply with the disclosure and reporting requirements set forth in this resolution may result in the disapproval, postponement or rejection of a proposal, in the reasonable discretion of the Commission.

B. Application of State Laws

Nothing in this resolution shall be deemed to exempt any person from complying with applicable provisions of any other laws of this state, including the disclosure requirements contained within the California Political Reform Act (Government Code sections 81000 *et seq.*).

C. Severability

If any section, subsection or clause of this resolution shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

PROPOSED

RESOLUTION

On a motion by Commissioner _____, seconded by
Commissioner _____, the foregoing resolution was passed and adopted by the
SACRAMENTO LOCAL AGENCY FORMATION COMMISSION, State of California, at a
meeting thereof this ____ day of _____, 2001, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Christopher Tooker, Chair
Sacramento Local Agency Formation Commission

ATTEST:

Marilyn Ann Flemmer
Commission Clerk

3/8/01

RECORDED
RESOLUTION

Assembly Bill 745

Assembly Bill No. 745

CHAPTER 109

An act to amend Sections 56100.1 and 56700.1 of, and to add Section 57009 to, the Government Code, relating to local agencies.

[Approved by Governor July 20, 2007. Filed with
Secretary of State July 20, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 745, Silva. Local agency formation commissions.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires specified procedures to be followed for the submission of a proposal for a change of organization or reorganization to the local agency formation commission. Existing law requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal that has been submitted to a local agency formation commission, and contributions in support of or in opposition to those measures.

This bill would require expenditures for political purposes made in connection with a proposal that will be submitted to a local agency formation commission, and contributions in support of or in opposition to those proposals, and expenditures for political purposes made in connection to proceedings for a change of organization or reorganization, and contributions in support of or in opposition to those proceedings, to be disclosed and reported to the same extent and subject to the same requirements of the Political Reform Act of 1974 as provided for local initiative measures.

The people of the State of California do enact as follows:

SECTION 1. Section 56100.1 of the Government Code is amended to read:

56100.1. A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015, expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission's Web site, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure otherwise required by Section 56700.1, the Political Reform Act (Title 9 (commencing with Section 81000)), or local ordinance.

SEC. 2. Section 56700.1 of the Government Code is amended to read:

56700.1. Expenditures for political purposes related to a proposal for a change of organization or reorganization that will be submitted to a commission pursuant to this part, and, contributions in support of or in opposition to those proposals, shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)) as provided for local initiative measures.

SEC. 3. Section 57009 is added to the Government Code, to read:

57009. Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part, and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)), as provided for local initiative measures.

**Commission Counsel Draft Disclosure
Policies**

March 6, 2001

HYDE, MILLER, OWEN & TROST

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PHILLIP L. ISENBERG
OF COUNSEL

TO: Sacramento Local Agency Formation Commission

FROM: Hyde, Miller, Owen & Trost

SUBJECT: Issues and Questions to Be Determined by Commission

DATE: March 6, 2001

The Commission was provided with a Staff Report summarizing the Proposed Resolution Relating to the Disclosure of Contributions Made in Support of or in Opposition to a Proposal and to Lobbying Disclosures. Counsel recommended that the Commission direct staff to prepare a final resolution, or alternatively, refer the matter to a subcommittee for further discussion, draft policies, disclosure forms and related materials, for consideration at future Commission meetings.

This memorandum discusses some of the issues and questions to be considered by the Commission in further discussing these matters and in finalizing the Proposed Resolution.

1. What monetary level should be established to trigger disclosure requirements?

The Proposed Resolution provides, as an option, that LAFCO require disclosure of contributions in excess of \$5000.00, expenditures in excess of \$1000.00, and lobbyist payments in excess of \$2000.00. These monetary trigger levels were modeled after the disclosure levels established by the City of Sacramento and the State Political Reform Act. The Commission, however, has discretion to establish a higher or lower monetary trigger level.

2. Should the Commission limit the disclosure requirements to only certain types of proposals before LAFCO?

The Proposed Resolution defines proposal such that disclosure is required for contributions made in support of or in opposition to annexations, incorporations, mergers, detachments, but not to sphere of influence applications.

The Commission may determine to limit disclosures to more controversial proposals such as incorporations and/or annexations. Likewise, the Commission may consider requiring disclosure for contributions made in support of or in opposition to sphere of influence applications.

3. Should LAFCO require an applicant to report any contributors for or against the proposal for which they are aware.

The Commission may consider requiring an applicant to report any contributors for or against the proposal for which they are aware. The Proposed Resolution does not contain such a reporting requirement. Likewise, the Commission should consider including the requirement that applicants file supplemental reporting disclosures and whether these reports will be made a part of the record at the time of the hearing.

4. Should LAFCO require any speaker at a LAFCO hearing to state on the record any contributions made in support or opposition to the proposal?

The Proposed Resolution does not require any speaker at a LAFCO hearing state on the record any contribution made in support of or in opposition to a proposal. The Commission may consider whether this should be a requirement. If so, the Commission should further consider whether disclosure of the actual amount spent will be required, or just the fact that a contribution was made.

5. How to define "lobbyist"?

The Proposed Resolution defines "lobbyist" consistently with the Political Reform Act. The Commission may also consider whether "lobbyist" should be defined to include firms, and lobbying coalitions.

6. What should the disclosure include?

The Proposed Resolution requires disclosure of information sufficient to identify the nature and interest of the lobbyist. AB2838, however, does not limit LAFCO's ability to require more detailed registration and reporting requirements. Therefore, LAFCO may require more stringent lobbying disclosure requirements than those currently provide for in the Proposed Resolution.

7. Should LAFCO implement an online disclosure program?

The Proposed Resolution does not address the issue of implementing an online disclosure program. Such a program would expedite information more quickly and allow interested persons to ascertain who is supporting and/or opposing a proposal.

The City of Sacramento recently entered into a licensing agreement with the City of San Francisco for an online filing system. The online filing system allows Sacramento candidates and committees to go on the Internet to access and complete the City's required disclosure forms. These electronically filed disclosure statements supplement the filing of required paper statements.

Consideration should be given to the costs related to the establishment, implementation and ongoing operation of the program.

TO: Sacramento Local Agency Formation Commission
FROM: Hyde, Miller, Owen & Trost
SUBJECT: Disclosure of Contributions and to Lobbying Disclosures
DATE: March 2, 2001

RECOMMENDATION:

It is recommended that the Commission:

- Direct staff to prepare a final resolution; alternatively refer the matter to a subcommittee for further discussion;
- Direct staff to draft Commission policies for consideration at future Commission meetings; and
- Direct staff to prepare disclosure forms and related materials.

BACKGROUND:

As the Commission is aware, enactment of AB 2838 (Hertzberg) resulted in a number of major changes to Local Agency Formation Commissions (LAFCOs) in 2001. Among other things, AB 2838 authorizes LAFCOs to adopt written policies and procedures regarding the disclosure of contributions, expenditures, independent expenditures and lobbying activities consistent with the Political Reform Act. AB 2838 also requires LAFCOs to hold a public hearing to discuss the adoption of these policies and procedures prior to March 31, 2001. The Commission held a hearing on March 7, 2001, and directed staff to prepare appropriate language for review.

STAFF REPORT:

Attached is a proposed resolution for discussion, relating to the disclosure of contributions made in support of or in opposition to a proposal and to lobbying disclosures. The disclosure requirements are modeled after the City's policies and procedures and the requirements set forth in the California Political Reform Act.

1. Contribution Disclosures

The proposed resolution would allow Sacramento Local Agency Formation Commission to require the disclosure of contributions, expenditures and independent expenditures made in support of or in opposition to a proposal. This is authorized under Government Code section 56100.1. A "proposal" has been defined to mean a request or statement of intention made by petition or by resolution for the change of organization or reorganization, consistent with Government Code section 56069. Thus, disclosures would be required for contributions in

support of or in opposition to, annexations, incorporations, mergers, detachments, but not to sphere of influence applications.

The Commission has discretion to determine the monetary level which would trigger disclosure of a contribution. By way of example, \$5000, is the monetary trigger level for the City of Sacramento and the Political Reform Act. The Commission may elect to impose a higher or lower amount.

Disclosures may be made to the Executive Officer or a County officer designated by the Board of Supervisors. The proposed resolution provides that campaign disclosures be made to the Executive Officer. These disclosures are in addition to any other disclosures that are required by the Political Reform Act.

2. Lobbying Disclosures

The proposed resolution requires disclosure and reporting of funds in excess of \$2000, per calendar month for lobbying and attempts to influence pending decisions by LAFCO Commissioners, staff or consultants. This is consistent with Government Code section 56300.

The Commission has discretion to determine the monetary level which would trigger disclosure and reporting of funds. By way of example, \$2000, is the monetary trigger for the Political Reform Act. The Commission may elect to impose a higher or lower amount.

3. Other Issues

Disclosures made to LAFCO will be posted on the Commission's web site or may be made to the County Recorder, Registrar of Voters or Clerk of the Board of Supervisors.

Attached for review, is the City of Sacramento's disclosure requirements and relevant portions of the Political Reform Act.

The language of the proposed resolution mirrors the language of the Political Reform Act. This is consistent with the amendments to the Cortese-Knox-Hertzberg Act. The proposed resolution imposes penalties for failure to comply with the resolution's requirements, consistent with the authority of LAFCO to impose such fines. If approved by the Commission, staff will develop disclosure forms for distributions to applicants and others.

RESOLUTION NO. LAFCo _____

**A RESOLUTION OF THE SACRAMENTO LOCAL AGENCY FORMATION
COMMISSION RELATING TO THE DISCLOSURE
OF CONTRIBUTIONS MADE IN SUPPORT OF OR IN
OPPOSITION TO A PROPOSAL AND TO
LOBBYING DISCLOSURES**

WHEREAS, Enactment of AB 2838 (Hertzberg) resulted in a number of major changes to Local Agency Formation Commissions in 2001; and

WHEREAS, AB 2838 authorizes LAFCOs to adopt written policies and procedures regarding the disclosure of contributions, expenditures, independent expenditures, and lobbying activities; and

WHEREAS, the Sacramento Local Agency Formation Commission desires to adopt such written policies and procedures;

**NOW, THEREFORE, the SACRAMENTO LOCAL AGENCY FORMATION
COMMISSION DOES HEREBY RESOLVE AS FOLLOWS:**

SECTION 1: Recitals

The above recitals are true and correct, and the Sacramento Local Agency Formation Commission (the "Commission") hereby so finds.

**SECTION 2: Disclosure of Contributions Made in Support of or in Opposition to a
Proposal**

A. Definitions.

Unless a particular word or phrase is otherwise specifically defined in this section, or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code sections 81000 *et seq.*) shall govern the construction, meaning, and application of words and phrases used in this section. References to particular sections of the Government Code or other statutes or laws, including references in this section, shall be deemed to include any changes to such sections, statutes or laws, including any amendments, deletions, additions, re-numberings or re-codifications that may occur subsequent to the enactment of this resolution.

"Contribution" means contribution as defined in Government Code section 82015, and

shall include loans to the extent that loans are considered contributions pursuant to Government Code section 84216.

“**Entity**” means any person or organization, as those terms are defined herein, other than an individual.

“**Expenditure**” means expenditures as defined in Government Code section 82025.

“**Independent Expenditure**” means independent expenditures as defined in Government Code section 82031.

“**Influencing Pending Decisions**” means promoting, supporting, influencing, modifying, opposing or delaying any pending decision to be made by Commission members, staff or consultants by any means, including but not limited to, the provision or use of information, statistics, studies or analyses.

“**Lobbyist**” means any individual who receives two thousand dollars (\$2000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing pending decisions made by Commission members, staff, or consultants.

