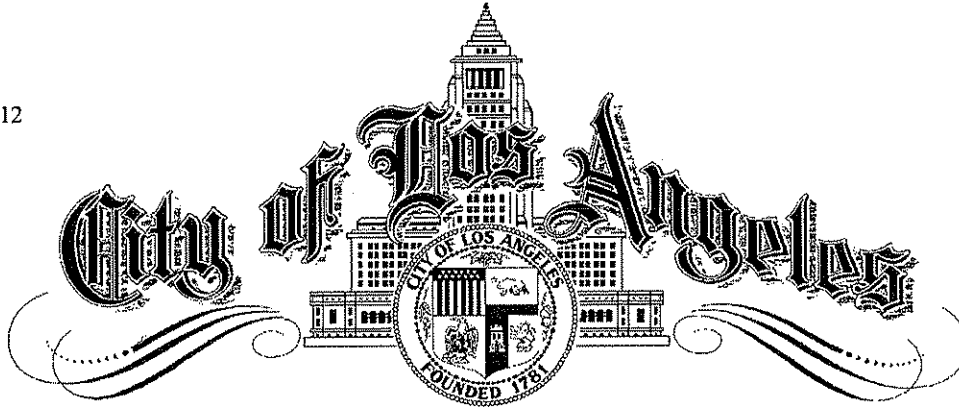


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CARMEN A. TRUTANICH
City Attorney

REPORT NO. R 1 1 - 0 2 8 8
JUL 2 2 2011

REPORT RE:

**DRAFT ORDINANCES TO AMEND THE LOS ANGELES MUNICIPAL CODE
TO CLARIFY CONTRACT BIDDER CONTRIBUTION AND FUNDRAISING
RESTRICTIONS AND RELATED MATTERS AND AMEND THE LOS ANGELES
ADMINISTRATIVE CODE TO REVISE THE MATCHING FUNDS TRUST FUND**

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Honorable Members:

This Office has prepared and now transmits for your consideration two attached alternative ordinances. The only difference between Ordinance A and Ordinance B is the definition of "Prohibited Fundraising." Ordinance A is approved as to form and legality. This Office does not approve Ordinance B as to form and legality due to the significant risk that the City would be unsuccessful in defending Ordinance B from a legal challenge. Nevertheless, Ordinance B is provided to you to inform you of the recommendation by the Ethics Commission.

Both ordinances add new provisions to the Los Angeles Municipal Code to add language clarifying the restrictions implementing recently adopted Measure H, which amended Charter Sections 470(c) and 609(e). The Charter amendments became effective on April 8, 2011. However, the restrictions only apply to bidders on contracts where the solicitation was issued on May 8, 2011, or later.

The ordinances also amend the Matching Funds Trust Fund provision of the Los Angeles Administrative Code (LAAC) Section 5.406 to be consistent with Charter Amendment H regarding removal of cap on the trust fund. A draft of Ordinance A was

transmitted pursuant to Council Rule 38 to the City Ethics Commission and other major contracting departments and their comments have been incorporated except as noted below.

Background

Measure H added Charter Section 470(c)(12) and revised Charter Section 609(e) relating to contract bidder campaign contributions. Charter Section 470(c)(12) prohibits persons who respond to City contract solicitations (bidders) from making campaign contributions to or engaging in prohibited fundraising activity for elected City officials, candidates for elective City office, and City committees controlled by elected City officials or candidates in the following scenarios:

1. If a contract is worth \$100,000 or more and requires approval by the City Council, the prohibition applies to contributions to City committees controlled by an elected City official or candidates for those offices and fundraising for those offices or committees.

2. If a contract is worth \$100,000 or more and requires approval by an elected official other than the City Council, the prohibition applies to contributions and fundraising for that elected official, candidates for that office, and City committees they control.

3. If a contract is for the Harbor Department, the Department of Water and Power, or the Los Angeles World Airports and is worth more than \$100,000, or if it is for other than materials of \$100,000 or more and does not require City Council approval, the prohibition applies to contributions and fundraising for the City Attorney and Controller, candidates for those offices, and City committees they control.

The prohibitions begin to apply on the date a bid is submitted. For successful bidders, the prohibitions continue for 12 months after the contract is signed. For unsuccessful bidders, the prohibitions end on the date the contract is signed (or earlier, if the bid is withdrawn or canceled.) The restrictions apply to subcontractors where the subcontract is valued at \$100,000 or more. The restrictions also apply to principals of the bidders and the covered subcontractors. The Charter further requires bidders to complete certain forms and subjects bidders, subcontractors and principals to penalties. Please note that the restrictions on contributions only apply to City committees controlled by candidates and do not apply to contributions to City elected officials for a non-City office.

Charter Amendment H also revised Charter Section 609(e), the prohibitions on gifts and political contributions from underwriting firms in relation to noncompetitive sales of revenue bonds by proprietary departments.

Summary of the Ordinances

The draft ordinances define various terms used in the Charter and provide further administrative detail. Specifically, the content of the requisite bidder form and the filing requirements are detailed. The responsibilities of the awarding authority are further defined by the ordinances. Lastly, the ordinances make certain technical amendments.

The ordinances contemplate the following process: The Ethics Commission must adopt forms that comply with the content requirements of the Charter and ordinance for filings under both Section 470(c)(12) and 609(e). The awarding authority must include in its contract solicitations information about the restrictions and the required form to be completed. Standard language already has been provided to the awarding authorities. Bidders are required to file the forms with the awarding authority at the time of bid submission. Failure to submit a completed form will cause the bidder to be deemed nonresponsive. As currently drafted, the awarding authority must forward an electronic copy of the form to the City Ethics Commission within 10 business days of the bid due date. The awarding authority is required to notify unsuccessful bidders of the award of the contract. The Ethics Commission is the agency charged with administrative, advisory and enforcement authority. Persons who violate the Charter or ordinance provisions are ineligible to respond to requests for bids or proposals or receive a new contract or contract amendment absent a finding of mitigating circumstances by the Ethics Commission. The restrictions apply to most types of contracts, but do not apply to collective bargaining agreements.

The draft ordinances address various issues. The ordinances clarify that the restrictions apply to contract amendments of \$100,000 or more individually, or in combination with the original contract. The ordinances further clarify that subsequent amendments causing the entire value of the contract to exceed \$100,000 and approved by an elected official also trigger the prohibitions. The draft ordinance also would apply prohibitions and requirements to proposed contractors who solicited a contract from the City where no other competitive process is involved. In addition, the ordinance clarifies that it applies to the selection of a list of pre-qualified bidders who may be subsequently awarded a contract. Similar clarifying language also is provided with regard to Charter Section 609(e) regarding noncompetitive sales of revenue bonds by proprietary departments.

The technical amendments include renumbering several provisions in the campaign finance ordinance and repealing two provisions in the Governmental Ethics Ordinance that were rendered obsolete by recent amendments to the campaign finance rules in line with guidance from the Ethics Commission during recent discussions. The LAAC also would be amended to reflect changes from Measure H relating to the elimination of the cap on the Matching Funds Trust Fund.

