

ORDINANCE NO. _____

AN ORDINANCE OF THE COUNTY OF ORANGE,
CALIFORNIA, ESTABLISHING A FAIR CAMPAIGN
PRACTICES COMMISSION AND ADDING ARTICLE 2 OF
DIVISION 6 OF TITLE 1, SECTIONS

TO THE CODIFIED
ORDINANCES OF ORANGE COUNTY

The Board of Supervisors of the County of Orange, California, does ordain as follows:

Sections 1-6A-1 through 1-6A-13, inclusive, are added to the Codified Ordinances of the County of Orange to read as follows:

Section 1-6A-1. FAIR CAMPAIGN PRACTICES COMMISSION.

(a) Establishment.

There shall be a Fair Campaign Practices Commission (“Commission”) that shall have the powers, duties and responsibilities set forth in this Ordinance and in Article III of the Charter of Orange County. The Commission shall have five members.

(b) Appointment.

1. Whenever appointments shall be made to the Commission, a panel comprised of the then three most recent past Presiding Judges of the Orange County Superior Court who reside in Orange County (the “Appointing Panel”) shall appoint the five members to the Commission to be selected from a list of applicants recommended by the Selection Panel of the Grand Jurors Association of Orange County. A Chairman and Vice-Chairman of the Commission shall be selected by the Commission.
2. A Selection Panel made up of members of the Grand Jurors Association of Orange County shall interview and screen applicants applying for a seat on the Commission. No less than a total of 15 applicants shall be recommended for appointment initially; thereafter, a minimum of 3 applicants per open seat shall be forwarded by the Selection Panel to the Appointing Panel..

(c) Terms of Office.

1. The members of the Commission shall serve staggered five-year terms beginning on January 1, 2009 and ending on December 31. Three of the initial Commissioners selected by random lot shall initially serve a three-year term; all members may be reappointed for a 5-year term. A member who has served two terms of any length shall be ineligible for reappointment.

2. The Chair and Vice-Chair shall each be elected for a one-year term and may be re-elected for a second one-year term.

(d) Qualifications.

1. Each member of the Commission shall be a registered voter of the County.
2. During his or her tenure, neither a member of the Commission nor its Executive Director shall hold any other public office.
3. If a member of the Commission, during their term of office, desires to participate in the campaign of, contribute to, or publicly support or oppose, a candidate for local County office or an incumbent local County elected official, such member shall first resign from the Commission.
4. No member of the Commission shall employ or be employed as a person who is acting as a Lobbyist, as that term is defined in County Ordinance 3892, Section 1-3-22(f).
5. No more than three members of the Commission shall be registered with the same political party.
6. No member of the Commission shall have been a former County Elected Official, or a current Agency/Department Head or Executive Manager.
7. No member of the Commission shall have been a former or a current elected or appointed official of a national, state or local partisan political committee.
8. No person who has been convicted of a felony, or a misdemeanor involving dishonesty or untruthfulness, shall be a member of the Commission.

(e) Removal.

Members of the Commission may be removed by the Chairman of the Board of Supervisors, with the concurrence of a majority of the Appointing Panel, for substantial neglect of duty, gross misconduct in office, inability to discharge the powers and duties of the office or violation of this Ordinance, after written notice of the grounds on which the removal is sought and an opportunity for a written reply and oral presentation to the Appointing Panel.

(f) Vacancies.

Appointments to fill vacancies on the Commission shall be made within 60 days by the Appointing Panel. Appointment shall be selected from at least 3 applicants forwarded to the Appointing Panel by the Selection Panel. Appointments to fill vacancies shall be for the unexpired term of the member whom the appointee succeeds. A vacancy or vacancies shall not impair the right of the remaining members to exercise the powers of the Commission.

(g) Quorum.

Three members shall constitute a quorum, and the concurring vote of not less than three members shall be required to take any action.

(h) Compensation; Expenses.

The members of the Commission shall serve without compensation and shall be reimbursed for travel and other expenses incurred in the performance of their official duties in accordance with Government Code section 53232.2, as amended.

(i) Meetings.

The Commission shall meet quarterly, at such times and places as directed by the Chair. Additional meetings may be called by the Chair or the Executive Director.

Section 1-6A-2. EXECUTIVE DIRECTOR, COMMISSION STAFF AND DELEGATION OF AUTHORITY.