“**Person**” means an individual, proprietorship, labor union, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, political action committee, committee, and any other organization or group of persons acting in concert.

“**Proposal**” means a request or statement of intention made by petition or by resolution of application of a legislative body or of a school district proposing proceedings for the change of organization or reorganization described in the request or statement of intention.

SECTION 3: Disclosure of Contributions and Expenditures

A. Contributions

Any person or organization who makes contributions of more than \$ _____; or *five thousand dollars (\$5000.00)* (this is the City of Sacramento’s disclosure requirement); in support of or in opposition to any proposal, shall disclose such contribution to the Commission’s executive officer and shall be posted on the Commission’s website. Disclosure shall be made by mailgram, telegram, guaranteed overnight mail through the United States Postal Service or

equivalent private delivery within twenty-four (24) hours. Such notification shall be made each time this threshold of \$ _____; or *five thousand dollars (\$5000.00)* is met.

Disclosure pursuant to this section shall be in addition to any disclosure required by Title 9 (commencing with section 81000) or by local ordinance.

B. Expenditures

Any person or organization who makes an expenditure of more than \$ _____; or *one thousand dollars (\$1000.00)* (this is the City of Sacramento's disclosure requirement) in support of or in opposition to any proposal, shall disclose such expenditure to the Commission's executive officer, and be posted on the Commission's website. Disclosure shall be made by mailgram, telegram, guaranteed overnight mail through the United States Postal Service or equivalent private delivery within twenty-four (24) hours. Such notification shall be made each time this threshold of \$ _____; or *one thousand dollars (\$1000.00)* is met.

Disclosure pursuant to this section shall be in addition to any disclosure required by Title 9 (commencing with section 81000) or by local ordinance.

SECTION 4: Lobbying Disclosures

A. Disclosure Requirements

Any lobbyist who attempts to influence pending decisions made by Commission members, staff, or consultants, in excess of \$ _____; or *two thousand dollars (\$2000.00)* in support of or in opposition to any proposal, shall disclose such expenditure to the Commission's executive officer, and be posted on the Commission's website. Such disclosure and reporting shall include the the following information:

1. The full name, business address and telephone number of the lobbying firm or employer;
2. A list of the lobbyists who are partners, owners officers or employees of the lobbying firm, or lobbyists who are employed by the lobbyist employer; and
3. Information sufficient to identify the nature and interests of the person.

These reporting and disclosure requirements are in addition to any other disclosures that are required by the Political Reform Act.

Disclosure shall be made to the Commission's executive officer, it shall be posted on the Commission website, if applicable.

SECTION 5: Enforcement

A. Penalties

Failure to comply with the disclosure and reporting requirements set forth in this resolution may result in the disapproval, postponement or rejection of a proposal, in the reasonable discretion of the Commission.

B. Application of State Laws

Nothing in this resolution shall be deemed to exempt any person from complying with applicable provisions of any other laws of this state, including the disclosure requirements contained within the California Political Reform Act (Government Code sections 81000 *et seq.*).

C. Severability

If any section, subsection or clause of this resolution shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

PROPOSED
RESOLUTION

On a motion by Commissioner _____, seconded by Commissioner _____, the foregoing resolution was passed and adopted by the SACRAMENTO LOCAL AGENCY FORMATION COMMISSION, State of California, at a meeting thereof this ____ day of _____, 2001, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Christopher Tooker, Chair
Sacramento Local Agency Formation Commission

ATTEST:

Marilyn Ann Flemmer
Commission Clerk

3/8/01

PROCESSED
RESOLUTION

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

AN ORDINANCE AMENDING TITLE 2 OF THE SACRAMENTO CITY CODE BY ADDING CHAPTER 2.13 THERETO, RELATING TO CONTRIBUTION LIMITS FOR CITY ELECTIONS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1.

Title 2 of Sacramento City Code is amended by adding Chapter 2.13 thereto, to read as follows:

Chapter 2.13: Campaign Contribution Limitations

Article I. General Findings

§ 2.13.010 Title.

This Chapter may be cited as the "Campaign Contribution Limits Code" of the City of Sacramento.

§ 2.13.020 Findings.

The City Council of the City of Sacramento finds and declares as follows:

- A. The policy of this City is to protect the integrity of the electoral process.
- B. Monetary contributions to political campaigns are a legitimate form of participation in the political process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates for municipal office. The increasing amounts of expenditures in political campaigns have forced many candidates for elective office to raise larger and larger sums from individuals or interest groups with a

FOR CITY CLERK USE ONLY

ORDINANCE NO. _____

DATE ADOPTED: _____

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specific financial stake in City matters. This can cause the public perception that the votes of City Council members and decisions of elected officials are being improperly influenced by monetary contributions. Such a perception can undermine the credibility of the City Council and the governmental process.

- C. The best interests of the citizens of the City of Sacramento are served by reducing the direct and indirect costs of campaigns.
- D. The City finds that limitations on contributions of money, services and materials by individuals or groups to municipal election campaigns should be imposed by law to protect the public health, safety and welfare. These limitations, however, should be reasonable so as not to discourage personal expression or participation in the political process.
- E. The constant pressure to raise contributions during both election years and off-election years is distracting elected municipal officials from addressing the needs of the community.
- F. Some elected municipal officials are responding to high campaign costs by raising large amounts of money in off-election years to either pay off campaign debts previously incurred or to accumulate campaign funds for future use. This fundraising distracts elected officials from important public matters, encourages contributions which may have a corrupting influence or, at the very least, the appearance of improper influence, and gives incumbent elected officials an unfair fundraising advantage over potential challengers.
- G. The integrity of the legislative process and public confidence in elected municipal officials are diminishing.

§ 2.13.030 Purpose and Intent.

The City Council of the City of Sacramento enacts this ordinance to accomplish the following purposes:

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- A. To encourage public trust in the electoral and decision-making processes of the City, and to ensure that individuals and interest groups have a fair and equal opportunity to participate in the elective and legislative process;
- B. To reduce the potential for influence by large contributors with a specific financial stake in matters before the City, thus countering the perception that decisions of municipal officials are influenced more by the size of contributions than by the merits of proposals and what is in the best interest of the residents of the City;
- C. To encourage smaller contributions;
- D. To allow municipal officials and elected candidates to spend a smaller portion of their time on fundraising and a greater proportion of their time working on and discussing important City issues;
- E. To help restore public trust in the City's legislative and electoral institutions; and
- F. To limit the use of loans and credit in the financing of political campaigns for municipal elective office.

Article II. Definitions

§ 2.13.040 Definitions.

Unless a particular word or phrase is otherwise specifically defined in this article, or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et seq.) shall govern the construction, meaning, and application of words and phrases used in this article. References to particular sections of the Government Code or other statutes or laws, including references in this section, shall be deemed to include any changes to such sections, statutes or laws, including any amendments, deletions, additions, renumberings or recodifications that may occur subsequent to the enactment of this ordinance.

"Campaign contribution account" means an account established pursuant to California Government Code Section 85201.

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"Campaign Reform Fund" means those funds in the Campaign Reform Budget Unit established pursuant to Division 6 of this Article.

"Candidate" means an individual who has filed a statement pursuant to California Government Code Section 85200 indicating an intent to run for City office.

"City campaign statement" means the statement which must be filed with the City Clerk by candidates for City elective office pursuant to this ordinance.

"City office" means the offices of Mayor and City Council member.

"Contribution" means contribution as defined in California Government Code Section 82015, and shall include loans to the extent that loans are considered contributions pursuant to California Government Code Section 84216.

"Controlled committee" means controlled committee as defined in California Government Code Section 82016.

"Entity" means any person or organization, as those terms are defined herein, other than an individual.

"General election period" means the period from the first day of the month following the month in which a primary election is held through December 31 of the year in which the election for a City office is held; except that in the event a candidate for City office receives a majority of votes cast in the primary election, the period from the first day of the month following the month in which the primary election is held through December 31 of that year shall be considered to be an off-election year for that candidate for purposes of applicable contribution limitations.

"Independent expenditure" means independent expenditure as defined in California Government Code Section 82031.

"Large political committee" means a political committee of persons that has been in existence for more than six months, receives contributions from one hundred or more persons and acting in concert makes contributions to one or more candidates for City elective office.

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"Off-election year" shall mean each of the calendar years during the term of a City elective office in which an election for that office is not held, subject to the following:

- 1) for purposes of a regular election for City elective office, the period from January 1 through June 30 of the year preceding the year of the election shall be considered an off-election year, while the period from July 1 through December 31 of that year shall be considered part of the election year and the aggregate limitations on off-year contributions set forth in Section 2.13.050 shall not be applicable to contributions made during that period.
- 2) if a candidate for City elective office receives a majority of votes cast in the primary election, the period from the first date of the month immediately following the month of the primary election through December 31 of that year shall be considered an off-election year for that candidate.
- 3) for purposes of a special election to fill a City elective office that became vacant in a year prior to the year of the special election, the prior year shall not be considered an off-election year;
- 4) for purposes of a special election to fill a City elective office, the period from the first day of the month immediately following the month in which the special election is held through December 31 of the year of the special election shall be considered an off-election year for that candidate for purposes of applicable contribution limitations.

"Person" means an individual or any proprietorship, labor union, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, political action committee, committee, or other entity which does not constitute a "large political committee" as defined above.

"Primary election period" means the period from July 1 of the year preceding the year of the election through the last day of the month in which the primary election is held.

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"Special election period" means the period from the date a City office becomes vacant through the last day of the month in which the special election for that City office is held.

Article III. Contribution Limitations.

§ 2.13.050 Contribution Limitations.

- A. **Council Members.** Contributions to candidates for the office of City Council member shall be subject to the following limitations in addition to the limitations established by Article 3 of Chapter 5 of the Political Reform Act (Government Code §§85301-85307):
- (1) **Contributions by Persons:** No person shall make, and no candidate for the office of City Council member, or a controlled committee of said candidate, or person acting by or on behalf of said candidate or said candidate's controlled committee shall accept, any contribution which would cause the total amount contributed by that person to the candidate, or to the candidate's controlled committee, to exceed Seven Hundred Fifty Dollars (\$750.00) in any of the following periods: a primary election period, a general election period, or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.
 - (2) **Contributions by Large Political Committees:** No large political committee shall make, and no candidate for the office of City Council member, or a controlled committee of said controlled committee, or person acting by or on behalf of said candidate or said candidate's controlled committee shall accept, any contribution which would cause the total amount contributed by that large political committee to the candidate, or to the candidate's controlled committee, to exceed Three Thousand Dollars (\$3,000.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

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B. **Mayor.** Contributions to candidates for the office of Mayor shall be subject to the following limitations in addition to the limitations established by Article 3 of Chapter 5 of the Political Reform Act (Government Code §§85300-85307):

(1) **Contributions by Persons.** No person shall make, and no candidate for the office of Mayor, or a controlled committee of said candidate, or person acting by or on behalf of said candidate or said candidate's controlled committee, shall accept into the candidate's campaign contribution account, any contribution which would cause the total amount contributed by that person to the candidate, or to the candidate's controlled committee to exceed One Thousand Dollars (\$1,000.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

(2) **Contributions by Large Political Committees:** No large political committee shall make, and no candidate for the office of Mayor, or a controlled committee of said candidate or said candidate's controlled committee, or person acting by or on behalf of said candidate or said candidate's controlled committee shall accept, any contribution which would cause the total amount contributed by that large political committee to the candidate, or to the candidate's controlled committee, to exceed Five Thousand Dollars (\$5,000.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

C. **Contributions by a Candidate to the Candidate's Campaign:** Nothing in subsections A and B above is intended to limit the amount that a candidate may contribute to his or her own campaign from his or her personal funds.