Key Issues To Be Considered

1. Prohibited Fundraising Definition

We have provided two ordinances that differ in the definitions of prohibited fundraising. Ordinance B contains the prohibited fundraising definition proposed by the Ethics Commission. Under this definition, a bidder responding to a contract solicitation, a subcontractor and their principals would be barred from soliciting or delivering any contributions to elected City officials or candidates, including hosting or inviting any persons to fundraising events. We have not approved Ordinance B as to form and legality because in our opinion the definition proposed would not withstand legal challenge.

The prohibited fundraising definition in Ordinance A contains a somewhat less restrictive definition of prohibited fundraising. It would prohibit a bidder, a subcontractor, and their principals from soliciting contributions from other entities of persons associated with the bidder or subcontractor, including other principals, officers and employees. Ordinance A also would prohibit bidders, subcontractors and their principals from delivering or serving as an agent or intermediary for prohibited and other employee contributions.

A third alternative definition, that was discussed briefly when the ballot measure was considered, would be unenforceable and difficult to monitor in our opinion. That alternative would have allowed for a certain level of fundraising such as \$1,000. However, that definition is problematic from an enforcement and monitoring standpoint, which ultimately raises a potential constitutional concern. For example, if a person who sent a fundraising invitation or hosted a fundraising event did not actually receive or deliver the contributions, the fundraiser or host would not know whether their fundraising had exceeded the prohibited threshold. In an abundance of caution, persons faced with this dilemma likely would choose to avoid any fundraising activity, which would essentially work as a total prohibition as proposed in Ordinance B.

As we previously identified in our report R10-0358 of October 28, 2010, based on the most recent cases involving fundraising and novel restrictions, it is our view that there is a significant risk that a broad fundraising limitation would be struck down by the courts.

Two recent court decisions bear directly on the issue of contractor fundraising bans. In addition, several court decisions from the California Supreme Court and the Ninth Circuit have addressed related lobbyist contribution and fundraising restrictions. Most recently, in 2010, in *Green Party of Connecticut v. Garfield*, 616 F.3d 189 (2d Cir. 2010) (*Green Party*), the Second Circuit court struck down a broad ban on fundraising by contractors and lobbyists. The restriction banned solicitation of contributions from all persons. The Second Circuit concluded that the restriction was not a marginal

restriction on speech, but rather a limit on expressive activity that "lies at the First Amendment's 'core'" because solicitation involves speech and, therefore, is subject to strict scrutiny requiring the government to show a compelling government interest that is narrowly tailored to achieve its purpose. The court suggested that a compelling governmental interest was not present to support the restriction and further concluded that, even if a compelling interest were present, with regard to bundled contributions, the provision was not narrowly tailored as there were less restrictive means to address the problem (such as banning only large scale fundraising events or banning solicitation only from the contractor's employees or subcontractors). Recently, the Ninth Circuit in a case involving San Diego's campaign finance requirements, considered the impact of the Second Circuit's decision in *Green Party*. (*Thalheimer v. City of San Diego*, 2011 U.S. App. LEXIS 11590 at 48 (2011).) The Ninth Circuit considered whether the analysis in *Green Party* should be applied to San Diego's contribution restrictions to political parties. The Ninth Circuit concluded that San Diego's contribution ban was distinguishable, based on the different nature of political parties as opposed to contractors or lobbyists in the two situations and, thus, held that the analysis in *Green Party* did not invalidate San Diego's contribution restrictions. Based on the Ninth Circuit's analysis and consideration of *Green Party*. We conclude that the Ninth Circuit likely will consider the *Green Party* analysis if reviewing a contractor fundraising restriction like the City's.

Previously, in a 1995 case the D.C. Circuit upheld a regulation known as Rule G-37. Rule G-37 barred municipal securities professionals from soliciting or coordinating contributions for or contributing to certain candidates. (*Blount v. SEC*, 61 F.3d 938 (D.C. Cir. 1995).) The Second Circuit in *Green Party* did not address this earlier decision, although the district court in *Green Party*, which was reversed, had relied on *Blount*.

Several other jurisdictions have imposed fundraising bans on government contractors. Most were narrower in scope than the City's prohibition and have not been challenged. Included are: Pennsylvania, which only applies to pension contractors (53 Pa Cons. Stat §§ 703-A(a)-b); Vermont, which imposes a solicitation ban on state treasurer contractors (32 Vt. Stat. Ann. § 109(b)); Kentucky, which bars awarding of a no-bid contract to persons fundraising more than \$30,000 for the elected officials campaigns (Ky. Rev. Stat. 121.330); Hawaii, which bars contractors from soliciting contributions (Haw. Rev. Stat. §11-205.5);¹ and New Jersey, which bars the execution of a contract with a person who solicited contributions to a candidate for governor or party committee (N.J. Stat. Ann § 19:44A-20.4). Following the *Green Party* decision striking Connecticut's contractor and lobbyist solicitation ban, Connecticut revised its broad contractor solicitation prohibition and adopted a more narrowly crafted provision that prohibits a contractor from knowingly soliciting the contractor's employees, its

¹ Several aspects of Hawaii's campaign finance law including its contractor contribution prohibition have been the subject of legal challenge which is not yet fully resolved. *Yamada v. Kuramoto*, No. CV10-17280 (JMS/LEK)(filed August 27, 2010 (D. Haw.))

subcontractors and subcontractor's principals. Connecticut's revised lobbyist restriction bans the bundling of five or more contributions and contains a solicitation ban while the legislature is in session. (Conn. Gen. Stat. Ann. § 9-612(g)(2); Public Act No. 10-1.) The revised Connecticut provisions have not been reviewed by a court at this time. None of these provisions appear to apply to subcontractors, unlike the City's Charter provision and ordinance.

California courts previously have considered restrictions relating to lobbyists which provide additional guidance as to how a California court might rule on the City's provision. In *Institute of Governmental Advocates v. Younger* (1977) 70 Cal.App.3d 878, 881, the Court of Appeal enjoined a provision prohibiting lobbyists from arranging contributions, because the restriction violated the First Amendment speech rights of the lobbyist and lobbyist's employer by barring the lobbyist from advising his or her client about contribution activity. The Court did not consider the issue of whether a lobbyist could be prohibited from delivering a contribution or acting as an intermediary for another, or from advising persons other than his or her client. Subsequently, applying strict scrutiny because of the breadth of the provision, the California Supreme Court struck down the prohibition. The Court held that the provision was overbroad because of the broad definition of lobbying and because the limits were not restricted to candidates who actually lobby. In addition, the restriction was invalidated because large and small contributions were not treated differently. (*Fair Political Practices Commission v. Superior Court* (1979) 25 Cal.3d 33). A revised ban on contributions which are made through or arranged by lobbyists was enjoined by a federal district court in *California ProLife Council PAC v. Scully*, 989 F. Supp. 1282, 1292 (1998). However, the current state law provision banning certain lobbyist contributions was upheld by a federal court as closely drawn and lacking the flaws that existed in earlier versions of the law. The court held that the state law provided lobbyists with ample opportunities to participate in the political process. (*Institute of Governmental Advocates, et al., v. Fair Political Practices Commission*, 164 F.Supp.2d 1183 (2001).) The Supreme Court and Ninth Circuit have required the existence of a record containing evidence and governmental findings to support novel campaign finance restrictions. (*Citizens for Clean Gov't v. City of San Diego*, 474 F.3d 647, 653-654 (9th Cir. 2007) (concluding that City did not present sufficient evidence to impose contributions limits on ballot measure committees during the signature gathering phase.)