(a) The Commission shall appoint and has the authority to discharge an Executive Director, who shall act in accordance with Commission policies and regulations and with applicable law. The Commission shall select the Executive Director from a list of not less than 3 nor more than 5 County Administrative Managers supplied by the County Executive Officer. The Executive Director shall serve as both Executive Director and in their then-current County position of employment. With respect only to their position as Executive Director, the Executive Director shall serve at the will of the Commission, shall not be subject to the provisions of the County Personnel and Salary Resolution and other County personnel resolutions relating to tenure and employee grievances, and shall have no property interest in his or her employment. With respect only to their position as Executive Director, the salary of the Executive Director *qua* Executive Director shall be set by the Board of Supervisors and shall be based on a recommendation submitted by the County Executive Officer after a review and analysis of the responsibilities and authority vested in the position.

(b) The Executive Director shall appoint and has the authority to discharge no more than 2 Commission staff members and prescribe their duties. The Executive Director shall select the staff members from a list, provided by the County Executive Officer, of not less than 5 qualified employees of the County. Said staff shall serve as both Commission staff and in their then-current County positions of employment. With respect only to their position as staff of the Commission, non-clerical personnel of the Commission shall serve at the will of the Executive Director, shall not be subject to the provisions of the County Personnel and Salary Resolution and other County personnel resolutions relating to tenure and employee grievances, and shall have no property interest in their employment. Clerical personnel shall be loaned to the Commission on an as-needed basis.

(c) The Commission may delegate authority to the Executive Director to act on behalf of the Commission between meetings of the Commission, except that rules, regulations and adjudicatory decisions can only be acted upon by the Commission.

Section 1-6A-3. DUTIES AND RESPONSIBILITIES OF THE FAIR CAMPAIGN PRACTICES COMMISSION.

The Commission shall have responsibility for the impartial and effective administration and implementation of the provisions of the Charter, statutes and ordinances concerning campaign financing. The Commission shall have the following duties and responsibilities insofar as they relate to County Candidates and County Elected Officials, as defined in the Orange County Campaign Reform Ordinance No. 3862 as amended from time to time:

- (a) To act as the filing officer and to otherwise receive copies of campaign statements required to be filed by County Candidates and County Elected Officials and by persons making independent expenditures supporting or opposing County Candidates and County Elected Officials where the Registrar of Voters would otherwise be authorized to do so pursuant to Chapters 4 and 7 of the California Political Reform Act of 1974 (Government Code Section 81000, et seq.) as amended, and to work with the Registrar of Voters during a transition period to ensure an orderly transfer of filing officer responsibilities;
- (b) To provide an electronic filing program at no charge to all County Candidates and County Elected Officials who are required to file campaign statements;
- (c) To audit campaign disclosure statements and amendments thereto and investigate alleged violations of the County's Campaign Reform Ordinance No. 3862 as amended from time to time and if necessary, report the findings to other appropriate State of California enforcement authorities;
- (d) To initiate complaints and to receive written complaints alleging possible violations of the Orange County Campaign Reform Ordinance No. 3862 as amended from time to time;
- (e) To enforce provisions of County laws pertaining to campaign finance disclosure;
- (f) To subpoena witnesses and the production of records pertinent to its investigations and to administer oaths;
- (g) To have full charge and control of its office, to be responsible for its proper administration, to submit annually a proposed budget to the Board of Supervisors and to expend the funds of the office; and

- (h) To receive grants and appropriations in support of the responsibilities of the Commission and its staff.

Section 1-6A-4. RULES AND REGULATIONS.

The Commission may adopt, amend and rescind rules and regulations to carry out the purposes and provisions of the County ordinances relating to campaign financing and to govern procedures of the Commission. In the event of any conflict between the rules and regulations and this ordinance, this ordinance shall prevail. Violation of the rule or regulation shall be subject to those penalties and remedies as may be provided.

Section 1-6A-5. ADDITIONAL DUTIES.