D. **Contributions to Committees:** No person shall make to any committee which contributes to any candidate for City elective office or makes expenditures for or against any candidate for City elective office, and no such committee shall accept from any person a contribution or contributions totaling more than Seven Hundred Fifty Dollars (\$750.00) in a calendar year; and no large political committee shall

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make to any committee which contributes to any candidate for City elective office or makes expenditures for or against any candidate for City elective office, and no such committee shall accept from any large political committee a contribution or contributions totaling more than Three Thousand Dollars (\$3,000.00) in a calendar year. The provisions of this subsection D shall not apply to contributions to candidates and candidate-controlled committees, which shall be subject to the limits set forth in subsections A and B above.

E. Making and Acceptance of Contributions, Timing of Contributions and Contributions to Officeholders in Off-election Years.

1. Making and Acceptance of Contributions.

For purposes of this chapter, a contribution shall have been considered to have been "made" and "accepted" as follows:

a) Monetary contributions:

(1) Making of monetary contributions: For purposes of the contribution limitations of this chapter, a monetary contribution is "made on the date the contribution is mailed, delivered, or otherwise transmitted to the candidate or a controlled committee. The date of the check or other negotiable instrument by which the contribution is made may be presumed by the candidate or controlled committee to be the date on which the contribution was mailed, delivered or otherwise transmitted, unless it is known to the candidate to be later than the date the contribution is mailed, delivered or otherwise transmitted, in which case the earlier date shall be considered the date on which the contribution is "made".

(2) Acceptance of monetary contributions: For purposes of the contribution limits of this chapter, a monetary contribution shall be deemed "accepted" on the date that it is made; provided that a monetary contribution shall not be considered accepted for purposes of this chapter if it is not cashed, negotiated or

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deposited, and, in addition, is returned to the donor within fourteen (14) days of receipt.

b. Non-monetary contributions:

- 1) Making of non-monetary contributions: A non-monetary contribution is "made" by the contributor on the earlier of the following dates: (i) the date that funds are expended by the contributor for goods or services if the specific expenditure is made at the request of the candidate or controlled committee; (ii) the date that the candidate or controlled committee or agent of the candidate or controlled committee obtains possession or control of the goods or services; or (iii) the date that the candidate or controlled committee otherwise receives the benefit of the expenditure.
 - 2) Acceptance of non-monetary contributions: A non-monetary contribution is deemed "accepted" on the date that it is "made" by the contributor; provided, that a non-monetary contribution shall be deemed not to have been accepted for purposes of this chapter if it is returned within fourteen (14) days of having been made by returning to the contributor any of the following: (i) the non-monetary contribution; (ii) its monetary equivalent; or (iii) the monetary amount by which the value of the non-monetary contribution exceeds the contribution limits of this chapter.
2. **Timing of Contributions:** For purposes of this chapter, a contribution shall be deemed to be a contribution during a general election period only if it is made by the contributor on or after the first day of the month immediately following the month in which the primary election is held.
 3. **Contributions to officeholders in off-election years:** Contributions to an incumbent mayor or an incumbent member of the City Council made in an off-election year shall be considered contributions for the election in which the incumbent acquired his or her office, unless the contributions are

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accepted and deposited into a new campaign contribution account for a future election to the same or different office.

Sec. 2.13.055: Filing of Statement by Large Political Committee Prior to Making Contributions

Not less than seven (7) calendar days prior to making a contribution to a candidate in an amount that itself or in combination with other contributions previously made to the candidate exceeds the amount that a person may contribute to a candidate pursuant to Section 2.13.050A(1) and 2.13.050B(1), a large political committee shall file the following documents with the City Clerk:

- A. a statement, under penalty of perjury on a form to be prescribed by the City Clerk, setting forth the name of the large political committee and the date of its formation, and certifying that it meets the requirements of a large political committee by having been in existence for more than six months, has received contributions from one hundred or more persons, and acting in concert, has made contributions to one or more candidates for City elective office; and
- B. a certified copy of the "statement of organization"^{filed} ~~filed~~ by the political committee pursuant to Government Code Sec. 84101.

2.13.060 Aggregation of Contributions

For the purposes of the contribution limitations contained in this chapter, contributions of two or more persons or entities shall be aggregated as follows:

- A. All payments made by a person or organization whose contributions or expenditure activities are financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons, shall be considered to be made by the person or organization financing, maintaining or controlling the contribution or expenditure.

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B. Two or more persons shall be treated as one and the same person for purposes of the contribution limitations set forth in Section 2.13.050 and their contributions shall be aggregated and shall not exceed the limitations set forth in Section 2.13.050, in the following situations:

- 1) **Related Entities:** Two or more entities, including but not limited to, partnerships, limited partnerships, and corporations, shall be treated as one person for purposes of the contribution limitations set forth in 2.13.050 above, when any of the following circumstances apply:
 - a) the entities share the majority of members of their governing boards.
 - b) the entities share two or more officers.
 - c) the entities are owned or controlled by the same majority shareholder(s) or general partner(s). For purposes of this subsection, a controlling interest means fifty percent (50%) or more of the voting power of a corporation.
 - d) the entities are in a parent-subsidary relationship. A parent-subsidary relationship exists when one corporation directly or indirectly owns shares possessing fifty percent (50%) or more of the voting power of another corporation.
- (2) **Controlling Interest:** A person and any general partnership in which the person is a general partner, or a person and any corporation in which the person owns a controlling interest, shall be treated as one and the same, and the aggregate contributions made by the person and the corporation or partnership shall not exceed the contribution limitations set forth in Section 2.13.050.

For purposes of this subsection, a controlling interest in a corporation means fifty percent (50%) or more of the voting power of a corporation.

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- C. Notwithstanding the provisions of Section 2.13.180, a candidate shall not be deemed to be in violation of this section if he or she accepts a contribution from a person or person(s) that exceeds the contribution limits set forth in Section 2.13.050 because of the aggregation of contributions pursuant to subsections A and B above. It is the intent of this section to make contributors, and not candidates, liable for violations of this section occurring as a result of the applicability of the aggregation rules set forth in subsections A and B above.

2.13.065 Written Solicitations by Candidates

Any candidate or controlled committee of a candidate making a written solicitation for a contribution to the candidate's campaign for city elective office shall include one of the following written notices in no less than ten-point type on each solicitation.

- A. **Candidate for City Council Position:** A candidate or controlled committee of a candidate for a City Council position other than Mayor shall provide the following written notice:

NOTICE

Chapter 2.13 of the Sacramento City Code limits the amounts that a contributor may give to a candidate for a City Council position for a primary, general or special election. Generally, a contributor other than a large political committee may not give more than \$750 to a candidate for a City Council position for a primary, general or special election, while a large political committee may not give more than \$3,000 to a candidate for City Council for a primary, general or special election. Chapter 2.13 contains certain other rules that may affect the amounts that an individual contributor may give. Please read Chapter 2.13 before making a contribution to my campaign.

- B. **Candidate for Mayoral Position:** A candidate or controlled committee of a candidate for Mayor shall provide the following written notice:

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NOTICE

Chapter 2.13 of the Sacramento City Code limits the amounts that a contributor may give to a candidate for Mayor for a primary, general or special election. Generally, a contributor other than a large committee may not give more than \$1000 to a candidate for Mayor for a primary, general or special election, while a large political committee may not give more than \$5,000 to a candidate for Mayor for a primary, general or special election. Chapter 2.13 contains certain other rules that may affect the amounts that an individual contributor may give. Please read Chapter 2.13 before making a contribution to my campaign.

2.13.070 Transfers of Funds or Contributions by Committees to Controlled Committees of Candidates for City Elective Office

- A. Except as provided in subsection B below, any transfer of funds or contributions by a committee to a controlled committee of a candidate for City elective office including an elected Councilmember or Mayor, shall comply with the contribution limits set forth in Section 2.13.050 above; and any contribution or transfer of funds by a committee to another committee which makes contributions to a candidate for City elective office, including an elected Councilmember or Mayor, or which makes expenditures for or against a candidate for City elective office, including an elected Councilmember or Mayor, shall comply with the contribution limits set forth in Section 2.13.050 above.

- B. Subject to the limitations of Government Code Section 85305 and the implementing regulations adopted by the Fair Political Practices Commission for special elections, a candidate for City elective office, including an elected Councilmember or Mayor, may transfer funds from one campaign account of a committee controlled by the candidate or elected official and established for a City elective office to the campaign account of another committee controlled by the candidate or elected official and established for a City elective office.

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2.13.080 Aggregate Off-Election Year Contribution Limitations.

A. Aggregate Limits

- (1) Except as provided in subsection A-2 below, the following aggregate off-election year contribution limits shall apply:
 - (a) No Councilmember or candidate for the City office of Councilmember shall accept contributions totaling more than fifteen thousand dollars (\$15,000.00) in any single off-election year.
 - (b) No Mayor or candidate for the City office of Mayor shall accept contributions totaling more than thirty thousand dollars (\$30,000.00) in any single off-election year.
- (2) **Exception: Contributions to pay off campaign debt:** Notwithstanding the limits set forth in subsection A-1 above, a contributor may make, and a candidate or former candidate may accept, a contribution to pay off debts incurred for a primary or other election occurring prior to the date of the contribution, provided that the aggregate of contributions made to the candidate for one or more City offices does not exceed the contribution limits set forth in Section 2.13.050 above, and the contribution is properly reported on the State or City campaign statement.

B. The aggregate off-election year contribution limits set forth in subsection A above shall be in addition to the individual contribution limits set forth in Section 2.13.050 above. The intent of this section is to impose an absolute limit on the amount that a candidate or incumbent for City elective office may receive in contributions in any single off-election year, even if no single contribution exceeds the limits set forth in Section 2.13.050 above. It is the further intent that contributions made during off-election years shall be attributed to a particular election, and shall be included in the amount attributed to a particular contributor for purposes of the contribution limits established by Section 2.13.050, pursuant to the rules set forth in subsection E of that section.

2.13.085 Legal Expense Funds.

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- A. In addition to contributions received in connection with an election to an elective city office, an elected city officer or a candidate for elective city office 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 officer's 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 officer's governmental activities and duties.
- B. Any elected city officer or candidate for elective city office wishing to establish a legal expense fund pursuant to this section shall file a statement of organization for the legal expense fund pursuant to Government Code Section 84101, as amended, with the secretary of state and a copy with the city clerk. The legal expense fund shall be named "The (name of candidate or officeholder) Legal Expense Fund." The statement of organization shall identify the specific civil, criminal or administration proceeding or proceedings for which the legal expense fund is established and shall conform to the requirements of Government Code Sections 84102-84104, as amended.
- C. The legal expense fund shall establish a single account at an office of a financial institution located in the City of Sacramento, and all contributions to the officer or candidate for his or her legal expenses shall be deposited into that account.
- D. Only contributions that are specifically designated by the donor as being made to the legal expense fund may be deposited into the legal expense fund account. All such contributions must be made payable to the legal expense fund, and no contribution that is not specifically made payable to the legal expense fund may be deposited into the legal expense fund account. However, non-monetary contributions may be received and used for purposes directly related to the legal expenses for which the fund is established if the donor specifically designates in writing that the contributions have been made for such purposes.
- E. No person (other than the officer or candidate) shall make, and no legal expense fund committee for an elective city officer or candidate for elective city office shall solicit or accept, contributions from any person to a legal defense fund totaling more than seven hundred fifty dollars (\$750.00).

