

**COPY**



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**AL #00-2**

JOHN RUSSO, Councilmember  
OAKLAND CITY COUNCIL  
One Frank Ogawa Plaza, 2<sup>nd</sup> Floor

**Re: Permissibility of Accepting Contributions from Partners of Firms Doing Business with the City of Oakland**

Dear Mr. Russo:

This Advice Letter is being provided in response to your request for an interpretation of the contribution and aggregation provisions of Oakland's Campaign Reform Act, contained in Chapter 3.12 of the Oakland Municipal Code (OMC).

### **ISSUE**

Whether a candidate for City office can accept a campaign contribution from a partner of a firm or corporation, when the firm or corporation has entered, or proposes to enter, into a contract with the City requiring City Council or Redevelopment Agency approval.

### **SUMMARY CONCLUSION**

If a contributor does not have a **controlling interest** in a firm, the Act would not preclude the contributor from making a campaign contribution to a candidate for city office, even if the firm that employs the contributor has entered, or proposes to enter, into a contract with the City requiring City Council or Redevelopment Agency approval. A **controlling interest** is defined as a "more than 50%" interest.

## **RULE**

Candidates for City of Oakland office are prohibited from accepting campaign contributions when:

1. The contributor is a firm, partnership or corporation, or the contributor has a **controlling interest** (defined as a greater than 50% financial interest) in a firm, partnership or corporation, **AND**
2. the firm, partnership or corporation has entered, or proposes to enter, into a contract with the City of Oakland **AND**
3. the monetary amount of the contract requires City Council or Redevelopment Agency approval.

## **DISCUSSION**

### **A. LIMITATIONS ON CONTRIBUTIONS FROM CONTRACTORS (OMC SEC. 3.12.140.)**

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The current version of the Oakland Campaign Reform Act precludes contributions from persons under contract with the City or seeking a contract with the City as follows:

“No person who contracts or proposes to contract with or who amends or proposes to amend such a contract with the City for the rendition of services, for the furnishing of any material, supplies, commodities or equipment to the City or for selling any land or building to the City or for purchasing any land or building from the City whenever the value of such transaction would require approval by the City Council shall make any contribution to the Mayor, a City Councilmember, a candidate for City Council, the City Attorney, a candidate for City Attorney, the City Auditor, a candidate for City Auditor, or committee controlled by such officeholder or candidate

at any time between commencement of negotiations and either one hundred eighty (180) days after the completions of, or the termination of, negotiations for such contract.”<sup>1</sup> (Section 3.12.140(A).)

A “person” subject to the section 3.12.140 contribution limitations can include an individual, proprietorship, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Section 3.12.040.) However, as explained in Section C below, a “person” would not include an individual who does not have a “controlling interest” in a firm that conducts business with the City.

The original Oakland Campaign Reform Act was adopted by the City Council in 1992 and went into effect in 1993. A prohibition against contributions from contractors doing business with the City was an integral part of the original Act.

The City Council amended the Act on July 27, 1999. The 1999 amendments altered the existing provisions in the following respects. First, subsections 3.12.140(A), (B) and (C) INCREASE the period when contributions from contractors are prohibited, starting with “commencement of negotiations” to either “180 days after completion of OR termination of negotiations for the contract”.

Second, for City and Redevelopment Agency contracts, section 3.12.140(M) holds the City Manager responsible for ensuring contractor compliance. This is accomplished by requiring the contractor to submit a signed acknowledgement at the time a bid or proposal is submitted, verifying that the contracting entity is in compliance with the campaign contribution restrictions.

Contractors that do not comply with the requirement may not be awarded a contract that is subject to City Council approval. Filing a false acknowledgement subjects the contractor to the criminal and civil enforcement provisions contained in the Act.

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<sup>1</sup> Two companion subsections act to prohibit contributions from contractors doing business, or seeking to do business, with the Oakland Redevelopment Agency (section 3.12.140(B).) and the Oakland School District (section 3.12.140(C).).

Third, the City Clerk is required to keep an updated list of current contractors available for inspection. (OMC sec. 3.12.140(M).)

**B. AGGREGATION PROVISIONS APPLY TO CONTRACTORS**  
**(OMC SEC. 3.12.080.)**

The Act contains aggregation requirements that are expressly intended “[f]or purposes of the contribution limitations enumerated in this Act.” (OMC sec. 3.12.080.) Under section 3.12.080, aggregation of the contributions of two or more entities is required when:<sup>2</sup>

1. Contributions are from persons whose contribution or expenditure activities are financed, maintained or controlled by another entity. (OMC sec. 3.12.080(A).)
2. Contributing entities share a majority of members of their boards of directors, the entities share two or more offices, the entities are owned or controlled by the same majority shareholder, or the entities are in a parent-subsidary relationship. (OMC sec. 3.12.080(B).)
3. **An individual owns a controlling interest in a general partnership or corporation.** (OMC sec. 3.12.080(C).)

Only the aggregation requirements summarized in Number 3 of this section relate to your specific issue. These requirements are further discussed in Section C below.

**C. “CONTROLLING INTEREST” FOR THE PURPOSES OF**  
**AGGREGATING CONTRIBUTIONS MEANS A FINANCIAL INTEREST**  
**EXCEEDING 50%**

Pursuant to the aggregation provisions of the Act contained in OMC section 3.12.080(C), as amended, an individual and any general or limited partnership in which the individual has a “controlling interest” shall be treated as

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<sup>2</sup> Aggregation is also required when a contributor is under eighteen years of age and the parents of the contributor have made contributions to the same candidate. (OMC sec. 3.12.100)

one person. The text of the provision specifies that “controlling interest” means “more than 50%”.

For those firms that contract with the City, or propose to contract with the City, and are subject to the limitations on contributions from contractors in OMC section 3.12.140, the aggregation provision applies so that an individual with more than a 50% interest in the firm can make no contribution at all for the same period of time the firm doing business or proposing to do business with the City is precluded from making contributions.

While the previous version of the ordinance did not define “controlling interest”, our office has advised in the past that “controlling interest” meant an interest exceeding 50%. Amendments to the Act that provide for aggregation based upon the existence of a “controlling interest” are thus consistent with previous advice provided on the matter.

### **CONCLUSION**

The Act does not preclude a contributor from making a campaign contribution to a candidate for city office, even if the firm that employs the contributor has submitted a bid for, or has been awarded, a contract by the City Council or Redevelopment Agency to do business with the City of Oakland, **provided the contributor does not have a controlling interest in the firm.**

If you have any further questions regarding the Oakland Campaign Reform Act, please do not hesitate to contact me.

Respectfully submitted,

JAYNE W. WILLIAMS  
City Attorney

By:                   /s/                  .  
J. PATRICK TANG  
Deputy City Attorney

cc: Oakland City Councilmembers  
Office of the City Clerk  
The Public Ethics Commission