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CITY ATTORNEY

REPORT NO. R 19-0300  
SEP 17 2019

**REPORT RE:**

**DRAFT ORDINANCES AMENDING ARTICLES 9.5 AND 9.7 OF CHAPTER IV OF  
THE LOS ANGELES MUNICIPAL CODE TO RESTRICT CAMPAIGN  
CONTRIBUTIONS AND FUNDRAISING BY DEVELOPERS AND SOLICITATION  
AND DISCLOSURE OF BEHESTED PAYMENTS BY ELECTED OFFICIALS**

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

Honorable Members:

As requested by the City Council on May 23, 2019, this Office has prepared and now transmits for your consideration three draft ordinances, approved as to form and legality. Two alternative draft ordinances amend the City's Campaign Finance Ordinance (Article 9.7 of the Los Angeles Municipal Code (LAMC)) to add restrictions regarding developer contributions. Alternative Ordinance A represents the Ethics Commission proposal. Alternative Ordinance B represents the Council motion proposal. Draft Ordinance C amends the City's Governmental Ethics Ordinance (Article 9.5 of the LAMC) to restrict and require disclosure of behested payments.

The City Council instruction authorized the City Attorney to make technical modifications and/or legal corrections to the requested draft ordinances in order to further the objectives of the recommendations and in accordance with current case law, and we have done so as described in this report.

## Summary of Ordinances

### **Ordinance A and the Ethics Commission Proposal**

Draft Ordinance A amends the LAMC to revise the City's Campaign Finance Ordinance as proposed by the Ethics Commission and has been refined to strengthen the City's legal position. Specifically, draft Ordinance A prohibits a land use applicant and its principals from making contributions to and fundraising for a City elected official and candidate for City office and his or her related City controlled committees.<sup>1</sup> Draft Ordinance A is applicable to any land use application that requires a discretionary decision.

Draft Ordinance A defines an applicant's "principal" to include: (1) an owner of the property; (2) a member of the project team; (3) a subcontractor expected to receive at least \$100,000 for performing work on the application or the project; (4) a board chair, president, chief executive officer, chief operating officer, or any individual who serves in the functional equivalent for an applicant, owner, member of the project team, or subcontractor; (5) a person holding at least 20 percent ownership interest in an entity that is an applicant, an owner of the property, a subcontractor, or a member of the project team; and (6) an individual employee of any of the other principals or applicant who is authorized to represent the principal before the Planning Department.

Draft Ordinance A requires the applicant to disclose information about the land use application and its principals in an Ethics Commission created database. The Planning Department will notify affected applicants of the requirements. The Planning Department will not consider the application to be complete until the applicant submits a receipt from the Ethics Commission referencing the applicant's certified filing of the information mandated by the ordinance. The applicant will have a continuing duty to update the filing in the event of changes. Additional penalties may apply to an applicant or principal violating the law, including barring the applicant or principal from seeking a new land use application for one year. The Ethics Commission will develop regulations to address this process.

Further, draft Ordinance A, as well as the other ordinances, add applicants, owners, and principals of a land use applicant as a restricted source under the Ethics Ordinance. This addition will impact gifts given to elected officials by these sources. This revision was requested by the City Council.

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<sup>1</sup> A developer contribution ban will bar additional persons from making contributions under existing City law concerning aggregation of contributions. Contributions from persons or fundraised by persons that are owned or controlled by the developer or principals will also be similarly barred, including, for example, sponsored committees (See LAMC Section 49.7.4). This applies to the restrictions in both draft Ordinances A and B.

### *Revisions From Proposal*

Consistent with the City Council's instructions, the following changes from the original proposal have been made in draft Ordinance A. The changes include refinements to definitions and time periods for fundraising prohibition as detailed below.

#### 1. Project Team and Principals

To provide further clarity and limit the potential breadth of the restrictions to conform with current case law, this draft ordinance revises the "project team" definition by limiting the team to the lead individuals at the identified firms and adding a construction firm to the list of firms included in the restriction. Additionally, the definition of "principal" was revised to include an applicant's executives, owners and representatives.

