



Los Angeles City Ethics Commission

July 30, 2014

The Honorable City Council  
c/o Holly Wolcott, City Clerk  
200 North Spring Street  
City Hall- 3rd Floor  
Los Angeles CA 90012

**Re: Campaign Finance Laws**

*FOR COUNCIL CONSIDERATION*

Dear Councilmembers:

On June 12, 2014, after several months of detailed review and discussion, the Ethics Commission unanimously approved a comprehensive set of recommendations for improving the campaign finance laws that apply to City elections. This letter transmits those recommendations, which amend both the Campaign Finance Ordinance (CFO) and portions of the Los Angeles Administrative Code (Ad Code or LAAC). The Ethics Commission believes that the recommendations strengthen City law and urge you to adopt the ordinance language proposed in Attachments B and C.

**A. INTRODUCTION**

1. Background

In 2012, the Ethics Commission recommended and the City Council adopted significant revisions to the CFO. These revisions resulted from a comprehensive review—the first in the law’s 20-year history—which became necessary because of changes in constitutional law, campaign practices, and technology.

The revised CFO was effective for the 2013 elections, the largest and most expensive in City history. The CFO worked extremely well during the 2013 elections. However, as with any legislative changes, it is important to step back and evaluate how they can be further improved. Because of the breadth of the changes to the CFO and the extensive experience that would be gained through the 2013 elections, a second, post-election review of the CFO was envisioned even during the 2012 review as a way to refine the changes and address any new issues. In fact, the City Council requested a post-election analysis of the impacts of the 2012 changes to the campaign finance laws. *See* Council File No. 12-1269, motion adopted 9/12/12.

In making the recommendations below, the Ethics Commission carefully considered experiences gained through the 2013 elections, as well as input from the public, advocacy groups, and regulated communities. The recommendations identify ways in which the CFO and

the Ad Code can be improved for future elections. There are substantive recommendations in the following categories:

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In addition to the substantive recommendations described below, there are also a number of technical and clarifying recommendations designed to streamline and promote understanding of the laws.

## 2. Attachments

Several attachments are included to assist in your analysis of the Ethics Commission's recommendations. Attachment A is a quick guide to key substantive changes, Attachment B is the proposed CFO, and Attachment B is the proposed Ad Code. Attachments D and E provide marked-up versions of the CFO and the Ad Code, for more detailed analysis.

The remaining attachments provide data that the Ethics Commission analyzed during this review. Attachment F is a communication from the City Clerk's office. Attachment G provides data regarding contributions in the 2013 elections, and Attachment H is projections regarding the balance of the Public Matching Funds Trust Fund through 2025.

3. Procedural Time Lines

Because the regular 2015 elections are already underway, it is important that any changes to the campaign finance laws take effect as quickly as possible so that candidates and others affected by the laws have as much notice as possible regarding the changes. Historically, changes to the laws have been adopted in time to take effect prior to the start of Candidate Filing Week. For the 2015 regular elections, that date is November 3, 2014. The Ethics Commission, therefore, urges that these recommendations be acted on in time to become effective by November 3.

In addition, the Los Angeles City Charter (Charter) requires prompt action on the Ad Code recommendations. A public hearing must be held and action to approve or disapprove must be taken within 60 days of the date the Ethics Commission approved the recommendations. Charter § 703(b). The Ethics Commission approved the Ad Code recommendations on June 12, and 60 days after that date is August 11. Finally, the Ethics Commission's changes to the Ad Code may not be modified, they may only be approved or disapproved. *Id.*

**B. FUNDRAISING**

1. Pre-election Fundraising Window

The CFO limits the amount of time prior to an election in which City candidates may engage in fundraising. Candidates for City Council may not solicit or receive contributions more than 18 months prior to a primary election, and candidates for Citywide office may not solicit or receive contributions more than 24 months before a primary election. LAMC § 49.7.10(A). However, these time frames apply only to regular elections. The CFO does not currently specify the fundraising window for special City elections, which typically occur within highly condensed time frames.

The Ethics Commission recommends clarifying that candidates in special elections may not solicit or receive contributions until an election has been called by ordinance under Charter § 409(b). *See* proposed LAMC § 49.7.10(B). This is consistent with Commission advice, will provide proper notice to candidates in special elections, and will open the fundraising window as soon as a special election is legally required to take place. In addition, the Commission recommends clarifying that the pre-election fundraising window applies to contributions received from other persons.

2. Post-election Fundraising Window

Post-election fundraising is limited to 12 months after the date of an election, and money raised during that time must be used to retire debt. LAMC § 49.7.10(B). Candidates may request a three-month extension based on extraordinary circumstances that are outside the candidate's control. LAMC § 49.7.10(B)(1). The Ethics Commission makes several recommendations regarding this fundraising window.

