



## Los Angeles City Ethics Commission

August 26, 2014

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

### **Re: Officeholder Committees**

#### *FOR COUNCIL CONSIDERATION*

Dear Councilmembers:

On August 14, 2014, the Ethics Commission unanimously approved recommendations for improving the laws regarding officeholder and legal defense committees. This letter transmits those recommendations, which amend the Campaign Finance Ordinance (CFO). To strengthen City law, the Ethics Commission urges you to adopt the ordinance language proposed in Attachment B.

#### **A. INTRODUCTION**

##### **1. Background**

Since the City first adopted the CFO in 1990, City law has allowed elected City officials to control committees for officeholder and legal defense purposes. City candidates may also control legal defense committees. While a few changes to the laws governing these committees were made as part of the 2012 CFO revisions (*see* Council File No. 12-1269), the bulk of these provisions have not been reviewed since 2003.

The Ethics Commission recommends approving the changes to the CFO that are proposed in Attachment B. The substantive recommendations are explained below, and a quick guide to key recommendations is provided in Attachment A. In addition to the substantive changes, the recommended language makes technical and clarifying changes, reorganizes and streamlines existing law, and helps to ensure consistency in and promote understanding of the laws.

In making the recommendations below, the Ethics Commission carefully considered experiences gained through administering the existing laws, as well as input from the public, advocacy groups, and regulated communities. The recommendations identify ways in which the CFO can be improved, and there are substantive recommendations in the following categories:

	<i>Page</i>
• <u>Officeholder Committees (Section C)</u>	
– Formation .....	3
– Monetary Limits.....	4
Contribution Limits .....	6
Exceptions .....	7
Fundraising and Expenditure Limits .....	7
– Allowable Expenditures.....	8
Events and Travel .....	9
Civic & Professional Memberships.....	10
Advertisements .....	10
Officeholder Communications .....	10
Expressions of Congratulation, Appreciation, or Condolence .....	11
Other Expenditures.....	11
– Prohibited Expenditures .....	11
– Blackout Period.....	12
– Post-service Activity .....	13
• <u>Legal Defense Committees (Section D)</u>	
– Formation .....	15
– Contribution Limit .....	15
– Surplus Funds.....	16
• <u>Campaign Statements (Section E)</u> .....	16
• <u>Behested Payments (Section F)</u> .....	16

## 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 recommended CFO language, and Attachment C is a marked-up version of the CFO.

The remaining attachments provide data that the Ethics Commission analyzed during this review. Attachment D details the types of expenditures made by officeholder committees in the past ten fiscal years, and Attachment E details the types of expenditures made by legal defense committees during the same period of time.

## B. EXISTING LAW

An elected City official may establish and maintain one officeholder committee, through which contributions may be solicited and received and funds may be spent to help the elected official effectively serve and fulfill responsibilities to the residents of the City. Los Angeles Municipal Code (LAMC) § 49.7.19(A). These responsibilities include communicating with

constituents, assuring efficient City services, and engaging in professional development activities. *Id.* Allowable expenditures are limited to a specific list of categories, per-person contribution limits apply, and fundraising and expenditures may not currently exceed \$75,000 during a fiscal year.

In addition, City officeholders and candidates for elected City office may establish and maintain committees to defray legal costs incurred in the defense of criminal, civil, and administrative proceedings arising directly from the conduct of an election campaign, the electoral process, or the performance of governmental duties. LAMC § 49.7.20(A). Like campaign and officeholder committees, per-person contribution limits apply to legal defense committees. However, because the costs associated with a legal proceeding may be any amount, there is no annual limit on fundraising or expenditures by a legal defense committee.

Both officeholder and legal defense committees are subject to disclosure and disclaimer requirements. Campaign statements must be filed quarterly or, during an election, on the filing schedule for candidates. LAMC §§ 49.7.21(A)–(B). Officeholder committees must include in their campaign statements detailed information about their expenditures. Los Angeles Administrative Code (LAAC) § 24.51. Finally, political communications made by officeholder and legal defense committees must contain specific disclaimers to identify the speaker, and a copy of each communication must be filed with the Ethics Commission. LAMC §§ 49.7.32, 49.7.33(A).

## C. OFFICEHOLDER COMMITTEES

### 1. Formation

The CFO currently states that an elected City official may establish and maintain one officeholder committee to help fulfill responsibilities to the City's residents. LAMC § 49.7.19(A). The CFO's definition of "elected City officer" means that an officeholder committee may be established by individuals who actually hold elected City office. LAMC § 49.7.2(G). However, newly elected officials often wish to begin their transitions to public service before they are actually sworn in. Renting field office space, purchasing equipment, recruiting staff, and incurring other similar administrative expenses ahead of time permits them to hit the ground running as soon as they are sworn into office.

The Ethics Commission recommends permitting an individual to establish an officeholder committee as soon as the individual's election to City office has been certified by the City Clerk. See proposed LAMC § 49.7.19(B). This will help newly elected City officials more effectively make the transition to holding City office and begin to serve their constituents as quickly as possible. This is also consistent with Commission advice that existed prior to the 2012 amendments to the CFO, which updated the definition of "elected City officer" but largely deferred consideration of the officeholder provisions.

## 2. Monetary Limits

The CFO imposes several monetary limits on officeholder committees. First, there is a limit on the amount that a single person may contribute to an officeholder committee. The limits are currently \$500 per person per fiscal year for the officeholder committees of City Council members and \$1,000 per person per fiscal year for the officeholder committees of the Mayor, the City Attorney, and the Controller. LAMC § 49.7.19(D).

