



Office of the City Attorney

DATE: September 5, 2014
To: Election Oversight Committee
FROM: Charles Parkin, City Attorney
SUBJECT: Proposed Amendments to LBMC Chapter 2.01 and 2.02
The Long Beach Campaign Reform Act

Proposed Amendments to Chapter 2.01 and Chapter 2.02

The City Attorney proposes the following amendments to the Long Beach Campaign Reform Act. You will find explanatory comments in *italics*.

Amend 2.01.210 Definitions (B), (D) (Revised 9/5/14)

2.01.210 Definitions

B. "Election cycle" means that period commencing with January 1 of an odd-numbered year and ending with September 1 of the following year for twelve (12) months after the regular general election primary and general elections. For a special election, the "election cycle" commences and that period commencing with the declaration of a vacancy in an elective office and ends ending twelve (12) months ninety (90) days after the special election date. for special elections.

Comment:

- *September 1 following a June election for fundraising to retire debt is extremely difficult and an insufficient amount of time. Candidates in the runoff don't have time to fundraise to retire primary debt until after the runoff election occurs. Donors are focused on candidates in the runoff election and often don't give to candidates who lost in the primary election until after the runoff election. Per donor contribution limits remain in place so no concern should exist about undue influence by donors.*

D. "Person" means any individual, organization or political action committee whose contributions or expenditure activities are financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons.

Two (2) or more entities shall be deemed one (1) person when any of the following circumstances apply:

The entities share the majority of members of their Boards of Directors; or

The entities share two (2) or more officers; or

The entities are owned or controlled by the same majority shareholder or shareholders; or

The entities are in a parent-subsidiary relationship.

An individual and any general partnership in which the individual is a general partner, or an individual and any corporation in which the individual owns a controlling interest, shall be deemed one (1) person.

The candidate responsible for reporting the contribution shall provide and include in the report the identity(ies) of the individual(s) affiliated with the entities referenced on the contributions.

Comment:

The definition of "persons" should be clarified so that the City must be provided information of the identity(ies) of various individual(s) affiliated with entities referenced. This proposed amendment can be approved by City Council with a two-thirds vote.

2.01.310 Limitations on contributions from persons.

A. For primary and general elections, no person shall make to any candidate for office or the controlled committee of such a candidate, and no such candidate or the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than two hundred fifty dollars (\$250.00) for the primary election and two hundred fifty dollars (\$250.00) for the runoff election if the candidate is on the runoff ballot or is a write-in candidate for the office of City Councilmember, three hundred fifty dollars (\$350.00) for the primary election and three hundred fifty dollars (\$350.00) for the runoff election if the candidate is on the runoff ballot or is a write-in candidate for City Attorney, City Auditor or City Prosecutor or five hundred dollars (\$500.00) for the primary election and five hundred dollars (\$500.00) for the runoff election if the candidate is on the runoff ballot or is a write-in candidate for Mayor.

B. For primary and general elections, no person shall make to any committee which supports or opposes any candidate and no such committee shall accept from each such person a contribution or contributions totaling more than two hundred fifty dollars (\$250.00) for the primary election and two hundred fifty dollars (\$250.00) for the runoff election for City Councilmembers, three hundred fifty dollars (\$350.00) for the primary election and three hundred fifty dollars (\$350.00) for the runoff election for City Attorney, City Auditor or City Prosecutor, or five hundred dollars (\$500.00) for the primary election and five hundred dollars (\$500.00) for the runoff election for Mayor.

C. For special elections, no person shall make to any candidate for office or the controlled committee of such a candidate, and no such candidate or the candidate's controlled committee shall accept from any such person, a contribution or contributions totaling more than one thousand dollars (\$1,000.00); and no political committee (as defined in California Government Code Section 82013) shall make to any candidate for office or the controlled committee of such a candidate, and no such candidate or the candidate's controlled committee shall accept from any such political committee, a contribution or contributions totaling more than two thousand five hundred dollars (\$2,500.00).

