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February 13, 1989

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Law and Legislation Committee
City Hall
Sacramento, California

Re: Ordinance Adding Article II to Chapter
62 of the Sacramento City Code Relating
to Contributor Statements (Proposed
Anti-Laundering Ordinance)

Honorable Members in Session:

DISCUSSION

Pursuant to the request of the Law and Legislation Committee, this office has prepared an anti-laundering ordinance similar to the legislation proposed by Councilmember Serna at the December 15, 1988 meeting. As the Committee is aware, Proposition 73 substantially amended the Political Reform Act, including the provisions regulating the manner in which contributions are to be handled by candidates. To eliminate the possibility of confusion, every effort has been made to utilize the terminology and definitions provided in the Act, as amended by Proposition 73. As a result, the proposed ordinance differs somewhat from the legislation submitted by Councilmember Serna; however, both have the same objective -- namely, to require the disclosure of the actual source of funds contributed to a candidate, to discourage further the unlawful laundering of funds, and to provide some measure of protection to candidates whose campaigns have been furnished laundered funds without their knowledge.

Under the proposed ordinance, all contributions of \$100.00 or more to the campaign of a candidate for City elective office must be accompanied by a statement identifying the source of contributed funds. The ordinance further provides that no candidate may deposit a contribution of \$100.00 or more unless and until the aforementioned statement is received. The ordinance does not require contributors' statements for contributions of less than \$100.00. Given that contributions of less than \$100.00 can be made in cash, this remains an avenue of possible abuse.

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Pursuant to the Political Reform Act (Government Code §81000 et seq.), as recently amended by Proposition 73, an individual must, before soliciting or receiving any contribution or loan, file with the Fair Political Practices Commission (FPPC) a statement indicating an intent to be a candidate for a specific office. Government Code §85200. The candidate must thereafter establish a campaign contribution account in which all contributions or loans made to the candidate, to a person on behalf of the candidate, or to the candidate's controlled committee, must be deposited. Government Code §85201. Any personal funds of the candidate which are to be utilized to promote his or her election must also be deposited in this campaign contribution account prior to expenditure. Government Code §85201(d). All campaign expenditures by candidates must be made from the candidate's campaign contribution account. Government Code §85201(e).

Under the Political Reform Act, no contribution of \$100.00 or more may be made unless by a written instrument containing the name of the donor and the name of the payee. Government Code §84300(c). The Political Reform Act does not contain a definition of the term "donor", nor does it define "contributor". The proposed ordinance defines the term "contributor" as the person whose name appears on the written instrument as donor as required by Government Code §84300(c), and it is the contributor as so defined who must execute the statement required by the proposed ordinance. In the instance where the name of more than one person appears on the written instrument, only one of the persons is required to execute and submit the required statement. The proposed ordinance contains two forms of statement, one for individual contributors and one for non-individuals. Candidates who contribute to their own campaigns are not required to execute any statement.

Pursuant to the Political Reform Act, candidates for state and local elective office are required to file statements identifying contributions of \$100.00 or more on a periodic basis. Government Code §§84200 et seq. Under the proposed ordinance, candidates who receive \$100.00 or more from a "contributor" as that term is defined in the ordinance may not deposit that contribution unless and until the contributor has furnished a statement identifying the source of the funds contributed and providing certain other information. The proposed ordinance would require that a candidate for City elective office file the contributors' statements for contributions received during the applicable reporting period on the same dates that the Political Reform Act requires candidates to file statements of contributions.

The proposed ordinance would require the City Clerk to maintain the statements of contributors for a period of four years

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following the election for which the contributions were accepted by the candidate or the candidate's controlled committee. The document retention requirements of the Political Reform Act are somewhat different; depending on whether or not the candidate is elected, and depending on the nature of the report or statement in question, the Political Reform Act requires that statements or reports be retained for a period ranging from not less than four years to indefinitely. Government Code §81009. The period of four years was selected as one which would allow the Clerk to reduce the City files after a reasonable period of time.

Like the statements filed pursuant to the Political Reform Act, the contributors' statements filed pursuant to the proposed ordinance would constitute public records, open for public inspection and copying, and the proposed ordinance so provides.

The proposed ordinance provides for criminal penalties. The knowing or wilful furnishing of a materially false statement by a contributor constitutes a misdemeanor. Similarly, any person who knowingly or wilfully violates the provisions of the ordinance would be guilty of a misdemeanor. Pursuant to state law, a misdemeanor is punishable by six months imprisonment and a fine not to exceed \$1,000.00. Sacramento City Code §1.7; Penal Code §19.

The proposed ordinance, and its contributor statement requirement, would apply to all contributions to be deposited in the campaign contribution account of candidates on or after May 1, 1989.