In reviewing the monetary limits, the Ethics Commission analyzed the dollar values of contributions to officeholder committees in the ten years from Fiscal Year 2003-2004 through Fiscal Year 2012-2013. The tables below identify the results and show that the vast majority of contributions were made at the highest permitted levels. The following table reflects contributions to City Council officeholder committees and shows that 84 percent were in the highest range of \$251 to \$500.

Dollar Value of Contributions City Council Officeholder Committees FY03-04 to FY12-13			
Contribution Value	Total Amount	Total Count	% of Total Count
\$0-99	\$18,909	192*	2 %
\$100-250	\$354,387	1,797	14 %
\$251-500	\$5,202,115	10,434	84 %
<b>Total</b>	<b>\$5,575,411</b>	<b>12,423</b>	<b>100 %</b>

\*Actual count may be higher. Because these contributions do not have to be itemized, total count represents 12 contributions that were itemized, plus the minimum number of contributions possible for the remaining dollar amount [amount divided by \$99.99].

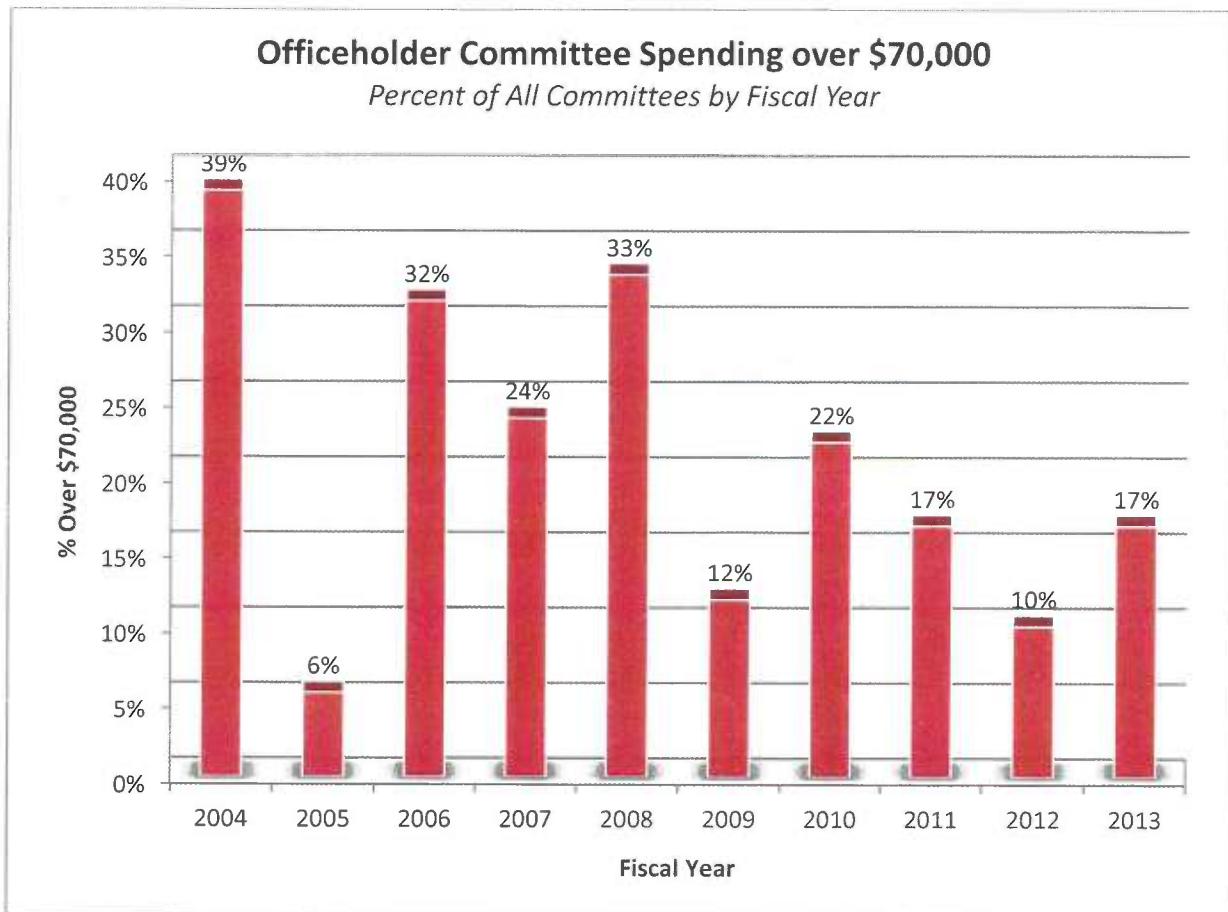
The next table shows that 61 percent of contributions to Citywide officeholder committees were in the highest range of \$701 to \$1,000. Contributions of \$251 or more represented 91 percent of all giving to Citywide officeholder committees.

Dollar Value of Contributions Citywide Officeholder Committees FY03-04 to FY12-13			
Contribution Value	Total Amount	Total Count	% of Total Count
\$0-99	\$1,069	11*	1 %
\$100-250	\$29,817	146	8 %
\$251-500	\$257,209	520	30 %
\$501-700	\$3,180	5	0 %
\$701-1,000	\$1,065,947	1,067	61 %
<b>Total</b>	<b>\$1,357,222</b>	<b>1,749</b>	<b>100 %</b>

\*Actual count may be higher. Because these contributions do not have to be itemized, total count represents the minimum number of contributions possible for the dollar amount [amount divided by \$99.99].