#### 2. Receipt of Contributions and Committees

Draft Ordinance A prohibits not only the making of certain contributions and fundraising, but also the receipt of those contributions and fundraising proceeds. To address the potential difficulty of knowing which contributions are prohibited, particularly those that result from unlawful fundraising, draft Ordinance A includes a requirement of knowledge that the contribution is restricted to ensure compliance with due process principles. Additionally, draft Ordinance A limits the ban on receiving contributions to City controlled committees, which are currently defined under existing law to include campaign, legal defense, recall, and ballot measure committees created for City purposes by an elected City officer or candidate for City office. The restriction does not apply to contributions relating to elections for non-City offices.

#### 3. Fundraising

To harmonize the draft ordinance with current case law, the fundraising restriction was crafted more narrowly, similar to the existing fundraising restriction relating to contract bidders. Instead of restricting fundraising from all persons, the revised language restricts fundraising only by the applicant and principals and employees and officers of the applicant and principals, and does not include a broad bundling prohibition. Draft Ordinance A does not include the Ethics Commission proposed expansion of the fundraising restriction for contract bidders or for lobbyists for the same reasons that were discussed previously in our October 28, 2010, report (R10-0358) and other confidential advice. The ordinance includes requirements consistent with technical changes to the existing fundraising prohibitions applicable to contractors and underwriters.

#### 4. Restriction Period

The length of the contribution and fundraising restriction in Draft Ordinance A lasts from the time a land use application is submitted until 12 months after the issuance of the final letter of determination on the application or, if none, the date the decision on the application is final. For applications that are withdrawn or terminated, the restriction ends on the day following the filing of a request for withdrawal or termination. This revision eliminates the potential lifetime restriction that would result from using a certificate of occupancy by the Department of Building and Safety as a basis for the restriction.

#### 5. Operative Date

The City Council requested that the ordinances not become operative until after the 2020 election cycle and also requested that the Ethics Commission create, update, and regularly publish a list of persons restricted from making contributions in an electronic database. The Ethics Commission has advised that it will not be in a position to have the database and filing system operational prior to the start of the fundraising window for the primary election in 2022, currently scheduled for March. Accordingly, the Ethics Commission recommended that the ordinances not become operative until the database is operational. All of the draft ordinances have a proposed operative date at the start of the fundraising window for the 2022 general election to provide certainty for campaigns and all those impacted by these ordinances. If the City Council wishes the ordinances to be operative on a different date, the ordinances must be revised.

#### **Ordinance B and the City Council Motion**

Draft Ordinance B reflects the City Council motion. Draft Ordinance B prohibits contributions from a restricted developer and its principals seeking a specific list of land use decisions, i.e., "significant planning entitlements," rather than all discretionary land use decisions. Under draft Ordinance B, a restricted developer is defined to include both the applicant and owner. In turn, principals of a restricted developer are defined to include: (1) a board chair, president, chief executive officer, chief financial officer, chief operating officer of an applicant or owner, and any individual who serves in the functional equivalent of one or more of these positions; (2) a person who holds an ownership interest of 20 percent or more in the developer; and (3) an individual authorized to represent the owner or applicant in the significant planning entitlement. Draft Ordinance B is an alternative to draft Ordinance A, and Council should not adopt both draft ordinances given they address substantially the same provisions. Draft Ordinance B is narrower in scope than draft Ordinance A.

Draft Ordinance B includes applications that seek a significant, non-ministerial planning entitlement, as referenced in the City Council motion. The list may need to be

amended in the near future due to the current planning code amendment process, which could change the name or process for various types of entitlements.

Draft Ordinance B restricts an owner, applicant and a principal from making contributions to City elected officials and candidates, other than the Controller. However, unlike draft Ordinance A, draft Ordinance B does not restrict officials and candidates from receiving a contribution from an owner, applicant, or principal. The restriction applies only to contributions to City elected officials and candidates and City controlled committees. The timing of the contribution restriction is the same as that of draft Ordinance A, from the time the application is submitted until 12 months after the final determination letter on the application, unless withdrawn or terminated. Also, draft Ordinance B imposes the same penalty as Ordinance A, which bars a person violating the contributor restriction from filing new applications for one year. Draft Ordinance B does not include the fundraising restriction imposed in draft Ordinance A. Ordinance B also adds land use applicants, owners, and principals to the restricted source definition in the Ethics Ordinance.