(Ord. C-7720 § 1, 2001; Ord. C-7661 § 2, 1999; Ord. C-7283 § 1, 1994; Prop. M, 6-7-94, eff. 6-24-1994)

Comment:

- *The current contribution limit is too low for citywide office in a large city such as Long Beach. Contribution limits should be the same for all citywide candidates whose campaigns are citywide.*
- *The runoff election limit should be higher than the primary election given the very short time between when it is known which candidates will be in the runoff election and the date of the runoff election.*
- *Recommend \$1000 primary limit for citywide candidates.*
- *Recommend \$1500 runoff limit for citywide candidates.*
- *Recommend \$400 primary limit for council candidates.*
- *Recommend \$650 runoff limit for council candidates.*

This proposed change would require a vote of the people.

2.01.330 Return of contributions.

A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized and is returned to the donor within thirty (30) days of receipt.

(Ord. C-7283 § 1, 1994; Prop. M, 6-7-94, eff. 6-24-1994)

Comment:

Recommendation is to DELETE

- *State law has extensive provisions regarding when a contribution is not "received" which are tied to campaign finance report filings. This section is in conflict with state law, or at a minimum is misleading. For example, during the late contribution reporting period, the contribution must be returned within 24 hours in order to be deemed not received. (See, e.g., Cal. Govt. Code §84203(c).)*

This proposed amendment can be approved by the City Council by a two-thirds vote.

2.01.340 Loans.

~~B. Every loan to a candidate or the candidate or the candidate's controlled committee shall be by written agreement which shall be filed with the candidate's or committee's campaign statement on which the loan is first reported.~~

Comment:

- *Redundant disclosure. Loans from all sources are reported on the FPPC Form 460 with complete lender information, interest rate, due date etc.*

This proposed amendment can be approved by the City Council by a two-thirds vote.

E. Notwithstanding any other provision of this Section 2.01.340: (1) a candidate for City Council shall not loan or otherwise transfer to his or her campaign, funds, or other thing of value, in excess of ~~ten~~ twenty thousand dollars (~~\$120,000~~) in a primary election and ~~ten~~ twenty thousand dollars (~~\$120,000~~) in a runoff election; (2) a candidate for City Attorney, City Auditor or City Prosecutor shall not loan or otherwise transfer to his or her campaign, funds, or other thing of value, in excess of ~~fifteen~~ thirty thousand dollars (~~\$1530,000~~) in a primary election and ~~fifteen~~ thirty thousand dollars (~~\$1530,000~~) in a runoff election, and, (3) a candidate for Mayor shall not loan or otherwise transfer to his or her campaign, funds, or other thing of value, in excess of ~~twenty-five~~ fifty thousand dollars (~~\$250,000~~) in a primary election and ~~twenty-five~~ fifty thousand dollars (~~\$250,000~~) in a runoff election. Nothing herein shall be construed to restrict a candidate from contributing his or her own funds or assets to his or her campaign.

Comment:

- *The current limits are too low. Candidates who enter a race "late" (such as when an incumbent chooses not to run for re-election during the candidate filing period) need an immediate influx of funds to become competitive against those who have been fundraising for a lengthy period of time. Also, candidates whose opponent(s) benefit from substantial independent expenditures often need an influx of contributions to respond. At a minimum, increase the limits to at least double and include in Section 2.01.1210 so the amounts are adjusted for inflation.*

This proposed change would require a vote of the people.

2.01.350 Family Contributions.

~~B. Contributions by children under eighteen (18) years of age shall be treated as contributions by their parents and attributed proportionately to each parent, one half (1/2) to each parent or the total amount to a single custodial parent.~~

Comment:

- *Recommendation is to DELETE.*

- *The current provision is unconstitutional. (McConnell v. FEC)*

This proposed amendment can be approved by the City Council by a two-thirds vote.

2.01.370 One campaign committee and one checking account per candidate.

Except as may be otherwise provided by State law, a candidate shall have no more than one (1) campaign committee and one (1) checking account per election out of which all expenditures shall be made. This Section shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

Comment:

- *Candidates should be able to establish a committee for the primary election and a separate committee for the runoff election if they wish to do so. It is easier for the public to monitor per-election contribution limits to know what expenditures are for each election. This would also facilitate easier internal accounting by campaigns. In the alternative, require campaigns to designate contributions as for the primary or for the general election on the FPPC Form 460 as is done for state candidates.*

This proposed amendment can be approved by City Council two-thirds vote.