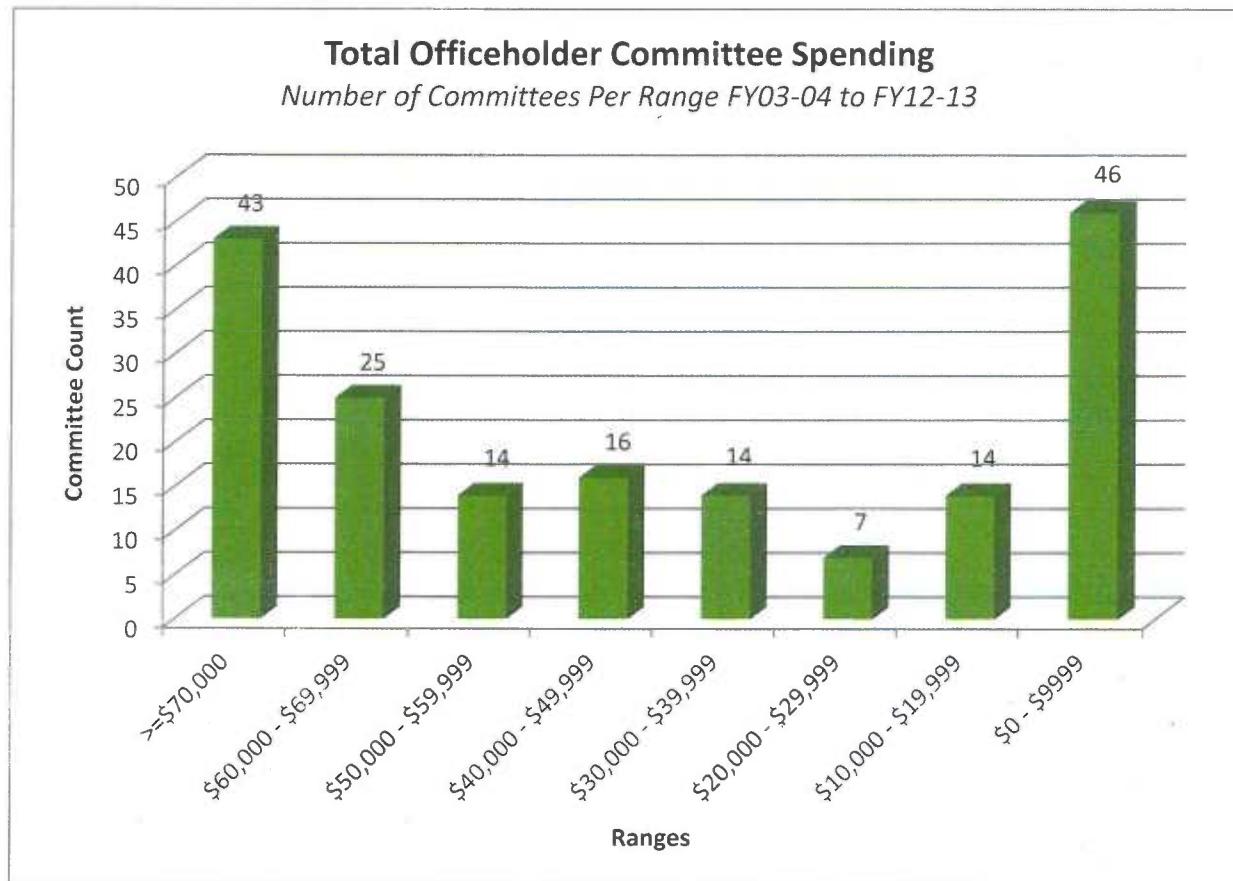
In addition to the per-person contribution limits, there are also limits on overall fundraising and expenditures. Officeholder committees may not solicit or receive contributions (or have an account balance) totaling more than \$75,000 in any fiscal year. LAMC § 49.7.19(E). If funds are transferred into an officeholder committee from a campaign committee, the \$75,000 fundraising limit is reduced by the amount of the transfer. LAMC § 49.7.19(F). Officeholder committees are also limited to \$75,000 in expenditures every fiscal year. LAMC § 49.7.19(G).

The two following charts provide data regarding officeholder committee expenditures in the ten years between Fiscal Year 2003-2004 and Fiscal Year 2012-2013. The first chart shows the percentages of officeholder committees that spent more than \$70,000 in each of those years. The percentages vary from year to year; but in the past five fiscal years (FY08-09 through FY12-13), 10 to 22 percent of all officeholder committees have spent \$70,000 or more per year. Another way to look at it is that 78 to 90 percent of all officeholder committees have spent less than \$70,000 per year.



The next chart shows that, in the ten most recent fiscal years, annual officeholder committee expenditures have tended to cluster at the top and the bottom of the spending ranges. Of the 179 officeholder committees that existed in the last decade, 25 percent spent \$70,000 or

more per fiscal year, and 26 percent spent less than \$10,000 per fiscal year. The remaining half of all officeholder committees spent between \$10,000 and \$69,999 per fiscal year.



The Ethics Commission makes the following four recommendations regarding the monetary limits that apply to officeholder committees.

a. *Contribution Limits*

First, the Ethics Commission recommends that the per-person contribution limits for officeholder committees be the same as the per-person contribution limits for campaign committees. *See proposed LAMC § 49.7.19(F)(1).* This will reflect the requirement in the Los Angeles City Charter (Charter) and the CFO that limits in City laws be adjusted annually to reflect changes in the Consumer Price Index (CPI) for the Los Angeles region. Charter § 702(h); LAMC § 49.7.3. It will also eliminate confusion for both officeholders and contributors by restoring and preserving the consistency between the contribution limits for officeholder committees and campaign committees.