First, the Commission recommends clarifying that contributions solicited and received during the post-election window may only be used to retire the campaign debt or pay the compliance, fundraising, and inauguration expenses of the candidate or committee. *See* proposed LAMC § 49.7.10(C). This recommendation is consistent with Commission advice and will clarify that a candidate seeking to retire debt may make expenditures and incur additional debt for that purpose. In addition, it will allow successful candidates to use their existing campaign funds to help pay for their inaugural costs.

Second, as with the pre-election fundraising window, the Ethics Commission recommends clarifying that the post-election fundraising window applies to contributions received from other persons. *See* proposed LAMC § 49.7.10(C).

Finally, the Ethics Commission recommends that the post-election fundraising windows for both the primary election and the general election end 12 months after the date of the general election. *See* proposed LAMC § 49.7.10(C). Currently, the window ends 12 months after each election. Having one deadline for all committees in an election cycle will reduce confusion for candidates and contributors. It will give all primary committees the benefit of the three-month extension, which applies now only in very limited circumstances. It will also acknowledge that raising money to retire debt can be difficult in the first three months after a primary election. For example, primary committees in the 2013 City elections raised less than one percent of contributions during the first three months following the primary election.

### 3. Solicitation and Delivery of Contributions

The CFO restricts the solicitation and delivery of contributions in City Hall and in other rooms or buildings owned or rented by the City. LAMC § 49.7.11. The Governmental Ethics Ordinance (GEO) contains a similar provision that was streamlined and clarified when the revised GEO became effective on February 10, 2014. LAMC 49.5.5(B). The Ethics Commission recommends applying the GEO's streamlined and clarified language to this section to ensure consistency between the two ordinances. *See* proposed LAMC §§ 49.7.11(B), (C).

### 4. Aggregation of Contributions

Contributions and expenditures made by certain closely related persons are aggregated under the CFO. To protect the contribution limits imposed by the Charter, aggregated contributions and expenditures are treated as having been made by a single person. LAMC § 49.7.4. There are nine specific circumstances when contributions are aggregated. For example, contributions to the same candidate from a parent corporation and one of its wholly-owned subsidiaries would be combined and treated as a single contribution to that candidate.

The Ethics Commission recommends that this provision specify two additional circumstances in which contributions will be aggregated. First, the Ethics Commission recommends clarifying that contributions by a business entity and another person will be aggregated when the person participates in the business entity's decision to make a contribution, is personally prohibited from making the contribution, and holds an ownership interest of at least

20 percent in the business entity. *See* proposed LAMC § 49.7.4(B). Second, the Ethics Commission recommends clarifying that contributions by a committee and another person will be aggregated when the person participates in the committee's decision to make the contribution, is personally prohibited from making the contribution, and provides (alone or in conjunction with other prohibited contributors) 20 percent or more of the committee's funding. *See* proposed LAMC § 49.7.4(D).

These two additions are modeled on the state's Political Reform Act regulation that governs prohibited contributions to state candidates by state lobbyists. 2 Cal. Code Regs. § 18572. The additions will clarify that a business entity or a committee cannot make a contribution when the entity or committee is owned or funded in significant part by persons who are prohibited from making the contribution. The 20-percent threshold was selected to reflect the financial world's presumption that a party who holds an interest of 20 percent wields "significant influence" and must report the interest. *See* Criteria for Applying the Equity Method of Accounting for Investments in Common Stock, Financial Accounting Standards Board Interpretation No. 35 (May 1981). It is also the CFO threshold for determining when a person hosts or sponsors a fundraising event. *See* LAMC §§ 49.7.11(A)(2)(g), 49.7.35(A)(7)(f), and 49.7.36(A)(1)(f).

#### 5. Contributor Information

The CFO currently prohibits City candidates and their controlled committees from depositing a contribution into their campaign checking accounts until they have obtained the contributor's name and address and, for contributions from individuals, the individual's occupation and employer. LAMC § 49.7.16(A). The CFO also requires that all fundraising and contribution forms with a signature line allow the contributor to certify that the contribution is legal under City law. LAMC § 49.7.16(B).

The Ethics Commission recommends clarifying that all fundraising and contribution forms must give contributors the option of certifying that the contribution is legal and consolidating the statements to which a contributor may certify. *See* proposed LAMC § 49.7.16(B). The Ethics Commission also recommends adding a provision to state that obtaining a contributor's certification is evidence that the candidate or committee who received the contribution has acted in good faith. *See* proposed § 49.7.16(C). This is consistent with Commission advice and will provide additional assurance to candidates and committees that the contributions they receive are made legally by the contributors.

#### 6. Committee Information

In 2012, a provision was added to the CFO requiring City candidates and their City controlled committees to provide the Commission with an email address and a list of web sites and social media accounts used to communicate with voters. LAMC § 49.7.15(A).

The Ethics Commission recommends applying this requirement to all City committees, so that independent expenditure committees, ballot measure committees, and recall committees will

also be required to submit this information. *See* proposed LAMC § 49.7.15(C). This will treat all committees the same way, and it will better inform voters and the public about the communication channels used to influence City elections.