Based on the most recent cases and those cited above, we conclude that there is a significant risk that a broad fundraising limitation would be struck down. In our view, the first alternative provided in Ordinance A is more likely to survive a court challenge. The definition in Ordinance B, which is similar to the provision struck by the court in *Green Party*, likely would be invalidated. Accordingly, we decline to sign as to form and legality Ordinance B. If Council opts to approve Ordinance B, Council should mitigate Ordinance B's exposure by developing a record of evidence (if one exists) that shows the problem to be solved and how the broader restriction addresses that problem in a manner that the more narrowly drawn ban in Ordinance A does not.

2. Additional Restriction

While drafting this ordinance and responding to questions about the Charter provision's application, it became apparent that the Charter provision does not, by its terms, apply to potentially large discretionary City contracts in which no competitive process is involved, either because the contract involves the proposer's own property or because it is the type of contract that does not require a competitive process. The Charter provision only applies to bidders responding to a contract solicitation issued by the City. These contracts, where approval of an elected official is required, pose potentially a larger risk of corruption or the appearance of corruption given the noncompetitive nature of the contracting process. The appearance is that such a proposer could, on the basis of campaign contributions and fundraising, receive a better deal than other qualified contractors or receive a contract that for any host of reasons is not in the best interests of the City. Accordingly, a restriction covering non-competitive proposers is included in the draft ordinance in Section 49.7.30(B)(6). This restriction furthers the purposes of both the Charter section 470(c)(12) and Charter section 470(c) generally. Charter section 470(c) also expressly permits the City to adopt additional restrictions by ordinance. We anticipate that, as we experience the implications of these recently enacted Charter provisions and ordinance in practice, we may present ordinance amendments to you.

3. Location of Form Filing

The draft ordinance provides that the forms, completed by bidders identifying contractors, subcontractors, and principals, are to be filed with the awarding authority in the first instance. This draft ordinance currently requires the awarding authority to electronically transmit to the City Ethics Commission a copy of the forms within 10 business days of the bid due date unless the City's Business Assistance Virtual Network or similar system is able to send the information to the City Ethics Commission.

Given that the submission of the bidder's form is a mandatory requirement imposed by the Charter, the submission of the form is a contract responsiveness issue to be determined by the awarding authority. In addition to responsiveness, bidders, subcontractors and their principals are subject to the substantive ban, prohibiting them from contributing or fundraising during the relevant time period. Failure to abide by those requirements subjects covered persons to administrative, civil or potentially criminal enforcement as provided by the City Charter and campaign finance ordinance. Currently, the requirements and penalties do not apply to the elected official or candidate that actually receives the prohibited fundraising or contributions.

For two reasons, the City Ethics Commission strongly opposes acting as the repository for the bidders' forms. The Ethics Commission states that it currently has no resources to post or manage the forms, which may number in the thousands on an annual basis. Additionally, maintenance of the forms by the Ethics Commission could

lead to a false impression that elected officials are prohibited from receiving these contributions. Compelling reasons exist for the maintenance of a central filing location where the public and candidates and officials can view these forms to inform them of the identities of those currently prohibited from making contributions. We are exploring options through the City's Business Assistance Virtual Network with the Mayor's Office. In San Francisco, which has similar requirements, the forms or information is centrally provided to the Ethics Commission. In New York, which has a slightly different lower contribution limit restriction on "doing business" entities, the information on entities doing business with the City is housed centrally and searchable and the Campaign Finance Board compiles a report of contributions received by elected officials from those entities. Both involve resources which have been identified as being significant.

Should the City Council desire to remove the requirement that Awarding Authorities electronically transmit the completed forms to the City Ethics Commission, amendments to the ordinance will be necessary.

If you have any questions regarding this matter, please contact Deputy City Attorney Renee Stadel at (213) 978-7100. She or another member of this Office will be present when you consider this matter to answer any questions you may have.

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By 
PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:RS:ac

cc: Gerry Miller, Chief Legislative Analyst
City Ethics Commission

ORDINANCE NO. _____

An ordinance amending the City's Campaign Finance Ordinance, found in Los Angeles Municipal Code Section 49.7.1, *et seq.*, to implement Charter Sections 470(c)(12) and 609(e) regarding restricting contributions and fundraising from contract bidders and proposers and related requirements and to make other technical changes to implement Measure H approved by the voters in March, 2011.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The following definition is added to Section 49.7.1.1 of the Los Angeles Municipal Code in alphabetical order to read as follows:

"City controlled committee" means a committee created for City purposes and controlled by an elected City official or a candidate for City office. The term includes City campaign committees, officeholder expense funds, legal defense funds relating to City office, and ballot measure committees involving City issues. The term does not include a committee created for election to or the holding of a non-City office.

Sec. 2. The title for Section 49.7.11 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 49.7.11. CAMPAIGN DISCLOSURE AND REPORTING.

Sec. 3. Sections 49.7.26.1, 49.7.26.3, 49.7.26.4, 49.7.27, 49.7.28, 49.7.29 and 49.7.30 of the Los Angeles Municipal Code are renumbered as Sections 49.7.27, 49.7.28, 49.7.29, 49.7.33, 49.7.34, 49.7.35, 49.7.36, respectively.

Sec. 4. A new Section 49.7.30 is added to the Los Angeles Municipal Code to read as follows:

SEC. 49.7.30. BIDDER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

A. Definitions. The following definitions apply for purposes of Charter Section 470(c)(12):

1. **"Awarding Authority"** means the City Council, a City board, commission, authorized employee, or authorized officer, including those who have control of their own special funds but excluding the City Purchasing Agent when acting pursuant to Section 9.1 of the Los Angeles Administrative Code, who makes or enters into a contract for the provision of goods or services of any kind or nature whatsoever to, for, or on behalf of the City. References to the awarding authority shall include references to staff when working on a matter subject to this Article.

2. **“Approval by an elected City office”** means approval of a contract or selection of a pre-qualified list of persons to contract with the City in any of the following circumstances:

(a) The elected City official or the elected City official’s agency is the awarding authority;

(b) The contract involves services provided directly to or under the supervision of the elected City official; or

(c) The contract requires approval of the elected City official or the elected City official’s agency pursuant to City law, executive directive, or City Council action.

The term does not include approval by an elected City official that is required pursuant to Charter Section 262, 271(d), or 370 for non-proprietary departments, provided that City Council approval is not otherwise required and the elected City offices identified in those sections are neither the awarding authority nor supervising the services under the contract. The term does include approval by an elected City official that is required pursuant to Charter Section 262, 271(d), or 370 for contracts with the Harbor, Water and Power, and Airport Departments.