Until 2012, the per-person contribution limits for both campaign committees and officeholder committees were the same. *See* previous LAMC § 49.7.12(A)(4). The officeholder contribution limits have not been raised since 1995. However, in 2012, the per-person limits for campaign committees were adjusted under the Charter to account for CPI changes. Because action on officeholder and legal defense committees was largely deferred until now, the per-person contribution limits for officeholder committees are currently different from the per-person limits for campaign committees.

To comply with the duty under the Charter to adjust contribution limits for CPI and to eliminate confusion for committees and contributors, the Ethics Commission recommends amending the CFO to state that the per-person contribution limits for officeholder committees are the same as the per-person contribution limits for campaign committees. *See* proposed LAMC 49.7.19(F). This will currently adjust the officeholder contribution limits to \$700 per person per fiscal year for City Council officeholder committees and to \$1,300 per person per fiscal for Citywide officeholder committees.

b. *Exceptions*

Second, the Ethics Commission recommends clarifying that the per-person contribution limit does not apply to contributions that officeholders make to their own committees or to loans that officeholders obtain from financial lending institutions on terms available to the public. *See* proposed LAMC § 49.7.19(F). This is consistent with Commission advice and will treat personal contributions and loans made by officeholders to their officeholder committees the same as personal contributions and loans made by candidates to their campaign committees.

Third, the Ethics Commission recommends eliminating the exception to the per-person contribution limit for compensation paid by a 501(c)(3) organization or an educational institution for a student intern. *See* proposed LAMC § 49.7.19(F). Because of the definition of “contribution” in state law, this exception is redundant. For example, a payment is not a contribution if the person making the payment receives adequate consideration, which is the case when an intern provides professional services in exchange for compensation. Cal. Gov’t Code § 80215(a). In addition, state law contains an exception for payments made by government agencies and 501(c)(3) organizations, which would apply to the overwhelming majority of organizations placing interns with elected City officials. Cal. Gov’t Code § 82015(b)(2)(B)(ii). Therefore, this exception in the CFO is unnecessary.

c. *Fundraising and Expenditure Limits*

Finally, the Ethics Commission recommends amending the CFO to reflect the Charter mandate that the annual aggregate limits on contributions, transfers, account balances, and expenditures be adjusted annually to reflect CPI changes. Charter § 702(h); *see* proposed LAMC §§ 49.7.19(G)(1)–(3). Limits have historically been adjusted for CPI based on the date the limit was last amended. The current aggregate limits were last amended at two different times: April 1999 for the limit on expenditures and August 2003 for the limits on fundraising, transfers, and account balances. *See* Ordinance Nos. 172480, 175344.

Because these amounts are intended to work together to limit overall fundraising and expenditures by officeholder committees, the Ethics Commission recommends adjusting all of the limits together, using the most recent date of amendment for any of the limits. Between the most recent amendment date of August 2003 and the CFO's CPI baseline date of December 2011, CPI in the Los Angeles region increased by 23.899%. See <http://data.bls.gov/cgi-bin/surveymost?r9>. Applying the CPI increase to the current limits and rounding to the nearest \$1,000 results in adjusted fundraising and spending limits of \$93,000 per fiscal year. The Charter also requires that this amount, along with other limitations and thresholds in City law, be adjusted annually. See proposed LAMC § 49.7.3(A)(8).

### 3. Allowable Expenditures

The CFO specifies 20 types of allowable expenditures for an officeholder committee, all of which must be made in connection with assisting, serving, or communicating with constituents. LAMC §§ 49.7.19(B)(1)-(21). Permitted expenditures currently include the following:

- Fundraising for the officeholder committee.
- Office equipment, furnishings, supplies, and rent.
- Salaries of part-time or full-time officeholder committee staff.
- Consulting, research, polling, photography, videography, and similar services.
- Attending conferences, meetings, receptions, and events in the performance of governmental duties.
- Travel costs incurred in the performance of governmental duties.
- Meals where City business is being conducted.
- Donations to tax-exempt 501(c)(3) organizations when a majority of the donation is tax-deductible.
- Memberships to civic or professional organizations, if the membership serves a governmental or legislative purpose.
- Educational training that improves skills used in the performance of governmental responsibilities.
- Advertisements in program books, testimonials, souvenir books, and other publications that do not support or oppose the nomination of or a candidate for elective City office.
- Mailings to persons within the City to provide information about City-sponsored events, government services, the requirements of the law, or the elected official's position on a City matter that has been recently acted on.
- Tickets to political events where no substantial part of the proceeds will benefit the officeholder, his or her immediate family, or the officeholder committee's treasurer.
- Expressions of condolence, appreciation, or congratulation sent to constituents, employees, government officials, or any other person with whom the officeholder communicates in an official capacity and limited to \$100 per recipient per fiscal year.

- Conferences, meetings, receptions, and events that are officially sponsored and hosted by the officeholder, including related expenses for fees, advertisements, invitations, materials, refreshments, and other incidental expenses.
- Events such as meetings, luncheons, and retreats attended primarily by the officeholder's staff in the conduct of official City business.
- Social events held by the officeholder to honor or thank members of the officeholder's staff or in connection with a holiday celebration attended primarily by the officeholder's staff.
- Payment of the officeholder committee's tax liabilities.
- Accounting, legal, and other administrative services provided to the committee.
- Expenses associated with the officeholder's campaign committee that could not have reasonably been paid for by the campaign committee.

Officeholder committees may also make expenditures similar to those specified above if they receive written advice from the Ethics Commission that the expenditure is allowable. LAMC § 49.7.19(B)(22).