## C. MATCHING FUNDS

### 1. Program Participation

Currently, City candidates must declare their acceptance or rejection of matching funds at the time they file their paperwork to qualify to appear on the ballot. LAMC § 49.7.22(A), LAAC § 24.32(a)(1). Paperwork is filed during Candidate Filing Week, which occurs approximately four months prior to a regular primary election. In reality, however, many candidates decide whether to participate in the matching funds program long before Candidate Filing Week.

The matching funds program encourages candidates to begin the process of qualifying and raising matchable contributions eight months before they are currently allowed to officially declare their participation in the program. At the same time, City laws hold participating candidates liable for their actions during the entire election cycle, not just from the time they opt into the program. For example, a candidate would not qualify to receive matching funds if the candidate used more personal funds than was permitted, even if the candidate did so prior to officially opting into the program.

Because the program both encourages candidates to engage in participating activities and holds them accountable for those activities at any point during the election, the Ethics Commission recommends allowing candidates to declare their participation in the program at any time after filing a Declaration of Intention to Solicit and Receive Contributions (Form 12). *See* proposed LAMC § 49.7.22(A), LAAC § 24.32(a)(1)(A).

### 2. Qualification Criteria

Candidates who wish to participate in the matching funds program must agree to certain conditions, such as limiting their overall campaign expenditures, limiting the amount of personal money they use for their campaigns, and agreeing to debate their opponents. LAMC § 49.7.23(C); LAAC § 24.32(a)(3). They must also meet certain qualification criteria. *Id.* They must be certified to appear on the ballot, be opposed by at least one candidate who is also certified to be on the ballot, and receive threshold amounts of qualified contributions from individuals. LAMC §§ 49.7.2(R), 49.7.23(C)(1)–(3); LAAC § 24.32(c).

The Ethics Commission recommends clarifying certain program requirements in the list of qualification criteria. *See* proposed LAMC §§ 49.7.23(C)–(D). For example, the Ethics Commission recommends stating that candidates and their treasurers must attend training prior to receiving matching funds, that matching funds may not be used in violation of federal, state, or City law, and that matching funds may not be used to pay for fines, penalties, or inauguration expenses. *Id.* This is consistent with Commission advice.

The Ethics Commission also recommends specifying that the limit on a candidate's use of personal funds is an aggregate limit that applies per election. *See* proposed LAMC § 49.7.23(C)(5); LAAC § 24.32(a)(3)(D). This will clarify that the limit is a fixed amount and that a candidate may spend that amount during the primary election and again during the general election.

### 3. Timing of Contributions

Candidates who meet the qualification requirements are eligible to have certain private contributions matched with public funds. Qualified contributions are matched when they are received from individuals no more than 12 months prior to the date of the primary election. LAMC §§ 49.7.2(R), 49.7.27.

The Ethics Commission recommends allowing candidates to receive qualified contributions at any time during the City's fundraising window and after they are permitted to begin soliciting and accepting contributions (*i.e.*, after filing a Declaration of Intent to Solicit and Receive Contributions). *See* proposed LAMC § 49.7.2(S). This provides an additional six months during which City Council candidates may receive qualified contributions and an additional 12 months for Citywide candidates.

Prior to the 2013 elections, qualified contributions could be received from any source, whether an individual or an entity and whether located in the City or elsewhere. Beginning with the 2015 elections, contributions must come from individuals who reside within the City in order to be qualified and matched. Because the pool of sources for qualified contributions is now smaller, the Ethics Commission recommends allowing contributions to be qualified and matched regardless of when during the fundraising window they are received. In addition, the Commission does not believe that timing should be a limiting factor when the goal is to encourage communication with constituents.

### 4. Rate of Match

During the 2013 City elections, every qualified contribution to every qualified candidate was matched with two public dollars (2:1 rate of match) in the primary elections and with four public dollars (4:1 rate of match) in the general elections. LAMC § 49.7.27(D).

Beginning with the 2015 City elections, the CFO will impose a two-tiered rate of match. Qualified candidates who, at the time they attempt to qualify for the ballot, submit to the City Clerk at least 1,000 valid signatures from registered voters residing in their districts will receive a 2:1 rate of match in the primary election and a 4:1 rate of match in the general election. LAMC §§ 49.7.27(B)–(C). Qualified candidates who make the ballot with 500 valid signatures will receive a 1:1 rate of match in both the primary election and the general election. *Id.*

The Ethics Commission makes two recommendations regarding the rate of match.

a. *Signature Requirement*

First, the Commission recommends eliminating the two-tiered rate of match by removing the requirement that candidates submit 1,000 valid signatures of registered voters in their districts to receive the higher rate of match. *See* proposed LAMC § 49.7.27. This recommendation is made for two reasons: the administration of the requirement presents a significant and cost-prohibitive burden on the City Clerk's office, which must certify the additional signatures; and the requirement may hinder the purposes of the matching funds program.

i. *Logistical Impact*

The Los Angeles City Election Code (Election Code) provides two methods by which candidates may qualify to appear on the ballot. A candidate may either submit 1,000 valid signatures from registered voters in the district or submit 500 valid signatures and pay a \$300 filing fee. Election Code § 310(c). These signatures must be collected during a fixed two-week period. Historically, the vast majority of candidates have qualified for the ballot by paying the fee and submitting 500 signatures. For example, in the 2013 elections, only two of the 99 candidates who attempted to qualify for the ballot did so by submitting 1,000 valid signatures.