The Commission shall have the following additional duties, which may be exercised by motion or order:

- (a) Prescribe forms for reports, statements, notices and other documents required by ordinances or other laws relating to campaign financing;
- (b) Prepare and publish manuals and instructions as necessary, setting forth methods of bookkeeping, preservation of records to facilitate compliance with and enforcement of the local campaign laws, and explaining applicable duties of persons and committees; and
- (c) Develop an educational program which may consist of the following components:
 1. Seminars, when deemed appropriate, to familiarize newly elected and appointed County officials and County candidates, and their treasurers, with County campaign laws; and
 2. A manual that summarizes, in simple, non-technical language, reporting requirements applicable to County Elected Officials and County Candidates, instructions for completing required forms, questions and answers regarding common problems and situations, and information regarding sources of assistance in resolving questions. The manual shall be updated when necessary to reflect changes in applicable County laws governing campaign financing.

Section 1-6A-6. REQUESTS FOR WRITTEN ADVICE.

Any person may request the staff of the Commission to provide written advice with respect to the person's duties under provisions of the Charter or any Ordinance relating to campaign finance. Such advice shall be provided within 21 working days of the actual receipt of the request, except that the time may be extended by the staff for good cause. Reliance on the advice, or the failure of the staff to provide the advice within 21 working days of its receipt of the request, or within the extended time for response, shall be a complete defense in any enforcement proceeding conducted by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding if the requester, at least 21 working days prior to the alleged violation, requested written advice from the staff in good faith, disclosed truthfully all the material facts, and committed the acts complained of either in reliance on the advice or because of the failure of the staff to provide advice within 21 days of the request or such later extended time. The staff's written advice shall be public records.

Section 1-6A-7. INVESTIGATIONS AND ENFORCEMENT PROCEEDINGS.

The Commission shall conduct investigations of alleged violations of the County's Campaign Reform Ordinance No. 3862 as amended from time to time. Any person who violates any provision of the Ordinance relating to campaign financing, or who causes any other person to violate any provision, or who aids and abets any other person in a violation, shall be liable under the provisions of this Ordinance.

(a) Investigations.

If the Executive Director, upon the sworn complaint of any person or on his or her own initiative, first determines that there is sufficient cause to conduct an investigation, the Commission shall investigate alleged violations of Orange County Campaign Reform Ordinance No. 3862 as amended from time to time. The Commission shall not be required to investigate a complaint filed with it unless the complaint is in writing, verified, identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant an investigation. The investigation shall be conducted in a confidential manner. To the extent permitted by applicable law, including the California Public Records Act, Government Code section 6250, et seq., records of any investigation shall be considered confidential information. The unauthorized release of confidential information shall be sufficient grounds for the termination of the employee or the removal of the Commissioner responsible for the release. The Commission may subpoena witnesses, compel their attendance and testimony, administer oaths and affirmations, take evidence and require by administrative subpoena the production of any books, papers, records or other items material to the performance of the Commission's duties or exercise of its powers.

(b) Remedial Measures.

If the Executive Director determines or believes that any person (the “target party”) has violated any provision of the Orange County Campaign Reform Ordinance No. 3862 as amended from time to time, or there is an error in the Campaign Disclosure Statements, they may at their sole discretion, advise the target party of remedial measures (the “Remedial Measures”) which may be taken by the target party to avoid further action by the Commission. Such Remedial Measures may, but need not necessarily, include the payment of a civil fine to the County General Fund. Nothing contained herein shall be deemed to require the Executive Director to offer Remedial Measures to any target party. In the event the target party is offered and timely performs such Remedial Measures to the satisfaction of the Executive Director, the Executive Director shall advise the target party (and any person who, in writing informed or complained to the Commission concerning any such violation), that the alleged violation has been resolved (the “Letter of Resolution”) and, in such event, no civil action shall thereafter be filed or maintained relating to such alleged violation, and no further action by the Commission is required.

(c) Findings of Probable Cause; Administrative Enforcement.

1. If the Executive Director determines that there is probable cause to believe that a provision of the Orange County Campaign Reform Ordinance No. 3862 as amended from time to time has been violated and cannot or will not be remedied in accordance with subsection (b) above, the Executive Director shall cause an administrative enforcement accusation to be issued and served, triggering the Administrative Hearing set forth in Subsection (d) below. No finding of probable cause shall be made by the Executive Director unless, at least 21 days prior to the Executive Director’s consideration of the alleged violation, the person alleged to have committed the violation is notified of the alleged violation by service of process or registered mail with return receipt requested, is provided with a summary of the evidence, and is informed of his or her right to be present in person and represented by counsel at any proceeding conducted by the Executive Director and staff for the purpose of considering whether probable cause exists for believing the person committed the violation. Notice to the alleged violator shall be deemed made on the date of service, the date the registered mail receipt is signed, or, if the registered mail receipt is not signed, the date returned by the post office. A proceeding held by the Executive Director for the purpose of considering probable cause shall be private unless the alleged violator files with the Commission a written request that the proceeding be public.