Data regarding the types of expenditures that officeholder committees have incurred in the ten years from Fiscal Year 2003-04 to Fiscal Year 2012-2013 is provided in Attachment D. Expenditures are categorized by the committee, using categories established by the state for its disclosure requirements (CA Form 460). The first chart in Attachment D shows expenditures by category for Citywide officeholder committees, and the second chart shows expenditures for City Council officeholder committees.

Total spending by all City Council officeholder committees in the past decade was \$6,414,427, and total spending by all Citywide officeholder committees was \$1,317,047. There are five times as many City Council members as there are Citywide officials, and their total spending is approximately five times greater. For both types of committees, the category with the most expenditures was professional services, such as legal or accounting services. City Council committees spent \$1,493,900 on professional services, and Citywide committees spent \$436,221. The categories with the second and third most expenditures were office expenses (\$1,008,562 for City Council; \$223,964 for Citywide) and consulting services (\$835,898 for City Council; \$216,038 for Citywide).

The Ethics Commission makes the following recommendations regarding allowable officeholder expenditures.

*a. Events and Travel*

The CFO currently contains six separate provisions allowing for expenditures related to events and travel. LAMC §§ 49.7.19(B)(6)-(8),(16)-(18). Because allowable expenditures have been amended on a piecemeal basis, the current provisions overlap and are not always clear regarding whether an event is allowed, who may attend, and how related expenditures are to be reported. For example, one provision governs expenditures for events "attended in the

performance of governmental duties,” while another provision governs expenditures for events “concerning City business.” LAMC §§ 49.7.19(B)(6),(16).

To improve clarity and readability, the Ethics Commission recommends streamlining and consolidating the six existing provisions into two provisions. *See proposed LAMC §§ 49.7.19(D)(5), (13).* As recommended, five of the existing provisions have been consolidated into a single provision governing events such as meetings, meals, conferences, and receptions that are attended by the officeholder or the officeholder’s staff in the performance of governmental duties. *See proposed LAMC § 49.7.19(D)(5).* The sixth provision governs social events, such as retirement and holiday parties, that are held by the officeholder and attended primarily by the officeholder’s staff. *See proposed LAMC § 49.7.19(D)(13).*

*b. Civic & Professional Memberships*

Officeholder committees may incur expenditures for membership to a civic or professional organization, if the membership serves a legislative or governmental purpose. LAMC § 49.7.19(B)(10). For example, a City Council member may use an officeholder committee to pay to join a national association of city council members. The current provision is vague regarding whose membership may be paid for, and the Ethics Commission recommends codifying Commission advice that memberships may be purchased for the officeholder or a member of the officeholder’s staff. *See proposed LAMC § 49.7.19(D)(7).*

*c. Advertisements*

The CFO currently allows officeholder committees to incur expenditures for advertisements in program books, testimonials, souvenir books, and other publications, as long as the advertisement does not support or oppose the nomination or election of a candidate for City office. LAMC § 49.7.19(D)(12). The Ethics Commission recommends that this provision be amended to apply to any advertisement, to specify that the advertisement may not support or oppose a ballot measure or recall, and to specify that the restriction applies to any ballot measure, candidate, or officeholder. *See proposed LAMC § 49.7.19(D)(9).* This is consistent with Commission advice.

*d. Officeholder Communications*

Officeholder committees may be used to pay for and distribute mailings to persons within the City to provide information about City-sponsored events, government services, the requirements of the law, or an official’s position on a particular City matter on which the City is acting or has recently acted. LAMC § 49.7.19(B)(13). The Ethics Commission recommends clarifying that the communication does not have to be a physical mailing, that the communication may be made to persons outside the City, and that the communication may relate to any City matter (other than an election). *See proposed § 49.7.19(D)(10).*

This recommendation is consistent with Commission advice, updates the law to account for technological advances in communication, and acknowledges that persons outside the City

may be affected by City action. For example, a person outside the City may sign up to receive email updates that are paid for by an officeholder committee. In addition, it may be appropriate for an officeholder to direct communications regarding City matters to persons outside the City when the matter, such as activity at LAX, has an extra-jurisdictional impact.

*e. Expressions of Congratulation, Appreciation, or Condolence*

Officeholder committees are currently allowed to incur expenditures for expressions of congratulation, appreciation, and condolence, such as plaques recognizing community organizations or flowers sent to the family of a recently deceased constituent. LAMC § 49.7.19(B)(15). These expenditures are currently limited to \$100 per fiscal year for each recipient. *Id.* The Ethics Commission recommends applying the limit on a per-event basis, rather than on a fiscal year basis, and updating the CFO to reflect the Charter mandate to adjust limits for CPI. See proposed LAMC § 49.7.19(D)(12).

A fiscal year limitation can be unnecessarily restrictive, because more than one expression of congratulation, appreciation, or condolence may be appropriate in one year. For example, an individual might get married and retire in the same year. In addition, the Charter requires the annual adjustment of limits in City law. The current \$100 limit was last amended in April 1999, and CPI for the Los Angeles region increased by 38.996 percent from April 1999 to December 2011. *See* <http://data.bls.gov/cgi-bin/surveymost?r9>; LAMC § 49.7.3(B)(2). Applying that CPI change results in an updated limit of \$140 when rounded to the nearest ten dollars.