Requiring candidates to submit twice as many signatures in order to be competitive and receive the 2:1 and 4:1 rates of match creates an incentive program that will double the amount of work required of the City Clerk's Elections Division staff for City candidates. *See* Attachment F, City Clerk communication dated 9/4/12 regarding "Impact of Proposed Changes to the City's Campaign Matching Fund Program". And, while the amount of signature verification work will double, the amount of time in which to accomplish that work—ten days—will not change. *See* Election Code § 310(g). Verifying a single signature takes an average of ten minutes, which means that an additional 500 signatures results, on average, in an additional 83 hours of staff time per candidate. To meet this demand in the same short period of time, the City Clerk's office will be required to operate around the clock, with 24-hour fully staffed shifts.

In addition, the work required to comply with the signature requirement is not simply a matter of more time for more signatures. Because candidates must still be allowed to qualify to appear on the ballot by submitting 500 valid signatures, those who also wish to qualify for the higher rate of match must submit 500 additional signatures through a supplemental matching funds signature form. LAMC § 49.7.27(C)(2). This form is distinct from the ballot nominating petitions, and signatures that appear on the nominating petitions cannot be counted toward the additional 500 signatures for the higher rate of match. The City Clerk's signature verification software can identify duplicate signatures, but only within the same petition. *See* Attachment F. They will, therefore, be required to check for duplicate signatures either manually, by comparing the nominating petitions against the matching funds signature forms, or by creating a software program.

Because the costs associated with verifying signatures is entirely driven by the number of signatures that must be verified, the signature requirement will also double the amount of money

the City Clerk's office must spend in order to verify signatures for City candidates. *See* Attachment F. The City Clerk has stated that an additional unbudgeted cost of \$2,156.25 per candidate would be needed to pay for the extra staff time necessary to verify the additional signatures. For the 2013 elections, the City Clerk estimated this additional cost to be in excess of \$200,000. *Id.* Funds were budgeted toward this expense for the 2015 elections, but these increased costs will continue to occur with every City election.

ii. Policy Rationale

In addition to the structural burden, the Ethics Commission does not believe the additional signature requirement furthers the Charter's purposes for the matching funds program. The program is meant to, among other things, avoid corruption or the appearance of corruption, reduce candidate reliance on private funding by assisting them in raising enough money to communicate their views, increase the value of smaller contributions, encourage more candidates to seek public office, and reduce the excessive fundraising advantage of incumbents. Charter § 471(a)(2).

A higher rate of match furthers the purposes of the program by allowing candidates to receive money more quickly, which increases the value of smaller contributions and assists candidates in communicating their views without heavy reliance on private funding. It also creates efficiencies for both candidates and staff. Imposing a challenging hurdle to receiving a higher rate of match works against these goals.

The Ethics Commission also has concerns about the matching funds program treating qualified candidates differently for the first time in the program's history by providing less public money to some. The signature requirement is likely to benefit candidates with name recognition or substantial funding. Those candidates will be better able to receive 1,000 signatures in the two-week signature-gathering period, which means they will receive more public funds and will receive them faster than their opponents. The Ethics Commission believes that the hurdle of providing an additional 500 valid signatures would particularly disadvantage first-time candidates and those without an extensive fundraising base. All of these factors may serve to discourage candidates from seeking public office and from participating in the matching funds program.

b. *Increased Rate*

Second, the Ethics Commission recommends that all qualified contributions be matched at a 6:1 rate during both the primary election and the general election. *See* proposed LAMC § 49.7.27(B). Originally, the matching funds program distributed public money at a base rate of 1:1. If certain outside spending triggers were met, candidates could receive funds at an accelerated 3:1 rate. *See* previous LAMC 49.7.22(C). The accelerated rate was a trigger benefit that was removed from City law in 2012 to comply with the United States Supreme Court's ruling in *Arizona Free Enterprise Club's Freedom Club PAC v. Bennett*, 131 S. Ct. 2806 (2011).

The base rate of match was increased during the 2013 elections, in part to offset the loss of the accelerated trigger rate, but also to ensure that candidates receive as much benefit from public funds as possible. The following table illustrates the change in rates of match over time when compared with the current recommendation.