3. **“Bidder”** means a person who bids on or submits a proposal or other response to a City contract solicitation or makes an unsolicited proposal.

4. **“Contract solicitation”** means a request for proposals, request for bids, request for qualifications, or any other request, whether written or verbal, for purposes of entering into a contract.

5. **“Contract”** means any agreement, franchise, lease, non-regulatory permit, land use license or easement, or concession, including any agreement for occasional professional or technical personal services, for the performance of any work or service or construction, the provision of any materials, goods, equipment, or supplies, the sale or purchase of property, the making of grants, or the rendering of any service to the City, including any proprietary department, or to the public where all of the following apply:

(a) The contract is let, awarded, or entered into, with, or on behalf of the City or an awarding authority;

(b) The contract has an anticipated value of at least \$100,000, including exercising all anticipated options; and

(c) The contract requires approval by an elected City office.

The term includes any subsequent amendment that, by itself or in combination with the original contract and any other amendments, has an anticipated value of at least \$100,000 and requires approval by an elected City office. The term also includes the selection of a pre-qualified list of persons to contract with the City where there is a not-to-exceed amount of at least \$100,000 and the list selection requires approval by an elected City office. The term does not include any contract with another government agency or a contract with an underwriting firm pursuant to Charter Section 609(e) for proprietary noncompetitive sales of revenue bonds.

6. **“Elected City official”** means an elective City officer, as that term is defined in Section 49.7.1.1.

7. **“Fundraising event”** means an event designed for political fundraising, at which contributions for an elected City official, a candidate for elected City office, or a City controlled committee are solicited, delivered, or made.

8. **“Principal”** means the following with regard to persons who are bidders and subcontractors:

(a) The person’s board chair, president, chief executive officer, chief operating officer, and an individual who serves in the functional equivalent of one or more of those positions;

(b) An individual who holds an ownership interest in the person of 20 percent or more; and

(c) An individual authorized by the bid or proposal to represent the person before the City.

9. **“Prohibited fundraising”** means the following activities:

(a) Asking the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor to make a contribution;

(b) Inviting the bidder, a subcontractor, or an employee, officer or principal of the bidder or subcontractor to a fundraising event;

(c) Supplying the name of the bidder, a subcontractor, or an employee, officer or principal of the bidder or subcontractor to be used for an invitation to a fundraising event;

(d) Permitting one's name to appear on a solicitation for contributions or an invitation to a fundraising event sent to the bidder, a

subcontractor, or an employee, officer, or principal of the bidder or subcontractor;

(e) Providing the use of one's home or business to hold a fundraising event if the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor has been invited;

(f) Paying for at least 20 percent of the costs of a fundraising event if the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor has been invited;

(g) Hiring another person to conduct a fundraising event if the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor is invited to the event;

(h) Delivering a contribution, either in person or by mail, of the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor to the elected City official, candidate for elected City office, or an agent of the official or candidate; or

(i) Acting as an agent or intermediary in connection with the making of a contribution of the bidder, a subcontractor, or an employee, officer, or principal of the bidder or subcontractor to an elected City official, a candidate for elected City office, or a City controlled committee.

10. **"Subcontractor"** means a person who is expected to receive at least \$100,000 as a result of performing some or all of a bidder's contract obligations.

B. For purposes of Charter Section 470(c)(12), the following apply:

1. **Timing of Fundraising and Contribution Restrictions.** In addition to the restrictions provided in Charter Section 470(c)(12), except as otherwise provided in Subsections B.5 and B.6, bidders, subcontractors, and principals may not make contributions to or engage in prohibited fundraising for elected City officials, candidates for elected City office, or City controlled committees from the date a bid is submitted until one of the following dates:

(a) For unsuccessful bidders, the date the contract is signed or the solicitation is withdrawn or canceled.

(b) For successful bidders, 12 months after the contract is signed.

2. **Contract Solicitations and Notifications.** Each awarding authority shall include in each contract solicitation the form identified in

Subsection B.3 and a description of the prohibitions and requirements of Charter Section 470(c)(12). The awarding authority shall determine whether the form is complete for responsiveness purposes and electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within ten business days of the bid due date. The awarding authority shall either notify bidders who are not awarded a contract of the date that the contract was signed or the contract solicitation was terminated or withdrawn or notify the bidders how they may obtain or request the date that the contract was signed or the contract solicitation was terminated or withdrawn, unless that information is available on a City website.

3. **Disclosure Form.** As provided in Subsection B.2, every bidder shall file with the awarding authority, at the time the bid or other response is submitted, the following information under oath in a form and format approved by the City Ethics Commission:

- (a) A description of the contract, including any City reference number associated with it, or if selection is of a pre-qualified list, a short description of the services to be provided, including any City reference number associated with it;
- (b) The name of the awarding authority;
- (c) The date the bid or other response was submitted to the awarding authority;
- (d) The name of the bidder;
- (e) The address of the bidder;
- (f) The phone number of the bidder;
- (g) The names and titles of the bidder's principals;
- (h) The names of the bidder's subcontractors;
- (i) The names and titles of each subcontractor's principals; and
- (j) A certification that the bidder understands, will comply with, and will notify its principals and subcontractors of the prohibitions and restrictions in this section and Charter Section 470(c)(12).

4. **Requirement to Amend Form.** If the information submitted pursuant to Subsection B.3 changes after the bid is submitted, the bidder shall amend the form and submit it to the awarding authority within five business days of the change. The requirement to amend the form applies whenever the

prohibitions and restrictions in Charter Section 470(c)(12) apply to the bidder, including after contract approval for successful bidders. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

5. **Contract Amendments.** If a contract amendment requires approval by an elected City official and the amendment is valued at \$100,000 or makes the total value of the contract \$100,000 or more for the first time, the prohibitions and restrictions in Charter Section 470(c)(12) apply from the date the awarding authority first discusses the amendment and terminates 12 months after the date the amendment is approved, disapproved, or withdrawn.

(a) The awarding authority shall notify bidders who were not previously required to submit the form identified in Subsection B.3 of the requirements in this section and Charter Section 470(c)(12) at the time the awarding authority first discusses the amendment with the bidder.

(b) Bidders who were not previously required to submit the form identified in Subsection B.3 shall submit the form within five business days of the date the awarding authority first discusses the amendment with the bidder. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

(c) This provision does not apply to an option that has been previously approved in a written contract.

6. **Unsolicited Proposals.** This Section and Charter Section 470(c)(12) also apply to contracts resulting from unsolicited proposals for which no competitive process will occur, except for procuring City services routinely provided pursuant to a standard fee schedule. The awarding authority shall provide notice of these restrictions and the form identified in Subsection B.3 at the time the awarding authority begins to discuss the contract with a bidder. The bidder shall submit the form to the awarding authority within five business days of receiving the notice. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt. The contribution and fundraising restrictions shall apply from the date the notice is provided until the contract solicitation is disapproved or 12 months after the contract is signed.