2.01.380 Contributions for officeholder expenses.

A. Notwithstanding any other provision of this Chapter, each elected City officeholder may establish an officeholder expense fund upon taking office, and ~~may solicit and accept e~~Contributions for said officeholder expense fund may be solicited and accepted not to exceed a total amount of ~~ten thousand dollars (\$10,000)~~ twenty-five thousand dollars (\$25,000) per calendar year for City Councilmembers and ~~twenty-five thousand dollars (\$25,000)~~ seventy-five thousand dollars (\$75,000) per calendar year for the City Attorney, City Auditor, City Prosecutor and Mayor.

...

Comment:

- *The money in such fund shall be expended and used only for the purpose of officeholder expenses associated with holding office, in accordance with and authorized by the applicable provisions of Sections 89512 through 89519 of the California Government Code, except for Subsection 89513(e)(1) for candidate controlled committees, 89513(e)(2) and 89513(e)(3) and that part of Subsection 89513(g) relating to loans to candidates, political parties or committees.*

...

C. DELETE

Comment:

- *Makes it clear when an officeholder account can be established*
- *Provides guidance that a controlled election committee becomes the officeholder account (to comply with the state one bank account rules) and this is not*

a new controlled committee or bank account. While activity in connection with election debt is taking place, indicate on FPPC Form 460 which contributions and which expenditures are officeholder account related.

- *Current annual amount that can be raised is too low for elected officials to serve/be active in the community, such as by attending community events, sponsoring district events, etc.*
- *Current rule enables the contribution to be made to the political party, ballot measure committee, PAC, etc., and to buy an ad, etc., but the elected official can't attend the event. Elected officials should be able to attend political events (that are not for candidates) using their officeholder account funds because these events provide opportunities to forge relationships that benefit the community.*
- *Eliminate the LBOEF because it no longer provides information that isn't already on the FPPC Form 460.*

Council action to make this change.

2.01.390 Transfer of funds.

~~Campaign funds and e~~Officeholder funds may not be used as a transfer, loan or contribution to any other candidate for local, State or federal elective office.

Comment:

- *Recognize that campaigns are a political endeavor and enable campaign funds to be used to make contributions to other candidates.*

*Council action to make this change.**

**Officeholder expenses and amounts were added by City Council ordinance, so any amendments can be made by Council action of at least 5 votes.*

2.01.410 Expenditure ceilings.

Comment:

This section needs a major revision.

- *Additional detail is needed regarding the process.*
- *Need a timeline for the payment to the campaign by the city to enable the funds to be useful as intended.*
- *Recommend having the City Auditor handle the payment process.*
- *Limits need to be reviewed/adjusted.*
- *Delete Section H. Given the relatively short timeframe for special elections, use of matching funds can have the most impact.*

Will need additional time and input from the Committee on proposed revisions to this section, depending on the direction of the Committee certain changes could be approved by Council action. Applicability of this section to special elections will require a vote of the people.

2.01.420 Time periods for expenditures.

For purposes of the expenditure ceilings and contribution limitations, qualified campaign expenditures and contributions made at any time up to the date of the primary election shall be considered expenditure or contributions for that election, and qualified campaign expenditures made after the date of the primary election shall be considered expenditures or contributions for the runoff (final) election. However, in the event that payment shall be considered qualified campaign expenditures for the time period in which they are used. Payments for goods and services used in both periods shall be prorated.

Comment:

- *As currently interpreted, a candidate who isn't in the runoff can continue to fundraise after the election but a candidate who is in the runoff can't. Candidates who are in the runoff election need the ability to fundraise (subject to the primary election contribution limit) after the primary election to pay off primary election debt.*

This proposed amendment can be approved by the City Council by a two-thirds vote.

2.01.610 Contribution limitations.

Comment: DELETE

- *Unconstitutional provision.*

This proposed amendment can be approved by City Council two-thirds vote.

2.01.620 Reproduction of materials.

Anyone who reproduces, broadcasts or distributes any material which is drafted, printed, prepared or previously broadcast by a candidate or a committee controlled by such a candidate shall report such activity and its value as a nonmonetary contribution to such candidate or committee.