2. If the Executive Director determines there is no probable cause, the complainant and the alleged violator(s) shall be notified in writing of the finding and setting forth the reasons for said finding, and, in such event, no civil action shall thereafter be filed or maintained relating to such alleged violation, and no further action by the Commission is required.

(d) Administrative Hearings.

After an accusation is issued and served, the Commission shall cause a public evidentiary hearing to be held to determine if a violation has occurred. When the Commission determines on the basis of substantial evidence presented at the hearing that a violation has occurred, it shall issue an order which may require the violator to:

1. Cease and desist the violation;
2. File any reports, statements or other documents or information required by law; and/or
3. Pay a monetary penalty to the General Fund of the County of up to \$2,500 for each violation or three times the amount which the violator failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.

When the Commission determines that no violation has occurred, it shall publish a declaration so stating.

(e) Civil Action to Collect Debt and Obtain Other Relief.

The Commission may file and prosecute a civil action in superior court to recover any amount(s) due and owing to the County of Orange by any person pursuant to this section, or to enjoin any violation or otherwise compel compliance with the requirements of this Ordinance. In the event of any civil action within the jurisdictional amount of the small claims court, the Commission may designate the person to bring such action on its behalf.

(f) Cost of Litigation.

The court may award to a plaintiff or a defendant, other than an agency, who prevails in any action authorized by this Ordinance, his or her costs of litigation, which costs shall include attorneys' fees.

(g) Referrals Between Agencies.

Regardless of whether the Executive Director makes a formal determination concerning probable cause, he or she may refer the matter to another appropriate agency for purposes of enforcement.

Section 1-6A-8. LEGAL SERVICES.

The County Counsel shall provide legal services without charge to the Commission until such time that a full-time or part-time Staff Counsel is warranted and approved by a vote of the Board of Supervisors.

Section 1-6A-9. APPROPRIATION.

The Board of Supervisors shall appropriate funds for the Commission. The Commission's budget shall be appropriated from the General Fund, to the extent that the funds are not obtained from any Federal, State or other grants.

Section 1-6A-10. STAFF OF THE COUNTY FAIR CAMPAIGN PRACTICES COMMISSION.

Within 60 days of adoption of this Ordinance by the Board of Supervisors, the County Executive Officer shall initiate the process for appointment of Commission members per Sec. 1-6A-1 of this Ordinance, authorize the hiring of staff sufficient to perform the duties and responsibilities of the Commission, and submit an operating budget to the Board of Supervisors for authorization.

Section 1-6A-11. AUTHORITY; CONFLICT WITH OTHER CHARTER PROVISIONS.

This Ordinance is adopted pursuant to and under the authority of Article III of the Charter of Orange County, and California Government Code Section 81013. In the event any provision of this Ordinance conflicts with other provisions of the Charter or of the Codified Ordinances, this Ordinance shall prevail.

Section 1-6A-12 STATUTE OF LIMITATIONS FOR ADMINISTRATIVE ENFORCEMENT ACTIONS.

No remedial measures or administrative enforcement action brought by the Fair Campaign Practices Commission shall be commenced more than four years after the date on which the violation occurred. The receipt of a written complaint alleging a violation of the law shall constitute the commencement date. If the person alleged to have violated the law engaged in the concealment of his or her acts, the four-year period shall be tolled for the period of concealment. If upon being ordered by a court to produce any person, witness or document sought by a subpoena, the person alleged to have violated the law fails to appear, or produce any witness or document in response to the order by the date ordered to comply therewith, the four-year period shall be tolled for the period of delay from the date the person or witness was originally scheduled to appear, or the document was to be produced, pursuant to the subpoena until the date the person appears, or the witness or document is produced.

Section 1-6A-13. OPERATIVE DATE.

The provisions of this Ordinance shall be operative thirty (30) days following its adoption by the Board of Supervisors.