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- F. Expenditures from the legal expense fund account shall be made only for legal costs directly related to the civil, criminal, or administrative proceeding or proceedings for which the legal expense fund was established. In no event, however, shall any expenditures from the legal expense fund account be used to pay or reimburse any fines, penalties, judgments or settlements in connection with any criminal prosecution or any civil or administrative action in which the officer or candidate is found to have committed, or admits to, an intentional or negligent violation of the law.
- G. No funds may be transferred from the legal expense fund to any other committee. Surplus funds remaining in the legal expense fund account after the proceeding or proceedings in connection with which the account was established have concluded, and after all debts are paid, may not be used for any other purpose. Such surplus funds shall be returned to donors on a pro rata basis or given to the city's general fund within six (6) months after final conclusion of the proceeding or proceedings and the payment of all debts incurred.
- H. The legal expense fund shall file campaign disclosure statements containing the same information and at the same times that the candidate or elective city officer files his or her statements in accordance with Government Code Sections 84100, et seq., as amended.
- I. Except as provided in this section, a donation to a legal expense fund established pursuant to this section shall not be subject to contributions limitations.
- J. This section shall constitute the sole authority for soliciting or accepting donations for legal costs for the defense of an action relating to the election process or an officer's conduct in office.

2.13.090 Contributions by Spouses and Children.

- A. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.
- B. Except as provided in Section 2.13.100, contributions by dependent children shall

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be treated as contributions by their parent or parents. If there is joint custody of the child, one-half of the contribution shall be attributed to each parent, and if there is a single custodial parent, the contribution shall be attributed to that parent.

2.13.100 Contributions by Spouse, Children, or Family Members of Candidate.

Contributions to a candidate by his or her spouse of separate property, and contributions by a candidate's children or any other family members, shall be subject to the contribution limits of this article.

2.13.110 Effective Date of Contribution Limitations.

- A. The contribution limitations of this Chapter shall apply to contributions made on or after January 1, 2001 to a candidate for City office seeking election in 2001 or thereafter.
- B. No candidate or other person shall be deemed to have violated any provisions of this article because contributions in excess of the limitations contained in Section 2.13.050 were accepted or made before the effective date of this Chapter. Nothing in this Chapter shall be deemed to require the return of any contribution made prior to the effective date of this Chapter, and contributions made prior to the effective date of this Chapter shall not be considered in determining whether a contributor or candidate is in compliance with the contribution limitations of this Chapter.

2.13.120 Periodic Review.

The contribution limits set forth in this Chapter shall be adjusted in January of every even year after 2000 to reflect any increase or decrease in the cost of living since January 1st of 2001 through December 31st of the year prior to the year in which the adjustment is made, as shown by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U). Such adjustments shall be rounded off to the nearest fifty dollars.

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Article IV. Filing and Disclosure Requirements

2.13.130 Filing of Campaign Statements.

Whenever any elected City officer, candidate or committee is required by the California Political Reform Act (Government Code Sec. 81000 et seq.) to file a semi-annual campaign statement, a preelection campaign statement or a supplemental preelection campaign statement, with the City Clerk, the elected officer, candidate or committee shall file at the same time a copy of the statement on a computer diskette or other electronic media, in a format prescribed by the City Clerk, provided that the Clerk has prescribed the format at least sixty (60) days before the statement or report is due. If no format has been described in a timely manner, the elected officer, candidate or committee shall file the report in a format suitable for scanning.

2.13.140 Filing of Statement by Large Political Committee Prior to Making Contributions that Exceed the Contribution Limits Applicable to Persons.

Prior to making contributions to a candidate for City ^{e. officer} ~~elective~~ office in an amount that exceeds the contribution limits for persons set forth in Section 2.13.050, a large political committee shall file a statement with the City Clerk, on a form prescribed by the City Clerk, indicating its status as a large political committee.

2.13.150 Independent Expenditures.

Any person or organization who makes independent expenditures of more than five thousand dollars (\$5,000.00) in support of or in opposition to any candidate for City office shall notify the City Clerk and all other candidates of such expenditure or expenditures by mailgram, telegram, guaranteed overnight mail through the United States Postal Service or equivalent private delivery service, or personal delivery within twenty-four (24) hours. Such notification shall be made each time this threshold of five thousand dollars (\$5,000.00) is met. For purposes of this section, expenditures made during the primary and general election periods shall be accumulated and notice shall be given each time the \$5,000.00 threshold is reached, regardless of whether \$5,000.00 is spent in a single election period.

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2.13.160 Independent Expenditures; Advertisements; Disclosures

- A. If the expenditure for a broadcast or mass mailing advertisement that expressly advocates the election or defeat of any candidate is an independent expenditure, the committee shall include on the advertisement the names of the two persons making the largest cumulative contributions to the committee making the independent expenditure. If an acronym is used to specify any committee names in this section, the names of any sponsoring organization of the committee shall be printed on print advertisements or spoken in broadcast advertisements. For the purposes of determining the two contributors to be disclosed, the contributions of each person to the committee making the independent expenditure during the one-year period before the election shall be aggregated.
- B. Any broadcast or mass mailing advertisement by an independent expenditure committee that expressly advocates the election or defeat of any candidate shall clearly state that the advertisement is authorized and paid for by a committee independent of the candidate.

Article V. Enforcement

2.13.170 Application of State Laws.

Nothing in this article shall be deemed to exempt any person from complying with applicable provisions of any other laws of this state, including the contribution limitations contained within the California Political Reform Act (Government Code §§81000 et seq.).

2.13.180 Enforcement.

- A. Except as provided otherwise in this article, any person who wilfully or knowingly violates any provision of this Chapter is guilty of a misdemeanor.
- B. In addition to the penalties provided in subsection A, if after election a candidate is convicted of a violation of any of the provisions of this Chapter, the election to office

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of such candidate shall be void and such office shall become vacant immediately thereupon or on the date upon which the candidate, if he or she is not an incumbent, would otherwise take office, whichever occurs later. In such event, the vacancy shall be filled in accordance with the procedures set forth in the City Charter for the filling of vacant City offices. If a candidate is convicted of a violation of this division at any time prior to election, his or her candidacy shall be terminated immediately and the candidate shall no longer be eligible for election. Any person convicted of a violation of this article shall be ineligible to hold City office for a period of five (5) years from and after the date of conviction.

2.13.190 Injunctive Relief.

Any candidate or other resident of the City may bring an action, at any time during an off-election year, an election year or thereafter, in a court of competent jurisdiction, to enjoin actual or threatened violations of, or to compel compliance with, or to obtain judicial declarations regarding, the provisions of this chapter.

Section 2 Severability

If any section, subsection or clause of this ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected.

DATE PASSED FOR PUBLICATION:

DATE ENACTED:

DATE EFFECTIVE:

MAYOR

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ATTEST:

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§ 82014. Conflict of Interest Code.

"Conflict of Interest Code" means a set of rules and regulations adopted by an agency pursuant to Chapter 7 of this title.

§ 82015. Contribution.

(a) "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.

(b) (1) A payment made at the behest of a committee as defined in subdivision (a) of Section 82013 is a contribution to the committee unless full and adequate consideration is received from the committee for making the payment.

(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

(A) Full and adequate consideration is received from the candidate.

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c) (3) of the Internal Revenue Code.

(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor,

address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements.

(C) For purposes of subparagraph (B), a payment is made for purposes related to a candidate's candidacy for elective office if all or a portion of the payment is used for election-related activities. For purposes of this subparagraph, "election-related activities" shall include, but are not limited to, the following:

(i) Communications that contain express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(ii) Communications that contain reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for elective office.

(iii) Solicitation of contributions to the candidate or to third persons for use in support of the candidate or in opposition to his or her opponent.

(iv) Arranging, coordinating, developing, writing, distributing, preparing, or planning of any communication or activity described in clauses (i), (ii), or (iii), above.

(v) Recruiting or coordinating campaign activities of campaign volunteers on behalf of the candidate.

(vi) Preparing campaign budgets.

(vii) Preparing campaign finance disclosure statements.

(viii) Communications directed to voters or potential voters as part of activities encouraging or assisting persons to vote if the communication contains express advocacy of the nomination or election of the candidate or the defeat of his or her opponent.

(D) A contribution made at the behest of a candidate for a different candidate or to a committee not controlled by the behesting candidate is not a contribution to the behesting candidate.

(c) The term "contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events; the candidate's own money or property used on behalf of his or her candidacy other than personal funds of the candidate used to pay either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if the services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

(d) The term "contribution" further includes any transfer of anything of value received by a committee from another committee, unless full and adequate consideration is received.

(e) The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent those amounts have been previously reported as a contribution. However, the fact that those amounts have been received shall be indicated in the appropriate campaign statement.

(f) The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are five hundred dollars (\$500) or less.

(g) Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by an individual for his or her own travel expenses if the payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

History: Amended by Stats. 1980, Ch. 289; amended by Stats. 1997, Ch. 450, effective September 24, 1997.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18215
 2 Cal. Code of Regs. Section 18216
 2 Cal. Code of Regs. Section 18225.7
 2 Cal. Code of Regs. Section 18421.1
 2 Cal. Code of Regs. Section 18423

2 Cal. Code of Regs. Section 18950
 2 Cal. Code of Regs. Section 18950.4

Opinions: In re Montoya (1989) 12 FPPC Ops. 7
In re Johnson (1989) 12 FPPC Ops. 1
In re Bell (1988) 11 FPPC Ops. 1
In re Nielsen (1979) 5 FPPC Ops. 18
In re Buchanan (1979) 5 FPPC Ops. 14
In re Reinhardt (1977) 3 FPPC Ops. 83
In re Cannon (1976) 2 FPPC Ops. 133
In re Willmarth (1976) 2 FPPC Ops. 130
In re Adams (1976) 2 FPPC Ops. 127
In re Dixon (1976) 2 FPPC Ops. 70
In re McCormick (1976) 2 FPPC Ops. 42
In re Burciaga (1976) 2 FPPC Ops. 17
In re Hayes (1975) 1 FPPC Ops. 210
In re Christiansen (1975) 1 FPPC Ops. 170
In re Cory (1975) 1 FPPC Ops. 137

§ 82016. Controlled Committee.

(a) "Controlled committee" means a committee that is controlled directly or indirectly by a candidate or state measure proponent or that acts jointly with a candidate, controlled committee, or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he or she, his or her agent, or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(b) Notwithstanding subdivision (a), a political party committee, as defined in Section 85205, is not a controlled committee.

History: Amended by Stats. 1983, Ch. 898; amended by Stats. 2000, Ch. 102 [Proposition 34 of the November Statewide General Election].

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18217
 2 Cal. Code of Regs. Section 18521
 2 Cal. Code of Regs. Section 18539

§ 82017. County.

"County" includes a city and county.

§ 82018. Cumulative Amount.

(a) Except as provided in subdivisions (b), (c), and (d), "cumulative amount" means the amount of contributions received or expenditures made in the calendar year.

(b) For a filer required to file a campaign statement or independent expenditure report in one year in connection with an election to be held in another year, the period over which the cumulative amount is calculated shall end on the closing date of the first semiannual statement filed after the election.

(c) For a filer required to file a campaign statement in connection with the qualification of a measure which

extends into two calendar years, the period over which the cumulative amount is calculated shall end on December 31 of the second calendar year.

(d) For a person filing a campaign statement with a period modified by the provisions of this section, the next period over which the cumulative amount is calculated shall begin on the day after the closing date of the statement.

History: Amended by Stats. 1976, Ch. 1106; repealed and reenacted as amended by Stats. 1980, Ch. 289; amended by Stats. 1985, Ch. 1456; amended by Stats. 1992, Ch. 405; amended by Stats. 1993, Ch. 769.

§ 82019. Designated Employee.

"Designated employee" means any officer, employee, member, or consultant of any agency whose position with the agency;

(a) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual;

(b) Is elective, other than an elective state office;

(c) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest;

(d) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

"Designated employee" does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

History: Amended by Stats. 1979, Ch. 674; amended by Stats. 1983, Ch. 1108; amended by Stats. 1984, Ch. 727, operative July 1, 1985; amended by Stats. 1985, Ch. 611.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18701

§ 82020. Elected Officer.

