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CARMEN A. TRUTANICH
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REPORT NO. R 13-0127
MAY 08 2013

REPORT RE:

**DRAFT ORDINANCE TO AMEND THE LOS ANGELES ADMINISTRATIVE CODE
TO ADD ETHICS COMMISSION REGULATIONS REGARDING DEBARMENT**

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. 13-0482

Honorable Members:

This Office has prepared and now transmits for your consideration, an ordinance that codifies changes to the Ethics Commission's regulations. The ordinance adds regulations regarding mitigating circumstances for contract bidder debarment when violations of the City Charter or Campaign Finance Ordinance are found by the City Ethics Commission. This ordinance is submitted to enable the City Council to consider the revisions by June 10, 2013.

Time Limit and Authority for Council Action

Pursuant to Charter Section 703, the City Council must hold a public hearing and either approve or disapprove Ethics Commission regulations within 60 days of adoption by the City Ethics Commission. If not disapproved within that time, the Mayor has 10 days to approve or disapprove the regulations. If not disapproved by the Mayor, the regulations have the force of law. The City Ethics Commission adopted these regulations on April 11, 2013. Therefore, the City Council has until June 10, 2013, to act on this matter.

The City Council does not have the same authority to amend this ordinance as with other ordinances. The City Council may only approve or disapprove, but cannot amend, the ordinance, as the ordinance is the codification of the Ethics Commission's regulations. Los Angeles City Charter Section 703.

Summary of the Ordinance

The City Charter provides that contract bidders are subject to debarment as further provided by ordinance. The City's Campaign Finance Ordinance specifies that any person who violates the City Charter Section 470(c)(12) or Los Angeles Municipal Code Sections 49.7.35 or 49.7.36 will be debarred for specified periods, unless the Ethics Commission determines that mitigating circumstances exist. This ordinance identifies mitigating circumstances that the Ethics Commission may consider when determining whether debarment should not be imposed. Additionally, the ordinance provides procedures for that determination. Among those procedures is a provision that would prohibit departments from taking action on a contract that involves a respondent who is charged with violating the contract bidder requirements from the time the Ethics Commission gives notice of the pending determination of debarment until the determination has been made by the Ethics Commission. Proposed Los Angeles Administrative Code Section 24.63(g).

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

Very truly yours,

CARMEN A. TRUTANICH, City Attorney

By  (for)

PEDRO B. ECHEVERRIA
Chief Assistant City Attorney

PBE:RS:ac

cc: Gerry Miller, Chief Legislative Analyst
City Ethics Commission

ORDINANCE NO. _____

An ordinance amending the Los Angeles Administrative Code to add a regulation of the City Ethics Commission concerning contract bidder debarment mitigating factors and procedure.

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

Section 1. Chapter 6 shall be added to Division 24 of the Los Angeles Administrative Code to read as follows:

CHAPTER 6

DEBARMENT

Section

- 24.61 Violations Requiring Debarment.
- 24.62 Mitigating Circumstances.
- 24.63 Procedural Requirements.

Sec. 24.61. Violations Requiring Debarment.

Charter Section 470(c)(12) and Municipal Code Sections 49.7.35 and 49.7.36 limit campaign contributions and fundraising by specific persons associated with certain City bids and contracts. A person found to have violated one or more of those provisions may not bid on, or be considered for, any City contract, extension or amendment, unless the members of the Ethics Commission determine that mitigating circumstances exist. Debarment lasts one year for the first violation, two years for a second violation, three years for a third violation, and four years for all subsequent violations.

Sec. 24.62. Mitigating Circumstances.

(a) The members of the Ethics Commission must determine whether mitigating circumstances exist whenever a violation of Charter Section 470(c)(12) or Municipal Code Sections 49.7.35 or 49.7.36 is found to have occurred.