7. **Business Assistance Virtual Network.** In the event that the City's Business Assistance Virtual Network or similar electronic system is used by a bidder to submit the forms required by this Section to the awarding authority and

the Business Assistance Virtual Network or similar electronic system sends the submitted data to the City Ethics Commission, the awarding authority shall not be required to submit the form(s) to the City Ethics Commission.

C. Violations and Debarment.

1. In addition to any other penalties or remedies established by this Article, a person who is found to have violated this section or Charter Section 470(c)(12) shall not be eligible to bid on or be considered for a contract, extension, or amendment unless the Ethics Commission, as a body, determines that mitigating circumstances exist concerning such violation.

2. The Ethics Commission, as a body, shall determine whether mitigating circumstances apply whenever a violation of this section or Charter Section 470(c)(12) is determined to have occurred. If the Ethics Commission determines that mitigating circumstances do not exist, the person found to be in violation shall be debarred for the following periods of time after the Ethics Commission's determination:

- (a) One year for the first violation;
- (b) Two years for the second violation;
- (c) Three years for the third violation; and
- (d) Four years for the fourth and subsequent violations.

3. The Ethics Commission may adopt regulations regarding mitigating circumstances, including what constitutes mitigating circumstances and any other information determined to be necessary.

4. The Ethics Commission staff shall notify all agencies, departments, boards and offices of a determination of debarment within 10 business days of the determination. The Ethics Commission's determination regarding debarment is final as to all offices, departments, boards, and agencies and may not be waived.

5. If an awarding authority has an existing contract with a person who is identified in a debarment notice from the Ethics Commission, the awarding authority shall determine in writing and, if the awarding authority is a City board, commission, or City Council, at a public meeting whether it is in the best interests of the City to terminate the contract.

6. An awarding authority shall not determine whether a violation of this Article or any other City law regarding campaign financing, lobbying, or governmental ethics has occurred.

Sec. 5. Charter Amendment H regarding Charter Section 470(c)(12) applies to contract solicitations issued or released on or after May 8, 2011. Charter Section 470(c)(12) applies to amendments and unsolicited contracts when discussions with the awarding authority began on or after the effective date of this ordinance.

Sec. 6. Section 49.7.31 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 49.7.31. UNDERWRITER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

A. Definitions. For purposes of Charter Section 609(e), the definitions of awarding authority, elected City official, and fundraising event as provided in Section 49.7.30(A) apply. The following definitions also apply:

1. **"Prohibited fundraising"** means the following activities:
 - (a) Asking the underwriting firm, a subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor to make a contribution;
 - (b) Inviting the underwriting firm, a subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor to a fundraising event;
 - (c) Supplying the name of the underwriting firm, a subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor to be used for an invitation to a fundraising event;
 - (d) Permitting one's name to appear on a solicitation for contributions or an invitation to a fundraising event sent to the underwriting firm, subcontractor, or an employee or officer of one of those persons;
 - (e) Providing the use of one's home or business to hold a fundraising event if the underwriting firm, a subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor has been invited;
 - (f) Paying for at least 20 percent of the costs of a fundraising event if the underwriting firm, a subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor has been invited;
 - (g) Hiring another person to conduct a fundraising event if the underwriting firm, a subcontractor, or an employee, officer, or principal of the underwriting firm or subcontractor is invited to the event;

(h) Delivering a contribution, either in person or by mail, of the underwriting firm, a subcontractor, or to an employee, officer, or principal of the underwriting firm or subcontractor to an elected City official to the elected City official, candidate for elected City office, or an agent of the official or candidate; or

(i) Acting as an agent or intermediary in connection with the making of a contribution by the underwriting firm, a subcontractor, or to an or an employee, officer, or principal of the underwriting firm or subcontractor to an elected City official, a candidate for elected City office, or a City controlled committee.

2. **"Subcontractor"** means a person who is expected to receive at least \$100,000 as a result of performing some or all of the underwriting firm's contract obligations but does not include an underwriting firm member of the syndicate in the applicable revenue bond sale.

3. **"Underwriting firm"** means any firm that seeks to provide underwriting services for noncompetitive sales of revenue bonds for the Airport, Harbor, or Water and Power Departments as provided in Charter Section 609 in response to a solicitation from an awarding authority.

B. For purposes of Charter Section 609(e), the following apply:

1. **Timing of Fundraising and Contribution Restrictions.** In addition to the restrictions provided in Charter Section 609(e), underwriting firms, subcontractors, and principals may not make any contributions to or engage in prohibited fundraising for elected City officials, candidates for elected City office, or City controlled committees from the date a response is submitted to a solicitation to be included on a pre-qualified list of underwriters or any subsequent solicitation for selection of an underwriter until one of the following dates:

(a) For underwriting firms that are not selected to be on the pre-qualified list, the date the list selection is made.

(b) For underwriting firms that are on the pre-qualified list, but not selected to contract after a subsequent solicitation, and are not members of the syndicate providing underwriting services on the sale of the revenue bonds, 12 months following the date of the list selection, and following the solicitation, on the date of the selection of the underwriting firm for a noncompetitive bond sale, or the date the solicitation is withdrawn or canceled.

(c) For underwriting firms that are on the pre-qualified list, and are selected to contract after a subsequent solicitation, or are members of

the syndicate providing underwriting services on the sale of the revenue bonds, 12 months following the date of the list selection, and 12 months after the underwriter selection is made.

2. **Contract Solicitations and Notifications.** Each awarding authority shall include in each contract solicitation for underwriting firm services regarding a noncompetitive sale for revenue bonds, including selection of a pre-qualified list of underwriters, the form identified in Subsection B.3 and a description of the prohibitions and requirements in City Charter Section 609(e) and this section. The awarding authority shall determine whether the form is complete for responsiveness purposes and shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of the due date of the proposals. The awarding authority shall notify underwriting firms that are not selected as pre-qualified underwriter or not selected as the underwriter on a particular noncompetitive sale of revenue bonds, the date the selection was made, terminated, or withdrawn, unless that information is available on a City website.

3. **Disclosure Form.** Every underwriting firm seeking to provide services regarding noncompetitive sales of revenue bonds under Charter Section 609(e) shall file with the awarding authority, at the time the response is submitted, the following information under oath in a form and format approved by the City Ethics Commission:

- (a) A description of the contract, including any City reference number associated with it, or if selection is of a pre-qualified list, a short description of the services to be provided, including any City reference number associated with it;
- (b) The name of the awarding authority;
- (c) The date the bid or other response was submitted to the awarding authority;
- (d) The name of the underwriting firm;
- (e) The address of the underwriting firm;
- (f) The phone number of the underwriting firm;
- (g) The names and titles of the underwriting firm's principals;
- (h) The names of the underwriting firm's subcontractors;
- (i) The names and titles of each subcontractor's principals; and

(j) A certification that the underwriting firm understands, will comply with, and will notify its principals and subcontractors of the prohibitions and restrictions in this section and Charter Section 609(e).

(k) A certification that the underwriting firm and its principals have not made prohibited gifts or contributions during the 12 months prior to selection for a contract, unless the matter is only a selection of a pre-qualified list of underwriters.