RECOMMENDATION

The Law and Legislation Committee should determine whether to recommend and forward the proposed anti-laundering ordinance to the City Council for consideration and adoption.

Respectfully submitted,

JAMES P. JACKSON, City Attorney

By: Richard E. Archibald
RICHARD E. ARCHIBALD,
Deputy City Attorney

February 16, 1989
All Districts

ORDINANCE NO.

ADOPTED BY THE SACRAMENTO CITY COUNCIL ON DATE OF

ORDINANCE ADDING ARTICLE II TO CHAPTER 62 OF THE SACRAMENTO CITY CODE, RELATING TO CONTRIBUTOR STATEMENTS

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

SECTION 1.

Article II of Chapter 62 of the Sacramento City Code is hereby added to read as follows:

ARTICLE II. Contributor Statements

§ 62.100 Declaration of Purpose and Intent.

It is the purpose and intent of the City Council of the City of Sacramento to impose additional requirements upon candidates for City office and their contributors to discourage the illegal practice of laundering of campaign funds. While the Political Reform Act (California Government Code Sections 81000 et seq.) prohibits the contribution of funds through agents or intermediaries without disclosure of the source of the funds, the Act does not provide any means for candidates who have been provided laundered funds without their knowledge to avoid the taint that sometimes accompanies the disclosure of illegal laundering. The requirements of this article are intended to serve as a further deterrent to unlawful laundering of funds, and to provide the candidate with some protection against claims of knowledge or involvement in laundering of campaign funds into that candidate's campaign.

This article is enacted pursuant to Sections 5 and 7 of Article XI of the Constitution of the State of California, Section 10 of the Charter of the City of Sacramento, and Section 81013 of the California Government Code.

§ 62.101 Definitions.

Unless a particular word or phrase is otherwise specifically defined in this article, the definitions and provisions contained in this article shall govern the construction, meaning and application of words and phrases used in this article. References to specific statutory or other provisions of law in this article are intended to include any amendments, revisions or renumbering of such provisions.

- (a) **"Campaign contribution account"** means an account established pursuant to California Government Code Section 85201.
- (b) **"Candidate"** means an individual who has filed a statement pursuant to California Government Code Section 85200 indicating an intent to run for City office.
- (c) **"City office"** shall mean the offices of Mayor and City Council member.
- (d) **"Contribution"** shall mean 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.
- (e) **"Contributor"** means the person whose name appears on the written instrument as the donor as required by California Government Code Section 84300(c) for contributions of \$100.00 or more. If more than one person is shown as donor on the written instrument required by Government Code Section 84300(c), each person shall be considered a contributor for purposes of this article.
- (f) **"Controlled committee"** shall mean controlled committee as defined in California Government Code Section 82016.
- (g) **"Intermediary"** means intermediary as defined in California Government Code Section 84302.5.
- (h) **"Person"** means person as defined in California Government Code Section 82047.

**§ 62.102 Deposit of Contributions:
Statement of Source of Contribution.**

- (a) No contribution of \$100.00 or more shall be deposited into a candidate's campaign contribution account unless and until the contributor has furnished, and the candidate or the person(s) acting on behalf of the candidate or a controlled committee of the candidate who deposits the contribution has received from the contributor a statement in the form specified in subparagraph (b) below, signed by the contributor and providing all of the information requested in said form.
 - (1) **More than one contributor.** If the written instrument required by Government Code Section 84300(c) contains the name of more than one contributor, only the statement of one contributor shall be required to be furnished pursuant to this article.

(2) **Contributor other than individual.** If the contributor is not an individual, the statement shall be made and signed on behalf of the contributor by an officer, director, or other individual authorized to sign the statement on behalf of the contributor.

(3) **Deposit of personal funds of candidate.** The provisions of this article shall not apply to a candidate's contribution of his or her own personal funds, or the personal funds of the candidate's spouse, to the candidate's own campaign contribution account.

(b) The statement required by subdivision (a) shall be furnished by the City Clerk and shall be in substantially the same form(s) set forth below. Copies or photocopies of the statements furnished by the City Clerk may be utilized.

(1) **Form of statement for individual contributor.** An individual contributor shall furnish a signed, completed statement in the following form:

Declaration of Individual Contributor

1. Name of contributor (your name): _____

2. Amount of contribution: _____

3. Persons other than the candidate or payee whose names also appear on the check, money order or other written instrument by which the contribution is being made. (For purposes of this declaration, "person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert): _____

4. Address of contributor: _____

5. Addresses of persons specified in (3) above: _____

6. Occupation of contributor: _____

- 7. Occupations of persons specified in (3) above:

- 8. Employer of contributor (if self-employed, the name of your business): _____
- 9. Employer of persons specified in (3) above (if self-employed, the names of the persons' business): _____

Check the appropriate box below:

____ This contribution is made from my own personal funds or from funds controlled by myself and one or more of the persons specified in (3) above. I understand that it is unlawful to make a contribution on behalf of another person, or to make a contribution while acting as an agent or intermediary of another person, without disclosing to the recipient of the contribution the name, address, occupation and employer of the other person.