(b) The Ethics Commission will consider the following when determining whether mitigating circumstances exist:

(1) The nature and extent of the violation, which may include factors such as the following:

- (A) The number of counts;
- (B) Whether the violation was egregious;

- (C) Whether the awarding authority notified the respondent of the legal requirements;
 - (D) Whether the violation was deliberate or coordinated; or
 - (E) Whether the respondent attempted to cure the violation.
- (2) The extent to which the respondent cooperated with the Ethics Commission, which may include factors such as the following:
- (A) Whether the respondent self-reported the violation to the Ethics Commission;
 - (B) Whether the respondent offered a full admission;
 - (C) The timeliness and extent of the respondent's cooperation with the audit and investigation of the violation that triggers debarment;
 - (D) The timeliness and extent of the respondent's cooperation with the audit and investigation of any other violation; or
 - (E) The prompt payment of fines recommended by staff or issued by the Commission.
- (3) The extent to which debarment will affect the City or those receiving City services, which may include factors such as the following:
- (A) The effect of debarment on City services;
 - (B) The effect of debarment on the City's finances;
 - (C) The effect of debarment on City projects and contracts; or
 - (D) The effect of debarment on the City's ability to fulfill any legal mandates.
- (4) The respondent's enforcement history with the Ethics Commission for the same or different types of violations.
- (5) Circumstances unique to the respondent or the contract.
- (6) The overall interests of justice.

Sec. 24.63. Procedural Requirements.

(a) The determination regarding whether mitigating circumstances exist is final and must be made at a public meeting.

(b) The Ethics Commission staff must notify all City agencies, departments, boards, and offices at least 21 days before a determination regarding mitigating circumstances is going to be made.

(c) The staff must make written recommendations to the members of the Ethics Commission regarding whether mitigating circumstances exist and provide a copy of the recommendations to the respondent at least 21 days before the determination is going to be made.

(d) The respondent may appear at the public meeting, with or without counsel, and may respond both verbally and in writing to the staff recommendations. Failure to appear shall be deemed acceptance of the Commission's determination and shall exhaust any further administrative remedies

(e) The staff must issue notice of the determination regarding mitigating circumstances within 10 business days after the determination is made. The debarment notice must be provided to all City agencies, departments, boards, and offices and must be posted on the Ethics Commission's web site.

(f) If the members of the Ethics Commission determine that mitigating circumstances do not exist, an awarding authority that has an existing contract with the respondent must make a written determination regarding whether it is in the City's best interests to terminate that contract. The determination must be made within 60 days of receiving the debarment notice.

(g) Once notice in 24.63(b) is made, no action on any bid involving the respondent may be taken until the members of the Ethics Commission make a determination. If the members of the Ethics Commission determine that mitigating circumstances do not exist, the respondent's status as a bidder is terminated as of the date the staff provides debarment notice to the awarding authority.

(h) If the respondent is a City contractor, subcontractor or underwriter, that status is not altered, and work and payments under an affected City contract must continue until all of the following have occurred:

(1) The members of the Ethics Commission have determined that mitigating circumstances do not exist;

(2) The staff has issued the debarment notice; and

(3) The awarding authority has made a written determination under Municipal Code Section 49.7.35(C) that it is in the City's best interests to terminate the contract.

(i) The respondent may waive any of the respondent's procedural rights.

Sec. 2. The City Clerk shall certify to the passage of this ordinance and have it published in accordance with Council policy, either in a daily newspaper circulated in the City of Los Angeles or by posting for ten days in three public places in the City of Los Angeles: one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall; one copy on the bulletin board located at the Main Street entrance to the Los Angeles City Hall East; and one copy on the bulletin board located at the Temple Street entrance to the Los Angeles County Hall of Records.

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

JUNE LAGMAY, City Clerk


By _____ Deputy

Approved _____

Mayor

Approved as to Form and Legality

CARMEN A. TRUTANICH, City Attorney

By 

RENEE A. STADEL
Deputy City Attorney

Date May 7, 2013

File No. 13-0482