*f. Other Expenditures*

The CFO currently allows officeholder committees to make expenditures that are not enumerated if they are similar to those specifically allowed and the committee receives written advice from the Ethics Commission. LAMC § 49.7.19(B)(22). The Ethics Commission is required to respond to a request for advice within five business days. *Id.*

The Ethics Commission recommends amending this provision to clarify that the advice need not be requested or provided in writing. *See* proposed LAMC § 49.7.19(D)(17). Given the five-day deadline for responding, the Commission's practice has been to give advice pursuant to this section informally. The recommended language codifies this practice and also specifies that formal written advice may be requested, in which case the Charter's response deadline of 21 business days would apply. *Id.*

**4. Prohibited Expenditures**

While no officeholder expenditure is permitted unless it falls into one of the enumerated categories, the CFO also explicitly prohibits certain types of expenditures, including those made in connection with a future election for City office. LAMC § 49.7.19(C)(1). The Ethics Commission recommends expanding this provision to include expenditures to support or oppose ballot measures and candidates in non-City elections. *See* proposed LAMC § 49.7.19(E)(1).

Officeholder expenditures associated with ballot measures and non-City candidate elections were removed from the list of allowable officeholder expenditures in 2012, but other officeholder provisions were not updated to reflect these changes. This recommendation is made to enhance clarity and ensure consistency.

5. Blackout Period

The CFO currently prohibits certain types of expenditures by officeholder committees from the date the controlling officeholder files a Declaration of Intention to Become a Candidate with the City Clerk through the date of the election for which the declaration was filed. LAMC § 49.7.19(H). For regular elections, the blackout period typically starts the November before the election and lasts approximately four months.

The blackout period applies to expenditures that could be perceived as being incurred to engage in campaigning, rather than performing existing governmental duties. These expenditures include but are not limited to payments for consulting services, polling, attendance at receptions and other events, advertisements, and certain types of communications. *Id.*

The Ethics Commission makes three recommendations regarding the blackout period. First, the Commission recommends reorganizing the CFO to list expenditures that are permitted during the blackout period by section number, rather than specifying in text the expenditures that are prohibited. *See* proposed LAMC § 49.7.19(H)(2). This will make the provision easier to understand and will eliminate the confusion that can arise when a prohibition does not precisely correspond to an allowable expenditure.

Second, the Ethics Commission recommends allowing event and travel expenditures during the blackout period for events attended primarily by the officeholder's staff in the conduct of official City business. *See* proposed LAMC § 49.7.19(H)(2)(b). Currently, travel expenditures are prohibited during the blackout period, and event expenditures may be made only if the officeholder does not attend. LAMC §§ 49.7.19(H)(2),(3). The reason for limiting these types of expenditures during the blackout period is to avoid the actual or apparent use of officeholder funds in a way that circumvents the City's campaign contribution limits and expenditure ceilings. However, the Ethics Commission believes the current CFO is both too broad and too restrictive in this area. On one hand, an officeholder committee may currently pay for a large community event attended by voters at which the officeholder's legislative agenda is promoted, as long as the officeholder does not attend. On the other hand, an officeholder committee may not currently pay for an event that the officeholder attends with his staff to conduct City business. The Ethics Commission recommends resolving these issues by permitting events and travel expenditures during the blackout period for both the officeholder and the officeholder's staff, as long as the event is for conducting City business and the attendees are primarily the officeholder's staff.

Finally, the Ethics Commission recommends that fundraising by the officeholder committee during the blackout period be prohibited. *See* proposed LAMC § 49.7.19(H)(1). Like

events attended by voters, fundraising close to an election can increase the perception that an officeholder committee is being used to circumvent the City's campaign finance laws.

6. Post-service Activity

The CFO does not currently address either fundraising by or the closing of officeholder committees after the controlling officeholder leaves City office. The Ethics Commission recommends specifying that any contribution solicited or received by the officeholder committee after the elected official leaves City office must be used to retire the officeholder committee's debt. *See proposed LAMC § 49.7.19(G)(4).* This is consistent with Commission advice and with the laws that apply to campaign committees.

The Ethics Commission also recommends requiring the closing or redesignation of officeholder committees within 90 days after the controlling officeholder leaves City office. *See proposed LAMC § 49.7.21(D)(1).* Officeholder committees may only make expenditures related to assisting, serving, or communicating with constituents. LAMC § 49.7.19(B). Once an officeholder leaves City office, the officeholder no longer has City constituents. Therefore, this recommendation will help ensure that contributions received after an officeholder leaves City service are used only to pay for expenditures incurred in furthering the purposes of the officeholder committees.

**D. LEGAL DEFENSE COMMITTEES**

In addition to controlling committees for officeholder purposes, elected City officials are permitted to control committees for legal defense purposes. LAMC § 49.7.20(A). This authority also extends to candidates for elected City office. *Id.*