"Elected officer" means any person who holds an elective office or has been elected to an elective

office but has not yet taken office. A person who is appointed to fill a vacant elective office is an elected officer.

§ 82021. Elected State Officer.

"Elected state officer" means any person who holds an elective state office or has been elected to an elective state office but has not yet taken office. A person who is appointed to fill a vacant elective state office is an elected state officer.

§ 82022. Election.

"Election" means any primary, general, special or recall election held in this state. The primary and general or special elections are separate elections for purposes of this title.

§ 82023. Elective Office.

"Elective office" means any state, regional, county, municipal, district or judicial office which is filled at an election. "Elective office" also includes membership on a county central committee of a qualified political party, and members elected to the Board of Administration of the Public Employees' Retirement System.

History: Amended by Stats. 1998, Ch. 923.

§ 82024. Elective State Office.

"Elective state office" means the office of Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees' Retirement System, and member of the State Board of Equalization.

History: Amended by Stats. 1991, Ch. 674; amended by Stats. 1998, Ch. 923.

§ 82025. Expenditure.

"Expenditure" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. "Expenditure" does not include a candidate's use of his or her own money to pay for either a filing fee for a declaration of candidacy or a candidate statement prepared pursuant to Section 13307 of the Elections Code. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

History: Amended by Stats. 1997, Ch. 394.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18225
2 Cal. Code of Regs. Section 18225.4
2 Cal. Code of Regs. Section 18421.1
2 Cal. Code of Regs. Section 18421.6
2 Cal. Code of Regs. Section 18423

Opinions: In re Lui (1987) 10 FPPC Ops. 10
In re Buchanan (1979) 5 FPPC Ops. 14
In re Welsh (1978) 4 FPPC Ops. 78
In re Cannon (1976) 2 FPPC Ops. 133
In re Juvinal, Stull, Meyers, Republican Central Committee of Orange County, Tuteur (1976) 2 FPPC Ops. 110
In re Sobieski (1976) 2 FPPC Ops. 73
In re Hayes (1975) 1 FPPC Ops. 210
In re Christiansen (1975) 1 FPPC Ops. 170
In re Kelly, Masini (1975) 1 FPPC Ops. 162

§ 82025.5. Fair Market Value.

"Fair market value" means the estimated fair market value of goods, services, facilities or anything of value other than money. Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported shall be the fair market value, and a description of the goods, services, facilities, or other thing of value shall be appended to the report or statement. "Full and adequate consideration" as used in this title means fair market value.

History: Added by Stats. 1985, Ch. 775.

References at the time of publication (see page 3):

Opinions: In re Hopkins (1977) 3 FPPC Ops. 107
In re Stone (1977) 3 FPPC Ops. 52
In re Thomas (1977) 3 FPPC Ops. 30
In re Corv (1975) 1 FPPC Ops. 153

Enforcement

Decisions: Oliver Speraw, et al. 80/14 (1980)

§ 82026. Filer.

"Filer" means the person filing or required to file any statement or report under this title.

§ 82027. Filing Officer.

"Filing officer" means the office or officer with whom any statement or report is required to be filed under this title. If copies of a statement or report are required to be filed with more than one office or officer, the one first named is the filing officer, and the copy filed with him shall be signed in the original and shall be deemed the original copy.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18227

§ 82027.5. General Purpose Committee.

(a) "General purpose committee" means all committees pursuant to subdivisions (b) or (c) of Section 82013, and any committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose more than one candidate or ballot measure, except as provided in Section 82047.5.

(b) A "state general purpose committee" is a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.

(c) A "county general purpose committee" is a committee to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county.

(d) A "city general purpose committee" is a committee to support or oppose candidates or measures voted on in only one city.

History: Added by Stats. 1985, Ch. 1456.

§ 82028. Gift.

(a) "Gift" means, except as provided in subdivision (b), any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material."

(2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or

or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars (\$10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

History: Amended by Stats. 1976, Ch. 1161; amended by Stats. 1977, Ch. 230, effective July 7, 1977; amended by Stats. 1977, Ch. 344, effective August 20, 1977; amended by Stats. 1978, Ch. 641; amended by Stats. 1979, Ch. 686; amended by Stats. 1980, Ch. 183; amended by Stats. 1984, Ch. 931; amended by Stats. 1987, Ch. 936; amended by Stats. 1997, Ch. 455, effective September 24, 1997.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18230
2 Cal. Code of Regs. Section 18232
2 Cal. Code of Regs. Section 18234
2 Cal. Code of Regs. Section 18235
2 Cal. Code of Regs. Section 18727.5
2 Cal. Code of Regs. Section 18940
2 Cal. Code of Regs. Section 18944.2
2 Cal. Code of Regs. Section 18946.5
2 Cal. Code of Regs. Section 18950.3

Opinions: In re Elmore (1978) 4 FPPC Ops. 8
In re Carey (1977) 3 FPPC Ops. 99
In re Moore (1977) 3 FPPC Ops. 33
In re Hayes (1975) 1 FPPC Ops. 210
In re Brown (1975) 1 FPPC Ops. 67

§ 82030.5. Income; Earned.

(a) For purposes of this title, "earned income" means, except as provided in subdivision (b), income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered.

(b) Income which is not "earned income" includes, but is not limited to, the following:

(1) Any income derived from stocks, bonds, property, or other investments, or from retail or wholesale sales.

(2) Any amount paid by, or on behalf of, an elected state officer to a tax-qualified pension, profit sharing, or stock bonus plan and received by the elected state officer from the plan.

(3) The community property interest in the income of a spouse.

History: Added by Stats. 1990, Ch. 1075.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18932

§ 82031. Independent Expenditure.

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

History: Formerly titled "Independent Committee." Repealed by Stats. 1979, Ch. 779. Added by Stats. 1980, Ch. 289. (Formerly Section 82031.5.)

§ 82031.5. Independent Expenditure.

[Repealed]

History: Added by Stats. 1979, Ch. 779; repealed by Stats. 1980, Ch. 289. (Reenacted as amended and renumbered Section 82031.)

§ 82032. Influencing Legislative or Administrative Action.

"Influencing legislative or administrative action" means promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses.

References at the time of publication (see page 3):

Opinions: In re Evans (1978) 4 FPPC Ops. 54
In re Leonard (1976) 2 FPPC Ops. 54
In re Nida (1976) 2 FPPC Ops. 1

§ 82033. Interest in Real Property.

"Interest in real property" includes any leasehold, beneficial or ownership interest or an option to acquire such an interest in real property located in the jurisdiction owned directly, indirectly or beneficially by the public official, or other filer, or his or her immediate family if the fair market value of the interest is two thousand dollars (\$2,000) or more. Interests in real property of an individual includes a pro rata share of

committees, and committees formed or existing primarily to support or oppose these candidates or officeholders:

(1) The original and one copy with the Secretary of State.

(2) Two copies with the clerk of the county with the largest number of registered voters in the districts affected.

(c) Elected officers in jurisdictions other than legislative districts, Board of Equalization districts or appellate court districts which contain parts of two or more counties, candidates for these offices, their controlled committees, and committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one of these jurisdictions shall file the original and one copy with the clerk of the county with the largest number of registered voters in the jurisdiction.

(d) County elected officers, municipal court judges, candidates for such offices, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in any number of jurisdictions within one county, other than those specified in subdivision (e), and county general purpose committees shall file the original and one copy with the clerk of the county.

(e) City elected officers, candidates for city office, their controlled committees, committees formed or existing primarily to support or oppose candidates or local measures to be voted upon in one city, and city general purpose committees shall file the original and one copy with the clerk of the city.

These elected officers, candidates, and committees need not file with the clerk of the county in which they are domiciled.

(f) Notwithstanding the above, no committee, candidate, or elected officer shall be required to file more than the original and one copy, or two copies, of a campaign statement with any one county or city clerk or with the Secretary of State.

(g) If a committee is required to file campaign statements required by Section 84200 or 84200.5 in places designated in subdivisions (d) and (e), it shall continue to file these statements in those places, in addition to any other places required by this title, until the end of the calendar year.

History: Added by Stats. 1978, Ch. 1408, effective October 1, 1978; repealed and reenacted as amended by Stats. 1980, Ch. 289. (Formerly titled "Combination of Pre-election and Semiannual Statements"); amended by Stats. 1982, Ch. 1060; amended by Stats. 1985, Ch. 1456; amended by Stats. 1986, Ch. 490; amended by Stats. 1990, Ch. 581.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18227

§ 84216. Loans.

(a) Notwithstanding Section 82015, a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it is not made for political purposes.

(b) A loan, whether or not there is a written contract for the loan, shall be reported as provided in Section 84211 when any of the following apply:

(1) The loan is a contribution.

(2) The loan is received by a committee.

(3) The loan is received by a candidate and is used for political purposes.

History: Added by Stats. 1977, Ch. 1119; amended by Stats. 1980, Ch. 289; amended by Stats. 1982, Ch. 29; repealed and reenacted as amended by Stats. 1985, Ch. 899; amended by Stats. 2000, Ch. 853.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18416

Enforcement

Decisions: Independent PAC Local 188 International Assn. of Firefighters, et al. 97/533 (2000)
National Rep. Congressional Comm. Non-Fed 98/507 (1999 Civil Suit)
Tom Bordonaro, Jr., et al. 96/76 (1997)
Peter Navarro; Robin Stark 93/456 (1996)
Arlo Smith, et al. 93/332 (1996)
Kevin P. Eckard, et al. 92/115 (1995)
Leo Bazile, et al. 90/813 (1995)
Bill Huggins, et al. 89/190 (1990)
Dan Shapiro/Friends of Dan Shapiro 87/614 (1989)
Cathie Wright/Wright Comm./Thomasina Criger 81/16 (1982)

§ 84216.5. Loans Made by a Candidate or Committee.

A loan of campaign funds, whether or not there is a written contract for the loan, made by a candidate or committee shall be reported as provided in Section 84211.

History: Former Section 84216.5 renumbered 84213 by Stats. 1980, Ch. 289; new section added by Stats. 1985, Ch. 899; amended by Stats. 2000, Ch. 853.

References at the time of publication (see page 3):

Regulations: 2 Cal. Code of Regs. Section 18416

§ 84217. Federal Office Candidates; Places Filed.

When the Secretary of State receives any campaign statement filed pursuant to the Federal Election Campaign Act, (2 U.S.C.A. Section 431 et seq.) the Secretary of State shall send a copy of the statement to the following officers:

HYDE, MILLER, OWEN & TROST

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

428 J STREET, SUITE 400

SACRAMENTO, CALIFORNIA 95814-2394

TELEPHONE (916) 447-7933

FACSIMILE (916) 447-5195


E-MAIL hmot@hmot.com

NANCY L. BEAUREGARD
PAUL J. CHRISMAN
RICHARD H. HYDE
MATINA R. KOLOKOTRONIS
CHRISTIANE E. LAYTON
NANCY C. MILLER
WILLIAM L. OWEN
KIRK E. TROST

PHILLIP L. ISENBERG
OF COUNSEL

MEMORANDUM

TO: Sacramento Local Agency Formation Commission

FROM: Hyde, Miller, Owen & Trost 

DATE: January 30, 2001

SUBJECT: Hearing on Disclosure of Contributions and Expenditures as required by Government Code Section 56300.

As the Commission is aware, enactment of AB 2838 (Hertzberg) resulted in a number of major changes to Local Agency Formation Commissions (LAFCOs) in 2001. Among other things, AB 2838 authorizes LAFCOs to adopt written policies and procedures regarding the disclosure of contributions, expenditures, independent expenditures and lobbying activities. AB 2838 also requires LAFCOs to hold a public hearing to discuss the adoption of these policies and procedures prior to March 31, 2001.