4. **Requirement to Amend Form.** If the information submitted pursuant to Subsection B.3 changes after the response is submitted, the underwriting firm shall amend the form and submit it to the awarding authority within five business days of the change. The requirement to amend the form applies whenever the prohibitions and restrictions in Charter Section 609(e) apply to the underwriting firm, including after contract approval for underwriting firms that are selected or are performing underwriting services as a member of a syndicate on the revenue bond sale. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

5. **Business Assistance Virtual Network.** In the event that the City's Business Assistance Virtual Network or similar electronic system is used by a bidder to submit the forms required by this Section to the awarding authority and the Business Assistance Virtual Network or similar electronic system sends the submitted data to the City Ethics Commission, the awarding authority shall not be required to submit the form(s) to the City Ethics Commission.

6. **Violations and Debarment.** The provisions of Section 49.7.30(C) shall also apply to violations of this section and Charter Section 609(e).

Sec. 7. Section 49.7.32 of the Los Angeles Municipal Code is added to read as follows:

SEC. 49.7.32. RECORDKEEPING.

All persons subject to this Article shall keep records that demonstrate compliance with this Article and related Charter provisions for four years.

Sec. 8. Sections 49.5.15 and 49.5.16 of the Los Angeles Municipal Code are repealed in their entirety.

Sec. 9. Subsection (t) of Section 24.5 of the Los Angeles Administrative Code are amended to read as follows:

(t) **Failure to Comply.** The failure of a participant, controlled committee of a participant or campaign treasurer to comply with the provisions of this section, and the failure of such person to provide full and accurate information required by this section, is unlawful, constitutes a violation of this section and is subject to the penalties and remedies set forth in Charter Section 706 and Los Angeles Municipal Code Section 49.7.34.

Sec. 10. Subsection (h) of Section 24.10 of the Los Angeles Administrative Code is amended to read as follows:

h. The failure of any elected City officer, controlled committee of an elected City officer, or committee treasurer to comply with the provisions of this section, and the failure of such person to provide full and accurate information required by this section, is unlawful, constitutes a violation of this section and is subject to the penalties and remedies set forth in Charter Section 706 and Los Angeles Municipal Code Section 49.7.34.

Sec. 11. Subsections (b) and (c) of Section 5.406 of the Los Angeles Administrative Code are amended to read as follows:

(b) There shall be placed in the Fund all proceeds from appropriations for public matching funds to partially finance campaigns for elective City offices.

(c) All interest or other earnings attributable to money in the Funds shall be credited to the Fund and shall be devoted to the purposes set forth in this chapter.

Sec. 12. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

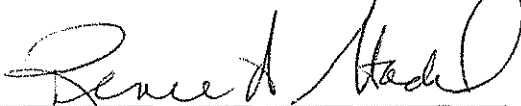
By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 
RENEE A. STADEL
Deputy City Attorney

Date July 22, 2011

File No. _____

ORDINANCE NO. _____

An ordinance amending the City's Campaign Finance Ordinance, Los Angeles Municipal Code Section 49.7.1 *et seq.* to implement Charter Sections 470(c)(12) and 609(e) regarding restricting contributions and fundraising from contract bidders and proposers and related requirements and to make other technical changes to implement Measure H approved by the voters in March, 2011.

**THE PEOPLE OF THE CITY OF LOS ANGELES
DO ORDAIN AS FOLLOWS:**

Section 1. The following definition is added to Section 49.7.1.1 of the Los Angeles Municipal Code in alphabetical order to read as follows:

"City controlled committee" means a committee created for City purposes and controlled by an elected City official or a candidate for City office. The term includes City campaign committees, officeholder expense funds, legal defense funds relating to City office, and ballot measure committees involving City issues. The term does not include a committee created for election to or the holding of a non-City office.

Sec. 2. The title for Section 49.7.11 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 49.7.11. CAMPAIGN DISCLOSURE AND REPORTING.

Sec. 3. Sections 49.7.26.1, 49.7.26.3, 49.7.26.4, 49.7.27, 49.7.28, 49.7.29 and 49.7.30 of the Los Angeles Municipal Code are renumbered as Sections 49.7.27, 49.7.28, 49.7.29, 49.7.33, 49.7.34, 49.7.35, 49.7.36, respectively.

Sec. 4. A new Section 49.7.30 is added to the Los Angeles Municipal Code to read as follows:

SEC. 49.7.30. BIDDER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

A. Definitions. The following definitions apply for purposes of Charter Section 470(c)(12):

1. **"Awarding Authority"** means the City Council, a City board, commission, authorized employee, or authorized officer, including those who have control of their own special funds but excluding the City Purchasing Agent when acting pursuant to Section 9.1 of the Los Angeles Administrative Code, who makes or enters into a contract for the provision of goods or services of any kind or nature whatsoever to, for, or on behalf of the City. References to the awarding authority shall include references to staff when working on a matter subject to this Article.

2. **"Approval by an elected City office"** means approval of a contract or selection of a pre-qualified list of persons to contract with the City in any of the following circumstances:

(a) The elected City official or the elected City official's agency is the awarding authority;

(b) The contract involves services provided directly to or under the supervision of the elected City official; or

(c) The contract requires approval of the elected City official or the elected City official's agency pursuant to City law, executive directive, or City Council action.

The term does not include approval by an elected City official that is required pursuant to Charter Section 262, 271(d), or 370 for non-proprietary departments, provided that City Council approval is not otherwise required and the elected City offices identified in those sections are neither the awarding authority nor supervising the services under the contract. The term does include approval by an elected City official that is required pursuant to Charter Section 262, 271(d), or 370 for contracts with the Harbor, Water and Power, and Airport Departments.

3. **"Bidder"** means a person who bids on or submits a proposal or other response to a City contract solicitation or makes an unsolicited proposal.

4. **"Contract solicitation"** means a request for proposals, request for bids, request for qualifications, or any other request, whether written or verbal, for purposes of entering into a contract.

5. **"Contract"** means any agreement, franchise, lease, non-regulatory permit, land use license or easement, or concession, including any agreement for occasional professional or technical personal services, for the performance of any work or service or construction, the provision of any materials, goods, equipment, or supplies, the sale or purchase of property, the making of grants, or the rendering of any service to the City, including any proprietary department, or to the public where all of the following apply:

(a) The contract is let, awarded, or entered into, with, or on behalf of the City or an awarding authority;

(b) The contract has an anticipated value of at least \$100,000, including exercising all anticipated options; and

(c) The contract requires approval by an elected City office.

The term includes any subsequent amendment that, by itself or in combination with the original contract and any other amendments, has an anticipated value of at least \$100,000 and requires approval by an elected City office. The term also includes the selection of a pre-qualified list of persons to contract with the City where there is a not-to-exceed amount of at least \$100,000 and the list selection requires approval by an elected City office. The term does not include any contract with another government agency or a contract with an underwriting firm pursuant to Charter Section 609(e) for proprietary noncompetitive sales of revenue bonds.

6. **"Elected City official"** means an elective City officer, as that term is defined in Section 49.7.1.1.