____ This contribution is made by me, either individually or with one or more of the persons specified in (3) above, while acting on behalf of another person, or while acting as an agent or intermediary for another person. I understand that it is unlawful to make a contribution on behalf of another person, or to make a contribution while acting as an agent or intermediary of another person, without disclosing to the recipient of the contribution the name, address, occupation and employer of the other person; therefore, I am providing this information as to the other person.

Name of person(s) that is (are) the source of contribution: _____

Address(es): _____

Occupation(s): _____

Employer(s): _____

I certify that I have read the foregoing and that the information provided herein is true and correct to the best of my knowledge and belief. Executed this _____ day of _____, 19____, at _____, California.

Signature of Contributor

(2) Form of statement for contributor other than individual. A contributor other than an individual shall file a statement in the following form:

Declaration of Contributor
Other Than an Individual

1. Name of contributor: _____
2. Amount of contribution: _____
3. Persons other than the candidate or payee whose names appear on the check, money order or other written instrument by which the contribution is being made. (For purposes of this declaration, "person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert): _____
4. Address of contributor: _____

5. Address of persons(s) specified in (3) above: _____

6. Occupation or business of contributor: _____
7. Occupation or business of person(s) specified in (3) above: _____
8. Employer, if any, of contributor: _____

- 9. Employer, if any, of person(s) specified in (3) above: _____
- 10. Name of individual signing declaration on behalf of contributor: _____
- 11. Title, office, or affiliation of declarant to contributor: _____

Check the appropriate box below:

_____ This contribution is made from the contributor's own funds, or from funds controlled jointly by the contributor and one or more of the persons specified in (3) above. I understand that it is unlawful for a contributor to make a contribution on behalf of another person, or to make a contribution while acting as an agent or intermediary of another person, unless the contributor discloses to the recipient the name, address, occupation and employer of the other person.

_____ This contribution is made by the contributor on behalf of another person or while acting as an agent or intermediary of another person. I understand that it is unlawful for a contributor to make a contribution on behalf of another person, or to make a contribution while acting as an agent or intermediary of another person, unless the contributor discloses to the recipient the name, address, occupation and employer of the other person. Therefore, I am providing this information on behalf of the contributor as to the other person.

Name of person(s) that is (are) the source of contribution: _____

Address(es): _____

Occupation(s): _____

Employer(s): _____

I certify that I am authorized to execute this declaration on behalf of the contributor specified above, that I have read the foregoing, and that the

information provided herein is true and correct to the best of my knowledge and belief. Executed this _____ day of _____, 19_____, at _____, California.

Signature on Behalf of Contributor

§ 62.103 Filing Statements With City Clerk.

Candidates shall file with the City Clerk the original and one copy of each of the statements at the times specified herein.

- (a) **Time of filing.** A candidate shall file the statements and copies of statements of contributors with the same frequency, and at the same times, that the candidate is required to file campaign statements pursuant to Chapter 4 of the Political Reform Act (Government Code Sections 84200 et seq.). The candidate shall file statements for those contributions deposited in the campaign contribution account during the period covered by the campaign statement filed pursuant to the Political Reform Act.
- (b) **Maintenance of statements by City Clerk.** The City Clerk shall maintain the statements of contributors, and shall make such statements available to the public for a period of four (4) years from the date of the election for which the candidate was a candidate for City office.
- (c) **Access to statements.** Every statement filed pursuant to this article is a public record, open for public inspection and reproduction at such times and upon such reasonable conditions as the City Clerk may designate.

§ 62.104 Enforcement; Criminal Penalties.

- (a) Any person who knowingly or wilfully furnishes a materially false statement pursuant to the provisions of this article is guilty of a misdemeanor.
- (b) Any person who knowingly or wilfully violates the provisions of this article is guilty of a misdemeanor.

§ 62.105 Effective Operative Date.

The requirements of this article shall apply to all contributions deposited into a candidate's campaign contribution account on or after May 1, 1989.

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§ 62.106 Application of State Laws.

Nothing in this article shall be deemed to exempt any person from complying with applicable provisions of any other laws.

§ 62.107 Severability.

If any part or provision of this ordinance, or the application thereof to any person or circumstance, is held invalid, the remainder of the ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, provisions of this ordinance are severable and are intended to have independent validity.

PASSED FOR PUBLICATION:

ENACTED:

EFFECTIVE:

MAYOR

ATTEST:

CITY CLERK