DISCLOSURE REQUIREMENTS:

A. Contributions, Expenditures and Independent Expenditures in Support of or in Opposition to a Proposal

AB 2838 (Section 56100.1) authorizes LAFCO to require the disclosure of contributions, as defined in Government Code section 82015, expenditures, as defined in Government Code section 82025, and independent expenditures, as defined in Government Code section 82031, made in support of or in opposition to a proposal. LAFCOs are required to hold a public hearing to discuss the adoption of policies and procedures regarding these disclosures not later than March 31, 2001. Disclosures may be made to the Executive Officer or a County officer designated by the Board of Supervisors. These disclosures are in addition to any other LAFCO disclosures that may be required. (Sections 56300; 56100.1.)

AB 2838 (Section 56700.1) *requires* the disclosure and reporting of expenditures for "political purposes" related to an organization or reorganization proposal submitted to the Commission to the same extent as required for local initiative measures.

RECOMMENDATION:

It is recommended that the Commission:

- Receive this report summarizing the contributions and expenditures disclosure requirements of the Cortese-Knox-Hertzberg Act.
- Direct staff to draft Commission policies and procedures consistent with the new law for consideration at future Commission meeting.
- Direct staff to redraft applications to provide that expenditures for “political purposes” related to organizations or reorganizations if required to be disclosed and reported.

B. Lobbying Disclosures

AB 2838 (Section 56300(c)) authorizes LAFCOs to adopt written policies and procedures to require the disclosure of lobbying efforts of persons who attempt to influence pending decisions made by Commission members, staff or consultants.

Disclosures made to LAFCO will be posted on the Commission web site or may be made to the County Recorder, Registrar of Voters or Clerk of the Board of Supervisors.

The Political Reform Act, Government Code section 82039 defines “lobbyist” as any individual who receives two thousand dollars (\$2000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. No individual is a lobbyist by reason of activities excluded by the Political Reform Act. (*See* Section 86300.)

RECOMMENDATION:

It is recommended that the Commission:

- Receive this report summarizing the contributions and expenditures disclosure requirements of the Cortese-Knox-Hertzberg Act.
- Direct staff to draft Commission policies and procedures consistent with the new law for consideration at future Commission meeting.

Assembly Bill No. 745

CHAPTER 109

An act to amend Sections 56100.1 and 56700.1 of, and to add Section 57009 to, the Government Code, relating to local agencies.

[Approved by Governor July 20, 2007. Filed with
Secretary of State July 20, 2007.]

LEGISLATIVE COUNSEL'S DIGEST

AB 745, Silva. Local agency formation commissions.

The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 requires specified procedures to be followed for the submission of a proposal for a change of organization or reorganization to the local agency formation commission. Existing law requires the disclosure of expenditures for political purposes related to a change of organization or reorganization proposal that has been submitted to a local agency formation commission, and contributions in support of or in opposition to those measures.

This bill would require expenditures for political purposes made in connection with a proposal that will be submitted to a local agency formation commission, and contributions in support of or in opposition to those proposals, and expenditures for political purposes made in connection to proceedings for a change of organization or reorganization, and contributions in support of or in opposition to those proceedings, to be disclosed and reported to the same extent and subject to the same requirements of the Political Reform Act of 1974 as provided for local initiative measures.

The people of the State of California do enact as follows:

SECTION 1. Section 56100.1 of the Government Code is amended to read:

56100.1. A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015, expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission's executive officer, in which case it shall be posted on the commission's Web site, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure otherwise required by Section 56700.1, the Political Reform Act (Title 9 (commencing with Section 81000)), or local ordinance.

SEC. 2. Section 56700.1 of the Government Code is amended to read:

56700.1. Expenditures for political purposes related to a proposal for a change of organization or reorganization that will be submitted to a commission pursuant to this part, and, contributions in support of or in opposition to those proposals, shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)) as provided for local initiative measures.

SEC. 3. Section 57009 is added to the Government Code, to read:

57009. Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part, and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act (Title 9 (commencing with Section 81000)), as provided for local initiative measures.

Disclosure Requirements

Assembly Bill 745 (Silva, 2007)
Contributions & Spending on LAFCO Petitions

Assembly Bill 745 (Silva, 2006) made important changes to the requirements for disclosing political contributions and spending on petitions that involve local agency formation commissions (LAFCOs). Signed into law by Governor Arnold Schwarzenegger as Chapter 109 of the Statutes of 2007, the bill will take effect on January 1, 2008.

Political Reform Act. The Political Reform Act requires ballot measure committees to disclose and report their contributions and expenditures. A local ballot initiative becomes a "measure" when the proponents start circulating petitions. When an initiative becomes a measure, a committee must begin reporting contributions and expenditures once it receives contributions of \$1,000 or more. A committee must report its contributions and expenditures even if they took place before the initiative became a measure (FPPC Campaign Manual 3, May 2006, Chapter 1).

FPPC ruling. In its 1976 *Fontana* opinion, the Fair Political Practices Commission (FPPC) said that a petition for city incorporation was not a local initiative under the Political Reform Act. An incorporation proposal does not become a "measure" until local officials place the proposal on the ballot. However, once an incorporation proposal qualifies for the ballot, the supporters and opponents must disclose contributions and expenditures made before the proposal was actually placed on the ballot (*In re: Fontana* [1976] 2 FPPC Opinions 15). In other words, their initial statements must be retrospective.

San Fernando secession attempt. In the late 1990s, some San Fernando Valley residents wanted to secede from the City of Los Angeles. Los Angeles city officials wanted the secession proponents to disclose their financial backers. Because of the FPPC's 1976 opinion, a city detachment petition to a local agency formation commission (LAFCO) isn't a "measure" until local officials place a proposal on the ballot. Therefore, the Valley secession proponents were not initially subject to the Political Reform Act's reporting and disclosure requirements.

Growth Within Bounds. The Legislature created the Commission on Local Governance for the 21st Century to review the state laws relating to LAFCOs and boundary changes (AB 1484, Hertzberg, 1997). The Commission knew that Los Angeles city officials were frustrated in their attempts to identify the San Fernando Valley secession movement's financial backers. In its 2000 *Growth Within Bounds* report, the Commission recommended that "proponents of reorganization actions be required to report campaign contributions in the same manner that local initiative proponents are required to report" (*Growth Within Bounds*, pp. 45 & 154).

Hertzberg's reforms. In response to the Commission's recommendation, the Legislature amended the Cortese-Knox-Hertzberg Act to require that contributions and expenditures for political purposes on boundary changes that have been submitted to LAFCO must be disclosed and reported as if they were local initiative measures (AB 2838, Hertzberg, 2000). The 2000 Hertzberg bill also allowed LAFCOs to adopt local disclosure policies and procedures that are more stringent than the statewide requirements (Government Code §56100.1 & §56300 [b]). Because

these provisions are in the Cortese-Knox-Hertzberg Act and are not part of the Political Reform Act, the FPPC does not enforce them, leaving enforcement up to the LAFCOs.

Anaheim's annexation. In 2005, the Orange County LAFCO approved the City of Anaheim's application to annex a large pocket of unincorporated territory. Orange County's Board of Supervisors supported the proposed annexation. After approving the annexation proposal, the Orange County LAFCO held the required public hearing to measure protests. Opponents organized a resistance campaign. When the LAFCO found that more than a majority of the area's registered voters had signed protest petitions, the annexation proceedings stopped, as required by law. Anaheim and Orange County officials wanted the opponents to disclose their financial backers, but they discovered that state law did not require campaign reporting on protest petitions. The 2000 Hertzberg bill applied only to application petitions to LAFCO, not to petitions that protest LAFCO decisions.

The former law. Local officials determined that the Act's reporting and disclosure requirements applied only to "proposals" which the statute defined as a request for a boundary change that's made by petition to LAFCO (Government Code §56069). LAFCOs accept, review, and decide on "proposals" under Part 3 of the Act. The protest provisions affect "proceedings" which the Act defines as the notice, hearing, and protest requirements that LAFCOs conduct (Government Code §56067). LAFCOs act as the conducting authority (Government Code §56029) under Part 4 of the Act. Therefore, the disclosure and reporting requirements imposed by the 2000 Hertzberg bill applied only to application petitions submitted to LAFCO under Part 3 of the Act; they were "proposals." Those requirements didn't apply to protest provisions submitted to LAFCO under Part 4 of the Act; those were "proceedings."

The new law. Effective January 1, 2008, **Assembly Bill 745 (Silva)** requires that contributions and expenditures for political purposes on boundary changes approved by a LAFCO be disclosed and reported subject to the same requirements that the Political Reform Act provides for local initiative measures.

Additional changes. AB 745 also amended the state law that already required contributions and expenditures for political purposes on boundary change petitions to a LAFCO to clarify those provisions and inserted a cross-reference to the Political Reform Act. Further, the bill clarified the law that allows a LAFCO to adopt local disclosure policies and procedures that are more stringent than the statewide requirements for disclosure and reporting on boundary change petitions to a LAFCO.))

✓ Enforcement? Because the disclosure and reporting requirements are in the Cortese-Knox-Hertzberg Act and are not part of the Political Reform Act, the FPPC does not enforce them, leaving enforcement up to the LAFCOs. In 2008, legislators may wish to consider moving these provisions into the Political Reform Act where all of the other disclosure and reporting requirements appear. If successful, that future bill would shift the enforcement duties from the LAFCOs to the FPPC, which is already responsible for enforcing the Political Reform Act.

CONCURRENCE IN SENATE AMENDMENTS
 AB 745 (Silva)
 As Amended June 26, 2007
 Majority vote

	ASSEMBLY:	74-0	(May 7, 2007)	SENATE:	37-0	(June 28,
						2007)

Original Committee Reference: L. GOV.

SUMMARY : Requires that contributions and expenditures for political purposes related to a local boundary change proposals carried out under local agency formation commission (LAFCO) law, and contributions in support or in opposition to those measures, be disclosed and reported subject to the same requirements that the Political Reform Act (PRA) provides for local initiative measures.

The Senate amendments :

- 1) Amend the state law that already requires contributions and expenditures for political purposes on boundary change petitions to a LAFCO to clarify those provisions and insert a cross-reference to the PRA.
- 2) Clarify the current law that allows a LAFCO to adopt local disclosure policies and procedures that are more stringent than the statewide requirements for disclosure and reporting on boundary change petitions to a LAFCO.

EXISTING LAW :

- 1) Establishes in each county a LAFCO to review proposals for the formation of new local agencies and changes in the organization of existing local agencies.
- 2) Authorizes a LAFCO to require lobbying disclosure and reporting requirements for persons who attempt to influence pending decisions by commission members, staff, or consultants.
- 3) Requires that expenditures for political purposes related to a change of organization or reorganization proposal that has

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been submitted to a LAFCO, and contributions in support of or in opposition to those measures, be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate.

AS PASSED BY THE ASSEMBLY , this bill required that expenditures for political purposes made in connection with petitions not yet submitted to a LAFCO be disclosed and reported to the same extent and subject to the same requirements as provided for local initiative measures to be presented to the electorate.

FISCAL EFFECT : None

COMMENTS : The PRA requires ballot measure committees to disclose and report their contributions and expenditures. A local ballot initiative becomes a "measure" when the proponents start circulating petitions. When an initiative becomes a measure, a committee must begin reporting contributions and expenditures once it receives contributions of \$1,000 or more. A committee must report its contributions and expenditures even if they took place before the initiative became a measure.