<b>Rates of Match in City Elections</b>				
	<b>Original (1993-2011)</b>	<b>2013 Elections</b>	<b>2015 Elections (current law)</b>	<b>2015 Elections (recommended)</b>
Base Rate	1:1 in primary 1:1 in general	2:1 in primary 4:1 in general	Without signatures: 1:1 in primary 1:1 in general  With signatures: 2:1 in primary 4:1 in general	6:1 in primary 6:1 in general
General Election Grant	20% of max	20% of max	20% of max	20% of max
Accelerated Rate	None in primary 3:1 in general <i>(now prohibited by United States Supreme Court)</i>	None	None	None

As mentioned above, one of the purposes of the matching funds program is to assist candidates in adequately communicating their views and positions without the need to raise large campaign funds and promoting public discussion of important issues facing the City. Charter §§ 471(a)(2)(A)–(B). Providing public funds to qualified candidates at a faster rate enables them to spend less time fundraising and more time communicating with voters. Candidates and treasurers have provided universally positive feedback about the effect that the increased rate of match in the 2013 elections had on their ability to engage in campaigning, rather than in fundraising.

In addition to giving qualified candidates more opportunity to communicate with voters, increasing the rate of match results in fewer matching funds claims. This makes the program more efficient for both candidates and City staff. During the 2001 elections, with a 1:1 match, candidates submitted an average of 9.1 claims in the primary and 11.5 in the general. However, in 2013, with increased rates of match, candidates submitted an average of 1.8 claims in the primary election and 3.8 claims in the general.

Finally, increasing the rate of match to 6:1 for both primary elections and general elections will reduce confusion regarding which rate applies when. It will also provide matching funds to candidates as quickly as possible, which furthers the purposes of the program by freeing them up to communicate with constituents.

## 5. Expenditure Ceilings

Candidates must agree to limit their overall campaign expenditures in order to receive matching funds. LAMC §§ 49.7.23(C)(4), (C)(6); LAAC §§ 24.32(a)(3)(C)–(D). The expenditure ceilings are set by law, adjusted for inflation, and lifted in response to threshold levels of spending by non-participating candidates or persons making independent expenditures. LAMC §§ 49.7.24–49.7.25. The Ethics Commission makes two recommendations regarding the expenditure ceilings.

First, the Ethics Commission recommends clarifying that expenditures count toward the expenditure ceiling when they are made or incurred. *See* proposed LAMC §§ 49.7.24(A), 49.7.25(A), 49.7.26. This is consistent with Commission advice and reflects the way expenditures are treated throughout the City’s campaign finance laws.

Second, the Ethics Commission recommends clarifying that the following payments do not count toward the expenditure ceilings:

- Refunded contributions.
- Returned matching funds.
- Filing fees paid to the City Clerk under Election Code § 310(c) for ballot access or to the Secretary of State under California Government Code § 84101.5 for committee maintenance.

*See* proposed LAMC § 49.7.24(C). This is consistent with Commission advice and reflects the fact that these payments are not expenditures made for campaigning purposes.

## 6. Maximum Matching Funds

In addition to increasing the rate at which matching funds are distributed to qualified candidates, the Ethics Commission also recommends increasing by approximately 50 percent the maximum amount of matching funds a qualified candidate may receive during both the primary election and the general election. *See* proposed LAMC § 49.7.29. The current maximums were set when the matching funds program was established in 1991 and have never been increased. The current and recommended maximums are identified in the table on the next page.

<b>Maximum Matching Funds Per Candidate</b> <i>Current v. Recommended</i>		
<b>Seat</b>	<b>Current Maximums</b>	<b>Recommended Maximums</b>
City Council	\$100,000 in primary \$125,000 in general	\$150,000 in primary \$187,000 in general
Controller	\$267,000 in primary \$300,000 in general	\$400,000 in primary \$450,000 in general
City Attorney	\$300,000 in primary \$350,000 in general	\$450,000 in primary \$475,000 in general
Mayor	\$667,000 in primary \$800,000 in general	\$1,000,000 in primary \$1,200,000 in general

The recommended maximums represent 31 to 35 percent of the expenditure ceilings that apply to matching funds candidates in primary elections. In general elections, they represent 46 to 53 percent of the expenditure ceilings. The recommended maximums are more in keeping with the CFO's original ratios of 29 to 30 percent in primary elections and 44 to 45 percent in general elections. And, as the expenditure ceilings increase for CPI, the recommended maximums will keep pace.

When the campaign finance laws were reviewed prior to the 2013 elections, it was only out of concern for the solvency of the trust fund that the Ethics Commission did not recommend increasing the maximums. At that time, the trust fund had a balance of approximately \$12,500,000. During the 2013 elections, the City paid a record \$10,189,304 in matching funds to candidates, leaving the fund with a post-election balance of \$2,461,989.

The City is required to make a minimum payment to the trust fund each year, unless a fiscal emergency is declared. Charter § 471(c). If no changes are made to the maximum matching funds provided to candidates, the Ethics Commission anticipates that the trust fund will continue to run a substantial surplus for the next 10 years and will have a balance of over \$19,000,000 following the 2025 City elections—larger than any balance in the fund's history and more than 50 percent higher than the balance prior to the 2013 elections.

