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REPORT NO. R 19 - 0 4 0 2
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REPORT RE:

**CONSISTENCIES BETWEEN DRAFT ORDINANCE B (DEVELOPER
CONTRIBUTION RESTRICTIONS) AND CHARTER AMENDMENT H
(CONTRACT BIDDER CONTRIBUTION RESTRICTIONS)**

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

Council File No. 19-0046

Honorable Members:

The Rules, Elections, and Intergovernmental Relations Committee requested this Office provide the City Council with a comparison of proposed Ordinance B banning developer campaign contributions and Charter Amendment H and its implementing ordinance, which bans certain contract bidder campaign contributions and fundraising.

Charter Amendment H and its implementing ordinance (collectively referred to as the contract bidder ban), codified in Charter Section 470(c)(12) and Los Angeles Municipal Code (LAMC) Section 49.7.35, bans campaign contributions from a contract bidder and subcontractor to the bidder if the contract requires approval of an elected official and the contract is valued at \$100,000 or more (subcontractors are included in the ban if they are expected to perform \$100,000 of work under the contract). These restrictions also apply to the principals of contract bidders and subcontractors.

Proposed Ordinance B bans campaign contributions from applicants and owners of property for significant entitlements and their principals.

Comparison

In large part, proposed Ordinance B is substantially consistent with Charter Amendment H and its implementing ordinance (referred to here as the “contract bidder ban”) with one significant difference regarding fundraising.

1. Fundraising

The contract bidder ban restricts fundraising by a contract bidder and its subcontractors of \$100,000 or more. The fundraising restrictions are narrowly crafted to ban certain activities relative to certain persons, such as inviting a bidder or subcontractor, and principals, employees, and officers of contractors or subcontractors to a fundraising event. The fundraising restrictions extend to the principals of the bidder and its subcontractors. Proposed Ordinance B does not include a fundraising ban.

2. Principals

Both the contract bidder ban and proposed Ordinance B utilize *almost* the same list of principals. The contract bidder ban list of principals does not include a Chief Financial Officer, while proposed Ordinance B does. Also, the contract bidder ban includes as a principal, an individual *employee* of the contract bidder or subcontractor representing them in the bid with the City, while proposed Ordinance B applies to an *individual* authorized to represent a restricted developer before the Planning Department, who may be someone other than an employee of the restricted developer. Additionally, an *individual* that owns 20% of a bidder or subcontractor qualifies as a principal under the contract bidder ban, while under proposed Ordinance B, a principal is a *person* that owns a restricted developer, which includes both individuals and entity owners.

3. Exceptions

The contract bidder ban includes a specific exception for government entities, but proposed Ordinance B does not contain this exception. Additionally, the contractor bidder ban implementing ordinance specifically states that a candidate who is also a contract bidder is not precluded from using personal funds on the candidate’s own City campaign. This provision is not included in proposed Ordinance B.

4. Committees and Receipt of Contributions

Both the contract bidder ban and the proposed Ordinance B apply to City controlled committees, which include campaign, recall, legal defense fund, and ballot measure committees, but do not apply to non-City controlled committees. Similarly, both the contract bidder ban and the proposed Ordinance B only apply to the person making the contribution, not to the elected official receiving a contribution.

5. Notice and Disclosure

Both the contract bidder ban and proposed Ordinance B require notice by the department to persons that may be impacted by the restrictions. Also, both require the bidder or applicant to submit a disclosure form identifying its principals and certifying that it will notify the principals of the restrictions. However, proposed Ordinance B requires the information to be filed electronically with the Ethics Commission, which is not the case with the contract bidder ban's disclosure requirements. At the outset of the implementation of the contract bidder ban and continuing to today, the disclosures have been made primarily in paper form and copies are forwarded to the Ethics Commission from the various Departments and Offices. The use of the electronic filing system in proposed Ordinance B will ensure that the information is publicly available in a timely matter to candidates and the public.

6. Timing of Restriction

The timing of the restrictions are essentially the same. The contract bidder ban applies from the time the proposal is submitted until 12 months after the contract is awarded, if successful, and ends at the time of contract signing if the bidder is not selected. Also, if a bid is withdrawn or the process is cancelled, the restriction ends immediately. The restriction also applies to certain contract amendments from the time of initial discussion until 12 months after the amendment is approved, disapproved, or withdrawn. Under proposed Ordinance B, the restriction applies at the time of application until 12 months after the letter of determination is issued, or if none, when the decision is final. Also, if the application is withdrawn or terminated pursuant to the Zoning Code, the restriction applies until the following day.

7. Penalties

Both bans have similar additional penalties. Persons violating the contract bidder ban are barred from obtaining new contracts for a sliding period of time depending on number of violations, unless the Ethics Commission finds mitigating circumstances based on regulations that were adopted. Persons violating the proposed developer contribution ban of proposed Ordinance B are barred from being an applicant, owner, or principal in a new application for a significant entitlement for one year. We have recommended that the Ethics Commission adopt regulations to ensure that this restriction is applied fairly and in consideration of appropriate facts.

If you have any questions regarding this matter, please contact Assistant 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 question you may have.

Sincerely,

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By 

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