In its 1976 Fontana opinion, the Fair Political Practices Commission (FPPC) said that a petition for city incorporation was not a local initiative under the PRA. An incorporation proposal does not become a "measure" until local officials place the proposal on the ballot. However, once an incorporation proposal qualifies for the ballot, the supporters and opponents must disclose contributions and expenditures made before the proposal was actually placed on the ballot. In other words, their initial statements must be retrospective.

In the late 1990s, some San Fernando Valley residents wanted to secede from the City of Los Angeles. Los Angeles city officials wanted the secession proponents to disclose their financial backers. Because of the FPPC's 1976 opinion, a city detachment petition to a LAFCO isn't a "measure" until local officials place a proposal on the ballot. Therefore, the San Fernando Valley secession proponents were not initially subject to the PRA's reporting and disclosure requirements.

The Legislature created the Commission on Local Governance for the 21st Century to review the state laws relating to LAFCOs and boundary changes [AB 1484 (Hertzberg), Chapter 943, Statutes of

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1997]. The Commission knew that city officials were frustrated

in their attempts to identify the secession movement's financial backers. In its 2000 Growth Within Bounds report, the Commission recommended that "proponents of reorganization actions be required to report campaign contributions in the same manner that local initiative proponents are required to report."

In response to the Commission's recommendation, the Legislature amended LAFCO law to require that contributions and expenditures for political purposes on boundary changes that have been submitted to LAFCO must be disclosed and reported as if they were local initiative measures [AB 2838 (Hertzberg), Chapter 761, Statutes of 2000]. AB 2838 also allowed LAFCOs to adopt local disclosure policies and procedures that are more stringent than the statewide requirements. Because these provisions are in LAFCO law and not part of the PRA, the FPPC does not enforce them, leaving enforcement up to the LAFCOs.

In 2005, the Orange County LAFCO approved the City of Anaheim's application to annex a large pocket of unincorporated territory.

Orange County's Board of Supervisors supported the proposed annexation. After approving the annexation proposal, the Orange County LAFCO held the required public hearing to measure protests. Opponents organized a resistance campaign. When the LAFCO found that more than a majority of the area's registered voters had signed protest petitions, the annexation proceedings stopped, as required by law. Anaheim and Orange County officials wanted the opponents to disclose their financial backers, but they discovered that state law does not require campaign reporting on protest petitions. AB 2838 applies only to application petitions to LAFCO, not to petitions that protest LAFCO decisions.

AB 745 closes this gap in the statutory requirements for reporting campaign information. Disclosing contributions and expenditures for petition campaigns reveals the financial backers' identity, so the public knows who stands behind the petitions. That's the public purpose served by the PRA and by AB 2838 that required reporting and disclosure for petitions that go to LAFCO. The public has a right to know who's paying for the protest petitions.

Like AB 2838, AB 745 amends LAFCO law but not the PRA. Therefore, the existing requirements to disclose political contributions and spending for boundary change petitions to

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LAFCO and the proposed requirements to disclose political contributions and spending on boundary change protest petitions fall outside of the FPPC's enforcement duties. If petition proponents violate the current reporting requirements, then it's up to LAFCOs and local residents to go to court to enforce the

state law. Similarly, if protest petitioners violate this bill's requirements, then someone needs to go to court.

Analysis Prepared by : Anya Lawler / L. GOV. / (916) 319-3958

FN: 0001712

**Calafco Draft Disclosure Policies
And Background Material**

October 26, 2007

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A.B. 745:

**DISCLOSURE OF CONTRIBUTIONS AND EXPENDITURES TO INFLUENCE
PETITION AND PROTEST DRIVES ON LAFCO PROPOSALS**

by

Michael G. Colantuono

and

Holly O. Whatley

Annual Conference
California Association of Local Agency Formation Commissions
Sacramento, California
August 30, 2007

1. Historical Background.

The post-Watergate era brought mandatory disclosure of financial contributions intended to influence the outcome of elections, such as elections on ballot measures, including incorporation and other proposals to the electorate. California led the pack with the adoption of Prop. 9, the Political Reform Act of 1974, which created the Fair Political Practices Commission (FPPC).

In 1976, the FPPC determined that a City incorporation effort did not become a “measure” to which campaign contribution disclosure applied unless and until the matter was placed on the ballot. *In re Fontana*, 2 FPPC Ops. 25, 75-162 (1976). Thus, public disclosure of the financial backers of an incorporation proposal is not required until fairly late in the game.

In the late 1990’s Valley Vote succeeded in placing on the ballot a proposal to separate the San Fernando Valley from Los Angeles, raising and spending hundreds of thousands of dollars to prepare its petitions and to gather signatures. Los Angeles officials demanded that Valley Vote (and other secession efforts in the Harbor area of the City, Hollywood, and on the Westside) disclose their donors. Under the *Fontana* opinion, however, disclosure was not required until the measures reached the ballot.

2. *The Commission on Local Governance for the 21st Century and A.B. 2838*

While Valley secession was pending, the Commission on Local Governance for the 21st Century, a state blue ribbon panel formed to review what was then known as the Cortese-Knox Local Government Reorganization Act, was sitting and heard testimony from Valley Vote, Harbor Vote, and Los Angeles city officials. The Commission recommended to the Legislature that “proponents of reorganization actions be required to report campaign contributions in the same manner that local initiative proponents are required to report.”

The Commission’s recommendations were largely adopted by the Legislature as 2000’s A.B. 2838 (Hertzberg, D-Van Nuys), which substantially revised the LAFCO law and renamed it the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (CKH Act), in recognition of then-Speaker Hertzberg’s leadership in creating the Commission and shepherding its recommendations into law. A.B. 2838 was a heavily negotiated bill and its provision regarding disclosure of contributions was less forceful than the Commission’s recommendation.

3. *Current Law (Pre-A.B. 745)*

A.B. 2838 adopted Government Code Section 56100.1 which, prior to the amendments of this year’s A.B. 745 (Silva, R-Huntington Beach) that take effect on January 1, 2008, read as follows:

A commission may require, through the adoption of written policies and procedures, the disclosure of contributions, as defined in Section 82015 [*i.e.*, the Political Reform Act], expenditures, as defined in Section 82025, and independent expenditures, as defined in Section 82031, made in support of or opposition to a proposal. Disclosure shall be made either to the commission’s executive officer, in which case it shall be posted on the commission’s website, if applicable, or to the board of supervisors of the county in which the commission is located, which may designate a county officer to receive the disclosure. Disclosure pursuant to a requirement under the authority provided in this section shall be in addition to any disclosure required by Title 9 (commencing with Section 81000) [*i.e.*, the Political Reform Act] or by local ordinance.

This statute is:

optional in LAFCOs; and,

applicable to petitions for a reorganization, but not to protests of a proposal at the conducting-authority stage.

According to the Assembly Floor Report on A.B. 745, only 19 of 56 LAFCOs responding to a survey have adopted policies to implement Government Code § 56100.1 and, of the ten most populous counties, only Fresno and San Diego LAFCOs have done so. San Diego’s policy is attached to this paper.

In 2005, the Orange County LAFCO approved an application of the City of Anaheim to annex a large, populated, unincorporated island. The County Board of Supervisors supported the application. A well-organized opposition campaign was conducted and sufficient protests of registered voters in the annexation area were collected to kill the proposal. Because the measure had not reached the ballot, no disclosure of who funded this campaign was required. Following his election to the Assembly, former Orange County Supervisor Jim Silva introduced A.B. 745 at the request of the Board of Supervisors to ensure that disclosure would be required in the future. The bill was adopted and signed by the Governor with no opposition – not a single “nay” vote was cast in either house or any committee of the Legislature.

4. *The Law as Amended by A.B. 745*

A.B. 745 makes non-substantial amendments to Government Code § 56100.1, which was adopted as part of A.B. 2828, which implemented the recommendations of the Commission on Local Governance for the 21st Century. Thus, LAFCOs retain discretion to adopt disclosure requirements with respect to proposals for action by a LAFCO as to expenditures, contributions and – unlike the new statutes discussed below – independent expenditures (*i.e.*, expenditures to influence the outcome of a petition that are made independently of the proponents of the petition).¹ It also adopts two new provisions of the CKH Act, as follows:

“56700.1. Expenditures for political purposes related to a proposal for a change of organization or reorganization that will be submitted to a commission pursuant to this part [*i.e.*, petitions for organization or reorganization of a local government], and, contributions in support of or in opposition to those proposals,

¹ “Independent expenditures” usually arise only with respect to candidate elections, and such expenditures must be independent of the candidate. It is not clear how an “independent expenditure” in the context of a measure differs from an expenditure by a committee or individual supporting or opposing the measure. Thus, the exclusion of “independent expenditure” from the newly adopted sections of the CKH Act may not have much significance.

shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act ... as provided for local initiative measures.

57009. Expenditures for political purposes related to proceedings for a change of organization or reorganization that will be conducted pursuant to this part [*i.e.*, conducting authority proceedings], and contributions in support of, or in opposition to, those proceedings shall be disclosed and reported to the commission to the same extent and subject to the same requirements of the Political Reform Act ..., as provided for local initiative measures.”

The first section is included in the chapter of the CKH Act governing petitions to a LAFCO for organization or reorganization of a local government. As to such petitions, it has the following consequences:

“Expenditures for political purposes” and “contributions in support of or in opposition” to these proposals must be disclosed to LAFCO under the rules of the Political Reform Act for local initiative measures. This is a mandatory duty of those who make such expenditures – *i.e.*, those who spend \$1,000 or more to influence the outcome of a proposal that has reached the signature-gathering stage. LAFCO has no discretion to allow expenditures to go unreported and it must accept the disclosure itself – it cannot arrange for the County Registrar to accept these filings, as Government Code § 56100.1 would permit (although see more on this issue in point 5 below). Thus, once the proponents or opponents of a petition for LAFCO action spend \$1,000 with respect to that proposal, they must report their contributions of \$100 or more and all of their expenditures. In theory, organizers of an independent expenditure campaign which neither supports nor opposes a proposal are exempt from this disclosure. However, it is very likely that expenditures will be viewed as being in support or opposition; so disclosure from all who spend more than \$1,000 with respect to a proposal is likely required.

The second new section of the CKH Act is placed in the chapter of the statute governing conducting authority proceedings and it has these same consequences: Once a person or group spends \$1,000 or more to influence the outcome of a conducting authority proceeding, that person or group must disclose contributions and expenditures to LAFCO.

Although the statute references the Political Reform Act, it does not amend that Act. Accordingly, the Fair Political Practices Commission has no jurisdiction to enforce the requirements for disclosure until a LAFCO matter is placed on the ballot and becomes a “measure” within the meaning of the Political Reform Act. Enforcement will be up to the LAFCO and, absent cooperation of the persons obligated to make disclosure, enforcement will require a lawsuit. Although the legislation is not clear on this point, it is likely the courts will

allow third parties to sue to enforce disclosure – as newspapers and opposing political forces may wish to do.

5. *Practice Tips for Implementing the Law*

Adopt a local policy. In theory, a LAFCO could enforce this statute just as it is written. However, this will lead to difficulties, as the analogy of a petition for or a protest of a LAFCO action to an initiative measure to be acted upon by the voters is imperfect. For example, the FFPC rules tie disclosure to election dates – requiring disclosures before and after the election and require expedited disclosure of large, last-minute contributions. What is the “election date” for a LAFCO proposal? Presumably the originally scheduled hearing date, but it will be helpful if a local policy spells this out. Moreover, what happens if the hearing date is postponed? Presumably, continuing disclosure should be required, but it will be helpful if the local policy addresses this, too.

Adopt a local policy before a controversy erupts. It will be much easier to achieve consensus among your Commissioners and to adopt rational policy if it is done in the abstract with respect to future proposals and not in the heat of a political battle on a particular proposal.