Based on historic qualification and distribution rates, projected appropriations into the trust fund, anticipated special elections between now and 2025, and the recommended 6:1 rate of match, the Ethics Commission believes that the trust fund can sustain the recommended increase in maximum matching funds while maintaining an adequate reserve each year in case of unanticipated costs or reduced appropriations. See Attachment H. While outcomes cannot be guaranteed, the projections are based on conservative assumptions. The Ethics Commission anticipates that the trust fund will have a balance of nearly \$5,100,000 following the 2025 City elections if the maximum matching funds are increased as recommended and that the trust fund will never drop below \$4,000,000 between now and then.

## 7. Matching Funds Claims

Qualified candidates must submit claims in order to receive matching funds. Until two weeks before the election, a claim must represent at least \$10,000 in qualified contributions. In the two weeks before the election, a claim must represent at least \$1,000 in qualified contributions. LAMC § 49.7.28(A); LAAC §§ 24.34(c)(2)(A)–(B).

Claims must identify each contribution for which matching funds are requested, including the contributor's name and address. LAAC § 24.34(a)(7). They must also include supporting documentation, such as the copy of the contribution check or the credit card transaction. LAAC § 24.34(a)(8).

The Ethics Commission makes several recommendations regarding matching funds claims. First, the Commission recommends clarifying that, if a qualified contribution is matched with public dollars and the contribution cannot be negotiated or is refunded or returned to the contributor, the candidate must either return the matching funds received for that contribution or submit an alternate qualified contribution. *See* proposed LAMC § 49.7.28(B). This is consistent with Commission advice.

Second, the Ethics Commission recommends that candidates be required to provide with their claims each contributor's certification that the contributor has provided a residence address. *See* proposed LAAC § 24.34(a)(7)(B)(ii). This will help to ensure compliance with the new qualification requirements that contributions used for the matching funds program come from individuals who reside within the City or the City Council district.

Third, the Ethics Commission recommends that candidates be required to certify that all contributions for which they claim matching funds have been deposited into their campaign checking accounts. *See* proposed LAAC § 24.34(a)(9). This will help to ensure that matching funds are being distributed for contributions that have actually been negotiated and received by the campaign.

Finally, the Ethics Commission recommends permitting a candidate's final claim for matching funds (*e.g.*, the claim that will reach the maximum amount of funding available to that candidate) to represent any amount of qualified contributions. *See* proposed LAMC § 49.7.28(A)(2); LAAC § 24.34(c)(2)(B). For other than final claims, candidates would continue to be required to submit a minimum of \$10,000 or, during the two week prior to the election, \$1,000 in qualified contributions. *See* proposed LAMC § 49.7.28(A); LAAC §§ 24.34(c)(2), (c)(2)(A).

## 8. Claim Review Deadline

Currently, the Ethics Commission's staff has three business days to review matching funds claims submitted by qualified candidates, and funds that have been certified must be available to candidates within five business days of submission. LAMC §§ 49.7.30(A)–(B); LAAC §§ 24.34(d)(1)(C), (f)(1). The Commission recommends extending these deadlines by

one business day and specifying that the clock does not start until the Commission has received all information necessary to process the claim. *See* proposed LAMC § 49.7.30(A)–(B); LAAC §§ 24.34(d)(1)(C), (f)(1).

While the current three-day deadline was challenging during the 2013 City elections, staff was able to review matching funds claims within that time frame. However, the new qualification criteria taking effect with the 2015 election will require additional work, because qualified (and matchable) contributions must now come from individuals residing within the City. LAMC §§ 49.7.2(R), 49.7.23(C)(1)(d). In addition, City Council candidates will be required to receive 200 contributions of at least \$5 from individuals residing within their districts. LAMC § 49.7.23(C)(1)(e).

These new geographic restrictions will require an additional layer of staff review to verify that the address submitted by a contributor is within the City or within the district. Because the Commission has no automated method of geocoding this data, each address must be manually verified using the City Clerk’s database of City addresses. This step in the review was never previously required and will require additional staff time.

#### **D. POLITICAL COMMUNICATIONS**

##### **1. Slate Mailers**

The CFO requires City candidates to file with the Ethics Commission copies of their campaign communications when the communications are distributed to 200 or more persons. LAMC § 49.7.32(A). The Ethics Commission recommends also requiring candidates to provide copies of the slate mailers for which they incur expenses. *See* proposed LAMC § 49.7.32(A).

Slate mailers are communications in which a number of candidates or ballot measures appear together under a common endorsement. Candidates typically pay to appear on slate mailers, which are distributed by slate mailer organizations. Payments made to appear on slate mailers must be disclosed on a candidate’s campaign statements, but the Ethics Commission does not receive corresponding copies of these communications. To provide voters with as robust disclosure as possible, the Ethics Commission recommends requiring the filing of these slate mailer communications.

##### **2. Independent Expenditure Communications**

An independent expenditure communication is a communication that urges a particular result in a City election and is made by a person other than a City candidate. LAMC § 49.7.2(J). Just as campaign communications made by candidates must be disclosed, the CFO also requires the disclosure of certain independent expenditure communications. LAMC § 49.7.31. In addition to providing information to voters about who is attempting to influence City elections, the disclosure of independent expenditure communications is also critical to the matching funds program, in which expenditure ceilings are lifted for candidates when independent expenditures reach certain amounts. LAMC § 49.7.25(B).