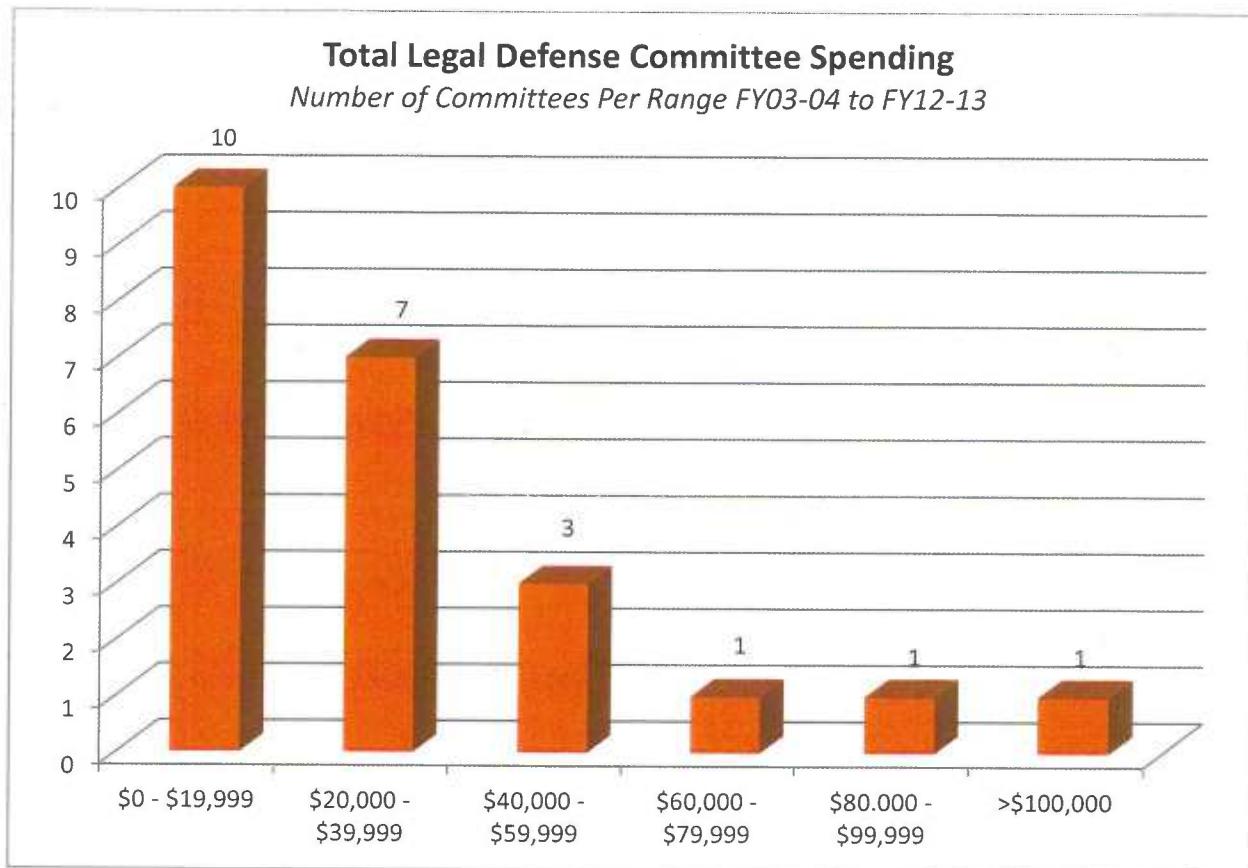
In the past ten fiscal years, 23 legal defense committees have been maintained by officeholders, and none have been maintained by candidates. Just as data regarding officeholder committees was analyzed over the past ten fiscal years, data regarding legal defense committees was also analyzed for this review.

The following table shows that 71 percent of contributions to legal defense committees were in the highest permitted range of \$701 to \$1,000.

Dollar Value of Contributions All Legal Defense Committees FY03-04 to FY12-13			
Contribution Value	Total Amount	Total Count	% of Total Count
\$0-99	\$1,435	17*	2 %
\$100-250	\$16,341	96	10 %
\$251-500	\$78,050	159	17 %
\$501-700	\$700	1	0 %
\$701-1,000	\$675,309	677	71 %
<b>Total</b>	<b>\$771,835</b>	<b>950</b>	<b>100 %</b>

\*Actual count may be higher. Because these contributions do not have to be itemized, total count represents 3 contributions that were itemized, plus the minimum number of contributions possible for the remaining dollar amount [amount divided by \$99.99].

The Ethics Commission also looked at the total amount of expenditures incurred by each of the 23 legal defense committees that reported activity in the past ten fiscal years. As shown in the chart below, 74 percent of the committees had total expenditures of less than \$40,000, and 43 percent had total expenditures of less than \$20,000.



Total spending by all legal defense committees during the past decade was \$725,117. Data regarding the types of expenditures they incurred during that time is provided in Attachment E. As with officeholder expenditures, the legal defense expenditures are categorized by the committee using categories established by the state. The chart in Attachment E shows that most expenditures by legal defense committees were categorized as professional services (\$331,198) and legal costs (\$292,373).

1. Formation

The CFO currently states that an “elected City officer or candidate for elective City office may establish and maintain a legal defense fund....” LAMC § 49.7.20(A). The Ethics Commission recommends amending this provision to clarify that former elected City officials and former City candidates may also establish and control legal defense committees. *See* proposed LAMC §§ 49.7.20(A), (B)(1), (D). This is consistent with Commission advice. It also acknowledges that there is a four-year statute of limitations on Ethics Commission enforcement matters and that Ethics Commission audits are conducted after elections are held.

2. Contribution Limit

Legal defense committees are currently permitted to solicit and receive contributions up to \$1,000 per person per fiscal year. LAMC § 49.7.20(B). Similar to the recommendations for officeholder committees, the Ethics Commission makes two recommendations regarding contributions to legal defense committees.

First, the Ethics Commission recommends tying the per-person contribution limit to the per-person campaign contribution limit that applies to candidates for Citywide office. *See* proposed LAMC § 49.7.20(B)(3). This was the case until 2012, when the per-person limit on campaign contributions to Citywide candidates was adjusted for CPI and consideration of the legal defense provisions was largely deferred. *See* LAMC § 49.7.3(B)(2)(b). For the reasons discussed above, the Ethics Commission believes that the consistency between the per-person contribution limits for legal defense committees and Citywide campaign committees should be restored and preserved. The recommended language will also ensure compliance with the Charter mandate to adjust the contribution limit to reflect changes in CPI. This recommendation will result in a current legal defense contribution limit of \$1,300 per person per fiscal year.