7. **"Fundraising event"** means an event designed for political fundraising, at which contributions for an elected City official, a candidate for elected City office, or a City controlled committee are solicited, delivered, or made.

8. **"Principal"** means the following with regard to persons who are bidders and subcontractors:

(a) The person's board chair, president, chief executive officer, chief operating officer, and an individual who serves in the functional equivalent of one or more of those positions;

(b) An individual who holds an ownership interest in the person of 20 percent or more; and

(c) An individual authorized by the bid or proposal to represent the person before the City.

9. **"Prohibited fundraising"** means the following activities:

(a) Asking another person to make a contribution to an elected City official, a candidate for elected City office, or a City controlled committee;

(b) Inviting a person to a fundraising event;

(c) Supplying names to be used for invitations to a fundraising event;

(d) Permitting one's name to appear on a solicitation for contributions or an invitation to a fundraising event;

- (e) Providing the use of one's home or business to hold a fundraising event;
- (f) Paying for at least 20 percent of the costs of a fundraising event;
- (g) Hiring another person to conduct a fundraising event;
- (h) Delivering a contribution, other than one's own or one's spouse's, either in person or by mail in a manner in which the identity of the contributor is communicated to the elected City official, candidate for elected City office, or an agent of the official or candidate; or
- (i) Acting as an agent or intermediary in connection with the making of a contribution to an elected City official, a candidate for elected City office, or a City controlled committee.

10. **"Subcontractor"** means a person who is expected to receive at least \$100,000 as a result of performing some or all of a bidder's contract obligations.

B. For purposes of Charter Section 470(c)(12), the following apply:

1. **Timing of Fundraising and Contribution Restrictions.** In addition to the restrictions provided in Charter Section 470(c)(12), except as otherwise provided Subsections B.5 and B.6, bidders, subcontractors, and principals may not make contributions to or engage in prohibited fundraising for elected City officials, candidates for elected City office, or City controlled committees from the date a bid is submitted until one of the following dates:

- (a) For unsuccessful bidders, the date the contract is signed or the solicitation is withdrawn or canceled.
- (b) For successful bidders, 12 months after the contract is signed.

2. **Contract Solicitations and Notifications.** Each awarding authority shall include in each contract solicitation the form identified in Subsection B.3 and a description of the prohibitions and requirements of Charter Section 470(c)(12). The awarding authority shall determine whether the form is complete for responsiveness purposes and electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of the bid due date. The awarding authority shall either notify bidders who are not awarded a contract of the date that the contract was signed or the contract solicitation was terminated or withdrawn or notify the bidders how they may obtain or request the

date that the contract was signed or the contract solicitation was terminated or withdrawn, unless that information is available on a City website.

3. **Disclosure Form.** As provided in Subsection B.2, every bidder shall file with the awarding authority, at the time the bid or other response is submitted, the following information under oath in a form and format approved by the City Ethics Commission:

- (a) A description of the contract, including any City reference number associated with it, or if selection is of a pre-qualified list, a short description of the services to be provided, including any City reference number associated with it;
- (b) The name of the awarding authority;
- (c) The date the bid or other response was submitted to the awarding authority;
- (d) The name of the bidder;
- (e) The address of the bidder;
- (f) The phone number of the bidder;
- (g) The names and titles of the bidder's principals;
- (h) The names of the bidder's subcontractors;
- (i) The names and titles of each subcontractor's principals; and
- (j) A certification that the bidder understands, will comply with, and will notify its principals and subcontractors of the prohibitions and restrictions in this section and Charter Section 470(c)(12).

4. **Requirement to Amend Form.** If the information submitted pursuant to Subsection B.3 changes after the bid is submitted, the bidder shall amend the form and submit it to the awarding authority within five business days of the change. The requirement to amend the form applies whenever the prohibitions and restrictions in Charter Section 470(c)(12) apply to the bidder, including after contract approval for successful bidders. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

5. **Contract Amendments.** If a contract amendment requires approval by an elected City official and the amendment is valued at \$100,000 or

makes the total value of the contract \$100,000 or more for the first time, the prohibitions and restrictions in Charter Section 470(c)(12) apply from the date the awarding authority first discusses the amendment and terminates 12 months after the date the amendment is approved, disapproved, or withdrawn.

(a) The awarding authority shall notify bidders who were not previously required to submit the form identified in Subsection B.3 of the requirements in this section and Charter Section 470(c)(12) at the time the awarding authority first discusses the amendment with the bidder.

(b) Bidders who were not previously required to submit the form identified in Subsection B.3 shall submit the form within five business days of the date the awarding authority first discusses the amendment with the bidder. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

(c) This provision does not apply to an option that has been previously approved in a written contract.

6. **Unsolicited Proposals.** This Section and Charter Section 470(c)(12) also apply to contracts resulting from unsolicited proposals for which no competitive process will occur, except for procuring City services routinely provided pursuant to a standard fee schedule. The awarding authority shall provide notice of these restrictions and the form identified in Subsection B.3 at the time the awarding authority begins to discuss the contract with a bidder. The bidder shall submit the form to the awarding authority within five business days of receiving the notice. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt. The contribution and fundraising restrictions shall apply from the date the notice is provided until the contract solicitation is disapproved or 12 months after the contract is signed.

7. **Business Assistance Virtual Network.** In the event that the City's Business Assistance Virtual Network or similar electronic system is used by a bidder to submit the forms required by this Section to the awarding authority and the Business Assistance Virtual Network or similar electronic system sends the submitted data to the City Ethics Commission, the awarding authority shall not be required to submit the form(s) to the City Ethics Commission.

C. **Violations and Debarment.**

1. In addition to any other penalties or remedies established by this Article, a person who is found to have violated this section or Charter Section

470(c)(12) shall not be eligible to bid on or be considered for a contract, extension, or amendment unless the Ethics Commission, as a body, determines that mitigating circumstances exist concerning such violation.

2. The Ethics Commission, as a body, shall determine whether mitigating circumstances apply whenever a violation of this section or Charter Section 470(c)(12) is determined to have occurred. If the Ethics Commission determines that mitigating circumstances do not exist, the person found to be in violation shall be debarred for the following periods of time after the Ethics Commission's determination:

- (a) One year for the first violation;
- (b) Two years for the second violation;
- (c) Three years for the third violation; and
- (d) Four years for the fourth and subsequent violations.

3. The Ethics Commission may adopt regulations regarding mitigating circumstances, including what constitutes mitigating circumstances and any other information determined to be necessary.

4. The Ethics Commission staff shall notify all agencies, departments, boards and offices of a determination of debarment within 10 business days of the determination. The Ethics Commission's determination regarding debarment is final as to all offices, departments, boards, and agencies and may not be waived.

5. If an awarding authority has an existing contract with a person who is identified in a debarment notice from the Ethics Commission, the awarding authority shall determine in writing and, if the awarding authority is a City board, commission, or City Council, at a public meeting whether it is in the best interests of the City to terminate the contract.

6. An awarding authority shall not determine whether a violation of this Article or any other City law regarding campaign financing, lobbying, or governmental ethics has occurred.