A person who independently makes a political communication supporting or opposing a City candidate must disclose the communication when any of the following occurs:

- The person makes or incurs expenditures of \$1,000;
- The person is a committee, makes or incurs expenditures of \$100 or more, and distributes the communication to at least 200 persons; or
- The person is not a committee, makes or incurs expenditures of \$100 or more, and distributes the communication to at least 1,000 persons.

LAMC § 49.7.31(A).

The Ethics Commission recommends two clarifications to the disclosure thresholds. First, the Ethics Commission recommends clarifying that an expenditure threshold may be met through multiple communications. *See* proposed LAMC § 49.7.31(A)(1)–(2). For example, disclosure is required if a person spends \$1,000 on two different mail pieces.

Second, the Ethics Commission recommends specifying that the monetary thresholds include both actual expenditures and the fair market value of the goods and services used or provided in connection with a communication. *See* proposed LAMC § 49.7.31(A)(1)–(2). For example, disclosure would be required if a person spent \$50 to print a billboard sign and displayed it in a location that has a fair market lease value of \$950.

### 3. Disclaimers

#### a. *Independent Expenditure Communications*

An independent expenditure communication that must be disclosed must also include disclaimer language. LAMC § 49.7.33(B). The disclaimer must contain, among other things, a statement that the communication was “not authorized by or coordinated with a City candidate” and, when the communicator is a committee, the names of the two contributors who gave the most to the committee in the previous six months. LAMC § 49.7.33(B)(2)–(3).

The Ethics Commission recommends changing the disclaimer provision in several ways. First, the Commission recommends changing the “not authorized by” statement to read “not authorized by a City candidate *or a committee controlled by a candidate.*” *See* proposed LAMC § 49.7.33(B)(2). This will align the City’s disclaimer language with the analogous state law requirement. *See* Cal. Gov’t. Code § 84506.5. A City disclaimer requirement that more closely aligns with state law will reduce confusion and enable committees to more efficiently comply with both laws, without diminishing the transparency that is currently provided to voters.

Second, the Commission recommends changing the major funding statement so that the committee making the communication is required to disclose the names of its top two contributors *of at least \$1,000* within the previous six months. *See* proposed LAMC § 49.7.33(B)(3). Prior to 2012, committees were required to disclose their top two contributors of

at least \$25,000. That monetary threshold was removed to provide more information to voters about the persons funding the committee.

While the current disclaimer succeeds in providing additional disclosure, it also raises other issues because there is no monetary threshold at all. For example, committees whose funding is comprised of equal, scheduled donations from its membership have difficulty determining who their top two contributors are. In addition, the current requirement can result in disclaimers that identify individuals who have contributed small amounts to a committee as major funders. A threshold of \$1,000 will provide more valuable information to voters about who is providing significant amounts of funding for independent expenditure communications. In addition, the recommended threshold mirrors the \$1,000 monetary threshold used to determine who is a significant speaker and is, therefore, required to disclose an independent expenditure communication. LAMC § 49.7.31(A)(1).

*b. Exceptions*

Currently, the CFO exempts from its disclaimer requirements certain small promotional items on which the disclaimer cannot reasonably be displayed, such as pens, pins, and mugs. LAMC § 49.7.33(E). The Ethics Commission recommends that this provision be expanded to include slate mailers and wearing apparel and clarified regarding small electronic communications. *See* proposed LAMC § 49.7.33(E).

These changes mirror the Political Reform Act and will provide more clarity to those making political communications in City elections. In addition to small promotional items, the state exempts wearing apparel from its definition of “advertisement”. 2 Cal. Code Regs. § 18450.1(b)(1). Furthermore, because slate mailers support and are funded by multiple candidates, a disclaimer regarding just one candidate is likely to be misleading.

The Political Reform Act also permits abbreviated disclaimers, under certain circumstances, for small electronic media advertisements. 2 Cal. Code Regs. § 18450.4(b)(3)(G)(4). When spacing constraints in an electronic communication make the full disclaimer impractical, the Ethics Commission recommends that the disclaimer identify, at a minimum, who has paid for it. In addition, the Ethics Commission recommends that the communication be required to provide the full disclaimer when a user interacts with it, such as through a rollover or a link to a web site. *See* proposed LAMC § 49.7.33(E)(2).

4. Reproductions

A person who reproduces, rebroadcasts, or redistributes any material that was drafted, printed, prepared, or previously broadcast by a City candidate or City controlled committee is required to inform the candidate that the person has made a non-monetary contribution to the candidate. LAMC § 49.7.18. This provision helps to ensure that all spending and distributing associated with a candidate’s campaign messages is accounted for and the contribution limits are protected.