Second, the Ethics Commission recommends clarifying that the per-person contribution limit does not apply to contributions that officeholders or candidates make to their own committees or to loans that officeholders or candidates obtain from financial lending institutions on terms available to the public. *See* proposed LAMC § 49.7.20(B)(3). This is consistent with Commission advice and will treat personal contributions and loans made by candidates and officeholders to their legal defense committees the same as personal contributions and loans made by candidates to their campaign committees.

### 3. Surplus Funds

The CFO currently requires the disposal of surplus legal defense funds within six months of the final conclusion of the underlying legal matter and the payment of all committee debt. LAMC § 49.7.20(C). Surplus funds may be returned to contributors, remitted to the City's general fund, or used in connection with another legal defense committee. *Id.*

The Ethics Commission recommends eliminating the authority to use surplus legal defense funds for another legal defense committee. *See* proposed LAMC §§ 49.7.20(C)(3). The CFO requires that contributions to and expenditures by legal defense committees be associated with the specific legal matter for which the committee is established. LAMC § 49.7.20(A)(2). Allowing funds to be transferred to a different legal defense committee contradicts this limitation. Therefore, the Ethics Commission recommends that funds remaining in a legal defense committee after the final resolution of the legal matter and the payment of all committee debt be either returned to contributors or remitted to the City's general fund.

The Ethics Commission also recommends requiring legal defense committees to be closed within 90 days after the final conclusion of the case or proceeding and the payment of all committee debt. *See* proposed LAMC § 49.7.21(D)(2). This mirrors the recommendation regarding the closing of officeholder committees after the controlling officeholder leaves City service. It also provides a three-month window in which the committee can conclude its business after the legal matter has been resolved, all debts have been paid, and the committee is, therefore, no longer necessary.

## E. CAMPAIGN STATEMENTS

Both officeholder and legal defense committees are required to file quarterly campaign statements. In an election year when the individual who controls the committee appears on the ballot, campaign statements must be filed on the election schedule. LAMC § 49.7.21. In addition to the information required by state law to be disclosed in a campaign statement, City law imposes additional disclosure requirements for officeholder committees for expenditures related to events, travel, gifts, and meals. LAAC § 24.51. The additional disclosure includes information such as the names of recipients, the names of payees, and the governmental purposes behind the expenditures. *Id.*

These additional disclosure requirements are currently housed in the Administrative Code. However, because they are substantive requirements, the Ethics Commission recommends that they be incorporated into the CFO. *See* proposed LAMC § 49.7.21(C). Placing all of the reporting requirements that apply to officeholder committees in the same body of law will provide better, more comprehensive notice to those who must comply with the requirements.

## F. BEHESTED PAYMENTS

An elected City official is required by state law to disclose when a person makes payments of \$5,000 or more in a calendar year at the behest of the elected official. Cal. Gov't

Code § 82015(b)(2)(B)(iii). A behested payment is one that is made to a third party at the request of or under any arrangement with an elected official. *Id.*; LAMC § 49.7.2(A). For example, if an elected City official asks an individual to make a donation to a non-profit organization and the person donates \$5,000 or more, the elected official must file the state's "Behested Payment Report" (CA Form 803) with the Ethics Commission.

The CFO currently states that any payment received by an elected City official or candidate must be considered either a campaign contribution, income, a gift, or a behested payment. LAMC § 49.7.8. It also states that all behested payments are subject to the CFO's officeholder committee provisions. *Id.* The Ethics Commission recommends replacing this provision with a requirement that an elected City official file a "Behested Payment Report" when a person makes payments of \$1,000 or more in a calendar year at the elected official's behest. *See* proposed LAMC § 49.7.8.

The current provision is largely redundant, because the state and City laws that define and regulate contributions, gifts, and income apply regardless of whether the CFO states that they do. *See, e.g.*, Cal. Gov't Code §§ 82015, 82028, 82030. In addition, the existing provision can be perceived as requiring that everything received by an officeholder must be treated as a contribution, a gift, or income, regardless of how those terms are defined by law.

The existing provision is also problematic because it can be read to apply the current per-person contribution limits for officeholder committees to requests for behested payments. This would mean that no officeholder could behest more than \$500 or \$1,000 per person per fiscal year, depending on whether the officeholder is a City Council member or a Citywide official, and is contrary to Commission advice.

To eliminate these issues, the Ethics Commission recommends replacing this provision with a \$1,000 reporting threshold for behested payments. The Commission believes that it is important for the public to know when a person is making sizeable contributions to third parties in response to requests from an elected official. The Commission also believes that the state's disclosure threshold of \$5,000 per person per calendar year is too high. Earlier this year, an attempt was made in the state legislature to lower the reporting threshold to \$2,500. *See* Senate Bill 831 (Hill). While it passed the Senate, the bill was amended in the Assembly to eliminate this provision.

A disclosure threshold of \$1,000 is in keeping with other existing disclosure thresholds aimed at providing transparency regarding sizeable monetary activity. For example, a person qualifies as a committee under state law by spending or receiving \$1,000. Cal. Gov't Code § 82013. It is also the amount at which the City requires the disclosure of independent expenditures. LAMC § 49.7.31(A)(1). To promote consistency among disclosure thresholds and to better inform the public, the Ethics Commission recommends a \$1,000 disclosure threshold for behested payments.

## G. CONCLUSION

The Ethics Commission strongly recommends that the CFO be updated as proposed in Attachment B. 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 Deputy Executive Director David Tristan at (213) 978-1960.

Sincerely,



Heather Holt  
Executive Director

*Attachments:*

- A Quick Guide
- B Recommended CFO
- C Marked-up CFO
- D Officeholder Expenditures by Category (FY03-04 to FY12-13)
- E Legal Defense Expenditures by Category (FY03-04 to FY12-13)