### **Ordinance C – Behested Payments**

Draft Ordinance C represents the Ethics Commission proposals to bar elected officials and their agents from soliciting certain “behested payments” from restricted sources, and requiring additional disclosure of behested payments.

Currently, state law requires disclosure of payments (monetary or in-kind) behested by elected officials for charitable, legislative, or governmental purposes where a single source makes a payment(s) of \$5,000 in a calendar year. California Government Code Section 84224. A payment is deemed to be at the behest of an official subject to “behested payment” disclosure when made at the request, suggestion, or express prior consent, or made in cooperation, consultation, coordination, or concert with the public official. California Government Code Section 82041.3. The Fair Political Practices Commission (FPPC) has adopted regulations specifying that payments are subject to behested payment reporting when a solicitation “features” an elected official. An official is “featured” if the solicitation includes the elected official’s photograph or signature or otherwise singles out the elected official by manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color. The regulations further state that an elected official is featured in a solicitation if the majority of persons listed on a roster or letterhead of the governing body are California elected officials. 2 California Code Regulations Section 18215.3. The FPPC has advised that the state reporting requirements apply to actions of the agents of the elected officials, including employees acting on the official’s behalf. Government Code Section 82004.5, Form 803.

The draft ordinance reduces the behested payment reporting threshold to \$1,000 and requires annotation on the FPPC Form 803 of whether the source is a restricted

source or developer. This disclosure proposal relies on the state law requirements without the exceptions in the behested prohibition proposal.

Draft Ordinance C includes a ban on solicitation of behested payments by elected officials and staff from restricted sources, with several exceptions. The proposed exceptions include solicitations: (1) made because of a state of emergency declared by the City Council; (2) communicated solely through mass media, a suggestion made to the entire audience at a public gathering, or written materials in which the name of the elected City officer is listed with other names; (3) seeking services provided to the City; and (4) made as a result of elected official's participation in a grant application submitted on behalf of the City or on behalf of a public agency or a non-profit where the City is participating in the grant funded program or the City will receive services through the grant funded program. While solicitation of the behested payment would not be prohibited from restricted sources in the exempted instances, the state disclosure requirements would continue to apply. Draft Ordinance C also adds land use applicants, owners, and principals to the restricted source definition in the Ethics Ordinance.

If the City Council does not adopt either draft Ordinance A or B, revisions to draft Ordinance C will be necessary.

### **Non-Individual Contributions and LAUSD**

None of the draft ordinances includes the Ethics Commission proposed changes to ban entirely all non-individuals from making contributions or fundraising, regardless of status, such as contractors, developers, or lobbying firms. These changes would be in conflict with the current City Charter. City Charter Section 470(c)(7) expressly permits candidates to receive a limited amount of non-individual contributions. If the City Council desires completely to restrict all non-individuals from making contributions, then a Charter amendment repealing or changing Charter Section 470(c)(7) is necessary. Related language proposed to change the contribution aggregation rules is also not included in the draft ordinances as those changes are only necessary in the event contributions are restricted from all non-individuals. If the Council wishes to explore this Charter amendment, we can report on the substance of the matter.

Additionally, although the Council motion requested a report back regarding potential application of restrictions to LAUSD, that request was not approved by City Council. So while some news reports have suggested that the draft ordinances would apply to LAUSD, that issue is not addressed in the draft ordinances or in this report. If the City Council requests this Office to report on this issue, we will do so.

Council Rule 38 Referral

Copies of the draft ordinances were sent, pursuant to Council Rule 38, to the City Ethics Commission and the Planning Department, and their comments have been incorporated as appropriate.

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 questions you may have.

Sincerely,

MICHAEL N. FEUER, City Attorney

By



DAVID MICHAELSON  
Chief Assistant City Attorney

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Transmittals