The Ethics Commission recommends three changes to this provision. First, the Commission recommends that it be clarified to state that the reporting requirement is triggered when a person reproduces all or a substantial part of the material. *See* proposed LAMC § 49.7.18. This is consistent with the language in the definition of *behested*. *See* LAMC § 49.7.2(A)(1)(b). It will also eliminate violations when just small portions of another's material are used, such as when a candidate incorporates an opponent's quotation into a communication.

Second, the Commission recommends that the provision apply to any candidate or committee. *See* proposed LAMC § 49.7.18. This will better protect the City's contribution limits and expenditure ceilings, and it will ensure that candidate committees and non-candidate committees are treated the same way under the law.

Finally, the Commission recommends clarifying that a candidate or committee whose material was reproduced is not liable for any resulting violation if it provides sufficient evidence to show it had no prior knowledge of the reproduction. *See* proposed LAMC § 49.7.18. This is consistent with Commission advice and eliminates the possibility of passive violations of the law imposed by the unilateral action of a third party.

#### 5. Social Media Accounts

Prior to the 2013 elections, the CFO was amended to specifically require disclaimers on the home pages of social media accounts (*e.g.*, Twitter, Facebook, Tumblr, etc.) that are used by City candidates or their City controlled committees to communicate regarding City elections. LAMC § 49.7.34(A). The law also states that elected City officers may not use a social media account for campaign purposes if it has been previously used for City purposes. LAMC § 49.7.34(B).

The Ethics Commission recommends three changes to this provision. First, the Ethics Commission recommends that the requirement be expanded so that it applies to any City committee, including independent expenditure committees. *See* proposed LAMC § 49.7.34(A). This will hold all speakers in City elections equally accountable for the messages they post online. It will also give the voters and the public more information about who is attempting to influence City elections, including information specifying which social media accounts are being used by the candidates, themselves, and which are being used by independent speakers.

Second, the Commission recommends clarifying that a social media account or web site may not be used for campaign purposes if the account or site is paid for, sponsored, or hosted by the City. *See* proposed LAMC § 49.7.34(B). Recently, the City Attorney has advised that an elected official's use of a social media account that is generally of a personal nature and has been used for a variety of purposes, including posting both City and non-City information, should not be prohibited. This recommendation is made to codify the City Attorney's advice.

Finally, the Ethics Commission recommends requiring elected officials to inform the public when they use an account or site that is not sponsored by the City to communicate about campaign activity or City business. *See* proposed LAMC § 49.7.34(B). To do this, the Ethics

Commission recommends requiring a statement on the home page of the account or site, similar to the statement that is currently required for accounts used for campaign purposes. *See* proposed LAMC § 49.7.34(A). This will help to reduce public confusion about when City resources are being used to communicate on behalf of an elected official, and it will further implement the City Attorney's advice in this area.

#### **E. BIDDERS AND UNDERWRITERS**

In 2011, City voters amended the Charter to prohibit contributions from and limit fundraising activities by certain City bidders, contractors, sub-contractors, and underwriters. Charter §§ 470(c)(12), 609(e). Currently, persons who are found to have violated these restrictions are, in addition to other penalties, debarred from bidding on or being considered for City contracts for specific periods of time. Charter §§ 470(c)(12)(I), 609(e)(2); LAMC §§ 49.7.35(C)(1), 49.7.36(B)(6). However, the CFO is silent regarding debarment for persons who aid and abet these violations. For example, if an individual directs a prohibited contribution from a company she controls, the company making the contribution is subject to debarment, but she is not.

The Ethics Commission makes two recommendations in this area. First, the Ethics Commission recommends specifying that aiders and abettors are subject to debarment. *See* proposed LAMC § 49.7.35(C)(1). This mirrors the CFO provision that imposes joint and several liability on agents for violations of the campaign finance laws. LAMC § 49.7.38(F)(2).

Second, the Ethics Commission recommends specifying that an entity is debarred if it has the same or similar management, ownership, or principal employees as a debarred person and is organized after the initiation of the proceeding that results in debarment. *See* proposed LAMC § 49.7.35(C)(1). This will codify advice from the City Attorney's office and will help to prevent a debarred person from creating a new business to circumvent the debarment.

#### **F. CONCLUSION**

The Ethics Commission strongly recommends that the CFO and the Ad Code be updated as proposed in Attachments B and C. The Ethics Commission recommends acting on the recommendations in time for them to be effective by November 3. In addition, the Charter requires action on the Ad Code recommendations by August 11.

We will be available during meetings at which the campaign finance laws are discussed, and we would be happy to answer questions at any time. Please feel free to contact me or Director of Policy Mike Altschule at (213) 978-1960.

Sincerely,



Heather Holt  
Executive Director

*Attachments:*

- A Quick Guide*
- B Proposed CFO*
- C Proposed Ad Code*
- D Marked-up CFO*
- E Marked-up Ad Code*
- F City Clerk communication dated 9/4/12 regarding "Impact of Proposed Changes to the City's Campaign Matching Fund Program"*
- G 2013 Contribution Data*
- H Projected Matching Funds Distributions and Trust Fund Balances*