Consider whether to require more disclosure than does the FFPC. While this statute is mandatory and requires at least as much disclosure for expenditures and contributions regarding a LAFCO petition or conducting authority proceeding as is required for a ballot proposal, a LAFCO may require additional disclosure. For example, it may make sense to coordinate disclosure under a local LAFCO policy with the disclosure required by the election finance ordinance of a local government affected by the proposal even if that local ordinance requires more disclosure than does the FFPC.

Disclosure is to LAFCO, but you can ask for help. Although the statute is clear that disclosure must be to LAFCO, it does not prohibit LAFCO from asking for help from County staff. Given that County elections officers are proficient with FFPC rules regarding election disclosure, and typically have substantial office hours to serve the public, it may be helpful to designate the County elections official as a deputy Executive Officer of LAFCO for this purpose.

Consider electronic disclosure. Disclosure under an optional LAFCO policy regarding proposals (*i.e.*, under Government Code § 56100.1) must be posted to a LAFCO’s website (if one exists) unless the local policy requires disclosure be made to a County officer. This requirement does not apply to mandatory disclosure under new Government Code §§ 56700.1 and 57009. However, there will likely be substantial public interest in this information and posting it to the Web may be helpful in disseminating the information without substantial wear and tear on LAFCO staff. However, consider whether complete disclosure of contributors’

information (including home addresses, for example) is a good idea in this age of cyber-stalkers. Privacy and transparency in government are competing goals and each community should consider how best to balance them.

You may wish to hew as closely to the FPPC rules or local campaign finance ordinances as practicable. It is not a good idea to reinvent the wheel here or to take on the burden of updating the wheel when legal developments require change in campaign finance disclosure requirements. This subject involves complex constitutional questions and the law is dynamic. It is probably best for both those in government and those in politics if this area of political finance disclosure is as similar to other campaign disclosure rules as possible. There will be a need to define terms and otherwise fit disclosure regarding LAFCO proposals into rules written with elections in mind and there is a need to consider conformity with local campaign finance ordinances. However, in general, consistency with background law is a worthy objective in this context.

CALAFCO may want to develop a model policy. This will be helpful to LAFCOs, especially those with fewer resources. If a model is developed, the San Diego and Fresno LAFCO rules for disclosure may be a good place to start. Input from the FPPC and the California Association of Clerks and Chief Election Officials (CACEO) will be valuable, too. The San Diego policy is attached to this paper.

Seek legal advice. Your policy should be reviewed by a lawyer before you adopt it. Someone will eventually sue to challenge or enforce these rules and it is best to do it right the first time than to risk losing a lawsuit and having to do it again.

Draft Policy to Implement AB 745
Disclosure of Political Expenditures Regarding LAFCO Proceedings

October 26, 2007 Draft

Pursuant to Government Code Sections 56700.1 and 57009, effective January 1, 2008, expenditures for political purposes related to a proposal for a change of organization or reorganization initiated by petition and contributions in support of or in opposition to any proposal at the conducting authority stage of the LAFCO process are subject to the reporting and disclosure to the same extent as required for local initiative measures under the Political Reform Act, Government Code Section 81000 et seq., and the regulations of the Fair Political Practices Commission implementing that law.

_____ LAFCO adopts the following reporting and disclosure requirements to implement Government Code Sections 56700.1 and 57009.

1. Definitions

- a. "Contribution" as used herein shall have the same definition as provided in Government Code Section 82015, as amended.
- b. "Expenditure" as used herein shall have the same definition as provided in Government Code Section 82025, as amended.
- c. "Independent expenditure" as used herein shall have the same definition as provided in Government Code Section 82031, as amended, except that the term "measure" as used in Section 82031 shall be replaced with the term "proposal for organization or reorganization."

[Alternative 1]

- d. "Political Purposes" as used herein shall mean for the purpose(s) of:
 - (i) influencing public opinion;
 - (ii) lobbying public officials;
 - (iii) influencing legislative or administrative action as defined in Government Code § 82032; and/or,
 - (iv) complying with legal requirements and LAFCO rules for the processing of a proposal, including, but not limited to and by way of example only, preparation of a comprehensive fiscal analysis for an incorporation (Government Code Section 56800) or documents necessary to comply with the California Environmental Quality Act, Public Resources Code Section 21000 et seq., such as a mitigated negative declaration or environmental impact report.

[Alternative 2]

- d. "Political Purposes" as used herein shall mean for the purpose(s) of:
- (i) influencing public opinion; (ii) lobbying public officials; and/or,
 - (iii) influencing legislative or administrative action as defined in Government Code § 82032. It shall not include for the purpose(s) of complying with legal requirements and LAFCO rules for the processing of a proposal, including, but not limited to and by way of example only, preparation of a comprehensive fiscal analysis for an incorporation (Government Code Section 56800) or documents necessary to comply with the California Environmental Quality Act, Public Resources Code Section 21000 et seq., such as a mitigated negative declaration or environmental impact report.
2. Disclosure Requirements for Petitions for Proposals for Organization or Reorganization
- a. Any person or combination of persons who directly or indirectly makes an expenditure or independent expenditure for political purposes of \$1,000 or more in support of, or in opposition to, a change of organization or reorganization submitted to the commission to which Government Code Section 56700.1 applies, shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.), to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.
 - b. Disclosures made pursuant to this Section shall be filed the commission's executive officer as designated in Section 5 below.
 - c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled commission hearing on a proposal for organization or reorganization. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
 - d. In the event the originally scheduled hearing date for the proposal for organization or reorganization is rescheduled or continued to a later date,

the obligation to file continues reports shall be filed on or before the 10th day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

3. Disclosure Requirements for Conducting Authority Proceedings

- a. Any person or combination of persons who directly or indirectly makes an expenditure for political purposes of \$1,000 or more related to conducting authority proceedings for a change of organization or reorganization to which Government Code Section 57009 applies, or in support of or in opposition to those conducting authority proceedings, shall comply with the reporting and disclosure requirements of the Political Reform Act (Government Code §§ 81000 et seq.) to the same extent and subject to the same requirements as for local initiative measures. Such reporting and disclosure requirements, except as otherwise excluded herein, extend to those required by the Fair Political Practices Commission Regulations regarding such disclosures and shall include disclosure of contributions, expenditures and independent expenditures.
- b. Disclosures made pursuant to this Section shall be filed with the commission's executive officer as designated in Section 5 below.
- c. For purposes of determining the deadlines by which such reports and disclosures must be filed, the term "election" as used in the Political Reform Act for determining such deadlines shall mean the date of the originally scheduled conducting authority hearing on the proposal for organization or reorganization. If no hearing date has been scheduled at the time a person becomes subject to disclosure under this policy, he or she shall request that the executive officer establish a date to serve as the "election" date for this purpose. The executive officer shall establish a date, such as, but not limited to, the date which is 6 months after the first filing with the commission regarding the proposal, and inform the requestor of that date in writing.
- d. In the event the originally scheduled conducting authority hearing date for a proposal for organization or reorganization is rescheduled or continued to a later date, the obligation to file continues and reports shall be filed on or before the 10th day of each month following the original hearing date with respect to contributions and expenditures received in the previous calendar month up to and including the third calendar month following final action by the commission on the proposal.

4. Certain Reports and Disclosures Excluded

[Alternative 1]

This policy requires only that the persons subject to it disclose via reports to the commission's executive officer contributions, expenditures and independent expenditures with respect to expenditures for political purposes related to a petition to the commission for a proposal for an organization or reorganization and does not impose on such persons the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

[Alternative 2]

This policy also requires that the persons subject to it comply with the regulations regarding the names of campaign committees, disclosures of the sources of mass mailings, and disclosures of the source of automated telephone calls under Government Code Sections 84501 et seq. and the regulations of the Fair Political Practices Commission implementing those sections.

5. Where to File

[Alternative 1]

All reports and disclosures required hereunder shall be filed with the commission's Executive Officer.

[Alternative 2]

All reports and disclosures required hereunder shall be filed with the _____ County elections official, who the _____ LAFCO hereby designates as a deputy Executive Officer of _____ LAFCO for purposes of receiving and filing such reports.

6. Reporting requirements are non-exclusive

The disclosure and reporting requirements herein are in addition to any other requirements that may be otherwise applicable under provisions of the Political Reform Act or by local ordinance.

7. Sunset provision

This policy is intended to implement Government Code Sections 56700.1 and 57009 and shall be of no further force and effect upon the effective date of legislation repealing or amending those sections to transfer responsibility for enforcing disclosure of expenditures for political purposes affecting

commission proceedings to the Fair Political Practices Commission or otherwise terminates the responsibility of this commission to adopt and implement this policy.

DRAFT

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MEMORANDUM

TO: Executive Officers of LAFCOs **FILE NO:** 99904-0191

FROM: Michael G. Colantuono, Esq. **DATE:** October 31, 2007

RE: Model Policy Implementing AB 745 (Disclosure of Political Expenditures)

The model policy to implement AB 745 (Silva, R-Orange) regarding mandatory disclosure of political expenditures and contributions affecting LAFCO proceedings is structured to provide three areas of choice for California's 58 LAFCOs. This memo explains these three choices. It is not meant as an overview of AB 745, as that is provided by the paper Holly Whatley and I presented to the CALAFCO annual conference earlier this year.

1. *Scope of Disclosable "Expenditures for Political Purposes."* Section 1(d) of the policy allows a LAFCO to choose how broadly to define the "expenditures for political purposes" that trigger a duty to disclose donations and expenditures to LAFCO. Alternative 1 includes expenditures to comply with LAFCO requirements, such as comprehensive fiscal analyses of incorporation proposals and environmental review documents like EIRs and negative declarations. Alternative 2 excludes these. If your Commission wishes to require proponents and their supporters to disclose how they finance compliance with these LAFCO requirements, you should use the language of Alternative 1. The downside to this additional public disclosure is that many, if not most, LAFCO applications will have application costs of \$1,000 or more, thus disclosure will be required in many cases in which there may not be substantial public controversy or interest. If your Commission wishes to reduce the amount of required disclosure for these reasons, you should use the language of Alternative 2.

2. *Committee Names, Robocalls and Mass Mailing.* Section 4 addresses committee names, automated phone calls ("robocalls"), and identification requirements for mass mailings. In addition to the requirement that donors to a political committee and expenditures by that committee be disclosed, the Fair Political Practices Commission rules which apply to matters which reach the ballot regulate the names of political committees (requiring them to identify major donors) and mandate that robocalls and mass mailers identify the committee as the source of the call or mailer. AB 745 can, but need not, be interpreted to require LAFCOs to enforce these rules for those who spend more than \$1,000 to influence a LAFCO's action on a petition or in a conducting authority hearing. The language of Section 4 labeled as "Alternative 1" takes the narrower view and expressly excludes the committee name, robocall and mass mailing rules from the force of this LAFCO policy. Alternative 2 expressly includes these rules. The choice

between these two alternatives turns on a policy choice between additional public disclosure versus additional burden on those regulated and on LAFCO and its staff as a regulator.

3. *Filing Official.* The alternative versions of Section 5 allow LAFCO to require that political contribution and expenditure information be filed with the LAFCO Executive Officer (as AB 745 requires) or with the County Elections official (whom this policy appoints as Deputy Executive Officer for this purpose). If your County Elections official is willing to serve in this role (for free or at a cost LAFCO finds acceptable), it may be more convenient for those subject to the policy to file there, as that office is familiar with campaign disclosure rules and has counter staff accustomed to interacting with those who engage in campaigns. If the services of your elections official are not available at a price your Commission is willing and able to pay, filings should be directed to the Executive Officer.

On behalf of the CALAFCO Attorneys Committee which prepared this policy (me, Holly Whatley, Clark Alsop, and Nancy Miller), I hope you find these materials helpful. If you have questions about them, you or your counsel may contact any of us.