Comment: DELETE

- *This provision is too broad and likely unconstitutional as written because it prohibits reproduction of any material. Current state law has adequate safeguards in place. (2 CCR §18225.7 (c)(3)(b)).*

This proposed amendment can be approved by City Council two-thirds vote.

2.01.630 Notice of independent expenditures.

Comment: DELETE

- *Redundant & no useful information provided. More detail about independent expenditures is already required to be disclosed pursuant to state law.*

This proposed amendment can be approved by the City Council by a two-thirds vote.

2.01.720 Additional pre-election campaign statement.

Comment: DELETE

- *Disclosure covering such a short period of time does not provide useful or complete information. Campaigns are focusing on final voter contact, not finances. The FPPC Form 460s are almost always (always?) amended because two days is insufficient time exists to gather the information and prepare the Form 460. Campaigns must file an FPPC Form 497 for contributions received of \$1,000 or more the day after receipt (or two days after receipt for non-monetary contributions) so key information is disclosed.*

This proposed amendment can be approved by a vote of the people.

2.01.730 Disclosure of occupation and employer. DELETE

Comment:

- *State law requires the contribution to be refunded if the donor's information is not obtained within 60 days. If the donations cannot be refunded (e.g., no address or phone #) the funds are required to be turned over to the state's general fund or local jurisdiction's general fund.*

This proposed amendment can be approved by City Council two-thirds vote.

2.01.1010 Surplus Funds-Defined.

Comment:

- *If post-election fundraising window changes, determine if this provision should be deleted or revised.*

2.01.1020 Retention of ten thousand dollars by officeholders.

Comment:

- *Move to officeholder account provisions.*
- *Enable transfer up to the amount allowed to be raised in a calendar year and reduce the amount able to be raised after the transfer.*

This proposed amendment to move this section can be approved by City Council.

2.01.1030 Disposal of surplus funds.

Comment:

- *Rework the date depending on decisions elsewhere.*

This proposed amendment can be approved by City Council two-thirds vote.

2.01.1210 Inflation/deflation.

A. Any amount subject to a limitation or ceiling, or established pursuant to formula set forth in Section 2.01.310 or Subsections 2.01.410.A.1 and 2.01.410.A.4 of this Chapter shall be automatically adjusted on January 1, 1996, and on January 1 of each even numbered year thereafter, upward or downward, equivalent to the most recent change in the annual average of the Consumer Price Index as published by the United States Department of Labor for the Los Angeles-Long Beach-Anaheim Metropolitan area.

B. For purposes of calculating the annual inflator/deflator factor under this Section, the base year shall be that year ending with the quarter ending June 30, 1995. Rates shall first be adjusted on January 1, 1996, and every two (2) years thereafter, based on the annually calculated change from the base year.

(Ord. C-7283 § 1, 1994; Prop. M, 6 7 1994, eff. 6-24-1994)

Comment:

- *This section should be amended to adjust the dates by which CPI adjustments are made and /or go into effect to better align with the realities of the Election Cycle as currently defined or as proposed to be amended.*

This proposed amendment can be approved by City Council two thirds vote.

2.02.010 Electronic Filing of Campaign Disclosure Statements

As soon as feasible, the City of Long Beach shall establish electronic filing of campaign disclosure statements pursuant to California Government Code Section 84615 for candidate controlled committees established for Mayor, City Attorney, City Prosecutor, City Auditor and City Council, [and] for primarily formed City of Long Beach committees [and Major Donors]. Whenever a committee or person is required by the California Political Reform Act (Government Code Section 81000 et seq.) to file a semi-annual, pre-election, supplemental pre-election or amendment(s) to a campaign statement with the City Clerk,

~~the committee or person shall file at the same time a copy of the statement in electronic format as prescribed by the City Clerk, provided that the Clerk has prescribed the format at least sixty (60) days before the statement or report is due.~~

Comment:

- *Long Beach should take advantage of state law which enables local jurisdictions to require electronic filing of campaign statements only.*

Include language to be used if this is implemented.

This proposed amendment can be approved by City Council.

Other Considerations

IntraCandidate Transfers

- *Clarify that intracandidate transfers from a candidate's other controlled committees must be made within the per donor contribution limit and must be attributed to specific donors.*

Legal Defense Fund

- *Consider the provisions to implement legal defense funds as permitted by state law.*

JCP:kjm

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