Sec. 5. Charter Amendment H regarding Charter Section 470(c)(12) applies to contract solicitations issued or released on or after May 8, 2011. Charter Section 470(c)(12) applies to amendments and unsolicited contracts when discussions with the awarding authority began on or after the effective date of this ordinance.

Sec. 6. Section 49.7.31 of the Los Angeles Municipal Code is amended to read as follows:

SEC. 49.7.31. UNDERWRITER CONTRIBUTION AND FUNDRAISING RESTRICTIONS.

A. Definitions. For purposes of Charter Section 609(e), the definitions of awarding authority, elected City official, fundraising event, and prohibited fundraising as provided in Section 49.7.30(A) apply. The following definitions also apply:

1. **"Subcontractor"** means a person who is expected to receive at least \$100,000 as a result of performing some or all of the underwriting firm's contract obligations but does not include an underwriting firm member of the syndicate in the applicable revenue bond sale.

2. **"Underwriting firm"** means any firm that seeks to provide underwriting services for noncompetitive sales of revenue bonds for the Airport, Harbor, or Water and Power Departments as provided in Charter Section 609 in response to a solicitation from an awarding authority.

B. For purposes of Charter Section 609(e), the following apply.

1. **Timing of Fundraising and Contribution Restrictions.** In addition to the restrictions provided in Charter Section 609(e), underwriting firms, subcontractors, and principals may not make any contributions to or engage in prohibited fundraising for elected City officials, candidates for elected City office, or City controlled committees from the date a response is submitted to a solicitation to be included on a pre-qualified list of underwriters or any subsequent solicitation for selection of an underwriter until one of the following dates:

(a) For underwriting firms that are not selected to be on the pre-qualified list, the date the list selection is made.

(b) For underwriting firms that are on the pre-qualified list, but not selected to contract after a subsequent solicitation and are not members of the syndicate providing underwriting services on the sale of the revenue bonds, 12 months following the date of the list selection, and following the solicitation, on the date of the selection of the underwriting firm for a noncompetitive bond sale, or the date the solicitation is withdrawn or canceled.

(c) For underwriting firms that are on the pre-qualified list, and are selected to contract after a subsequent solicitation, and are members of the syndicate providing underwriting services on the sale of the revenue bonds, 12 months following the date of the list selection, and 12 months after the underwriter selection is made.

2. **Contract Solicitations and Notifications.** Each awarding authority shall include in each contract solicitation for underwriting firm services regarding a noncompetitive sale for revenue bonds, including selection of a pre-qualified list of underwriters, the form identified in Subsection B.3 and a description of the prohibitions and requirements in City Charter Section 609(e) and this section. The awarding authority shall determine whether the form is complete for responsiveness purposes and shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of the due date of the proposals. The awarding authority shall notify underwriting firms that are not selected as pre-qualified underwriter or not selected as the underwriter on a particular noncompetitive sale of revenue bonds, the date the selection was made, terminated, or withdrawn.

3. **Disclosure Form.** Every underwriting firm seeking to provide services regarding noncompetitive sales of revenue bonds under Charter Section 609(e) shall file with the awarding authority, at the time the response is submitted, the following information under oath in a form and format approved by the City Ethics Commission:

- (a) A description of the contract, including any City reference number associated with it, or if selection is of a pre-qualified list, a short description of the services to be provided, including any City reference number associated with it;
- (b) The name of the awarding authority;
- (c) The date the bid or other response was submitted to the awarding authority;
- (d) The name of the underwriting firm;
- (e) The address of the underwriting firm;
- (f) The phone number of the underwriting firm;
- (g) The names and titles of the underwriting firm's principals;
- (h) The names of the underwriting firm's subcontractors;
- (i) The names and titles of each subcontractor's principals; and
- (j) A certification that the underwriting firm understands, will comply with, and will notify its principals and subcontractors of the prohibitions and restrictions in this section and Charter Section 609(e).

(k) A certification that the underwriting firm and its principals have not made prohibited gifts or contributions during the 12 months prior to selection for a contract, unless the matter is only a selection of a pre-qualified list of underwriters.

4. **Requirement to Amend Form.** If the information submitted pursuant to Subsection B.3 changes after the response is submitted, the underwriting firm shall amend the form and submit it to the awarding authority within five business days of the change. The requirement to amend the form applies whenever the prohibitions and restrictions in Charter Section 609(e) apply to the underwriting firm, including after contract approval for underwriting firms that are selected or are performing underwriting services as a member of a syndicate on the revenue bond sale. The awarding authority shall electronically submit the form to the City Ethics Commission in a Portable Document Format (PDF) or other electronic format pre-approved by the Commission within 10 business days of receipt.

5. **Business Assistance Virtual Network.** In the event that the City's Business Assistance Virtual Network or similar electronic system is used by a bidder to submit the forms required by this Section to the awarding authority and (1) the required information is posted on the Business Assistance Virtual Network or similar electronic system and may be viewed by members of the public online or (2) the Business Assistance Virtual Network or similar electronic system sends the submitted forms to the City Ethics Commission, the awarding authority shall not be required to submit the form(s) to the City Ethics Commission.

6. **Violations and Debarment.** The provisions of Section 49.7.30(C) shall also apply to violations of this section and Charter Section 609(e).

Sec. 7. Section 49.7.32 of the Los Angeles Municipal Code is added to read as follows:

SEC. 49.7.32. RECORDKEEPING.

All persons subject to this Article shall keep records that demonstrate compliance with this Article and related Charter provisions for four years.

Sec. 8. Sections 49.5.15 and 49.5.16 of the Los Angeles Municipal Code are repealed in their entirety.

Sec. 9. Subsection (t) of Section 24.5 of the Los Angeles Administrative Code is amended to read as follows:

(t) **Failure to Comply.** The failure of a participant, controlled committee of a participant or campaign treasurer to comply with the provisions of this section, and the failure of such person to provide full and accurate information required by this section, is

unlawful, constitutes a violation of this section and is subject to the penalties and remedies set forth in Charter Section 706 and Los Angeles Municipal Code Section 49.7.34.

Sec. 10. Subsection (h) of Section 24.10 of the Los Angeles Administrative Code is amended to read as follows:

h. The failure of any elected City officer, controlled committee of an elected City officer, or committee treasurer to comply with the provisions of this section, and the failure of such person to provide full and accurate information required by this section, is unlawful, constitutes a violation of this section and is subject to the penalties and remedies set forth in Charter Section 706 and Los Angeles Municipal Code Section 49.7.34.

Sec. 11. Subsections (b) and (c) of Section 5.406 of the Los Angeles Administrative Code are amended to read as follows:

(b) There shall be placed in the Fund all proceeds from appropriations for public matching funds to partially finance campaigns for elective City offices.

(c) All interest or other earnings attributable to money in the Funds shall be credited to the Fund and shall be devoted to the purposes set forth in this chapter.

Sec. 12. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

I hereby certify that this ordinance was passed by the Council of the City of Los Angeles, at its meeting of _____.

JUNE LAGMAY, City Clerk

By _____
Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By _____
RENEE A. STADEL
Deputy City Attorney

Date _____

File No. _____