

**CITY ETHICS COMMISSION
AUDIT REPORT**

“Re-Elect Jose Huizar”
2007 Primary Election Committee
(ID #1291807)

September 11, 2007



**City Ethics Commission
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Los Angeles, CA 90012
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LOS ANGELES CITY ETHICS COMMISSION AUDIT REPORT

“Re-Elect Jose Huizar”

2007 Council District Fourteen Primary Election Committee

AUDIT AUTHORITY

This report is based on the City Ethics Commission’s audit of the “Re-Elect Jose Huizar” committee (“the Committee”). The purpose of the audit was to determine if the candidate, treasurer and the Committee complied with the limitations, prohibitions, and record keeping and disclosure requirements of (1) City Charter Section 470; (2) the Political Reform Act of 1974, as amended; and (3) applicable City ordinances. The audit is mandated by Los Angeles City Charter Section 470 (n) (2). That section states that “[the City Ethics Commission shall] conduct audits and investigations of reports and statements filed by candidates and committees supporting or opposing candidates for elective City office.” Los Angeles Administrative Code Section 24.6 (A) requires that the City Ethics Commission (CEC) audit each candidate who raised \$100,000 or more in contributions or who spent \$100,000 or more in expenditures in connection with his or her campaign for the primary and/or general election. Section 24.6 (A) also requires the CEC to audit each committee controlled by a candidate who is subject to a mandatory campaign audit. In addition, Los Angeles City Charter Section 702 (d) requires audits to be conducted of every candidate receiving public matching funds.

AUDIT PERIOD

The audit covered the period January 1, 2006, through June 30, 2007. During this period, the Committee reported on its campaign statements an opening cash balance of \$0, total cash receipts of \$386,990 total cash disbursements of \$380,394 and a closing cash balance of \$6,596.^{1/}

COMMITTEE BACKGROUND

The Committee filed a Statement of Organization with the Secretary of State on October 11, 2006, to support Jose Huizar’s candidacy for Fourteenth District Councilmember in the March 6, 2007 primary election. The Committee’s identification number is 1291807. The committee treasurer is David L. Gould, whose office is located at 555 S. Flower Street, Suite 4210, Los Angeles, California 90071.

^{1/} Cash receipts include monetary contributions and miscellaneous increases to cash (matching funds, account interest, refund of deposits, etc.).

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Mr. Huizar filed a "Declaration of Intent to Solicit and Receive Contributions" with the City Ethics Commission on November 10, 2006 for the 2007 primary election. To manage its financial activity, the Committee maintained one campaign checking account located within the City of Los Angeles as required by City Charter Section 470 (g).

Mr. Huizar did not participate in the Public Matching Funds Program ("the Program"). He was opposed in the race by two matching funds participants. The matching funds participants were Juan "Johnny Jay" Jimenez and Alvin Parra. Mr. Parra was the only candidate that received matching funds for the primary election.

AUDIT SCOPE AND PROCEDURES

The audit included tests of the Committee's campaign records and transactions and included, but was not limited to, the following general categories:

1. compliance with laws governing the receipt of contributions, including loans;
2. proper disclosure of contributions from persons, including the itemization of contributions when required, as well as the completeness and accuracy of the information disclosed;
3. proper disclosure of disbursements, including the itemization of disbursements when required, as well as the completeness and accuracy of the information disclosed;
4. proper disclosure of campaign debts and obligations;
5. accuracy of total reported receipts, disbursements and cash balances as compared to campaign bank records;
6. adequate record keeping for campaign transactions;
7. compliance with matching funds regulations and spending limits;
8. complete and timely filing of State and City forms, statements and reports; and
9. other audit procedures that were deemed necessary in the situation.

This report will be referred for routine review to the City Ethics Commission's Enforcement Division, the City Attorney's Office and the Fair Political Practices Commission.

AUDIT FINDINGS

Audit findings describe instances where auditors concluded that a committee failed to comply with State and City law. The findings noted below are those that auditors concluded were material.

Issue #1 – Excess Contributions

Charter Section 470 (c) (3) provides, in pertinent part, that a candidate for City Council and/or his controlled committee shall not accept any contribution or contributions totaling more than \$500 from any person for a single election.

Title 2 of the California Code of Regulations Section 18401 (a)(2)(A) requires a committee to maintain in its records the cumulative amount of all contributions – monetary and non-monetary – received from a contributor. Compliance with this requirement prevents a committee from accepting contributions in excess of the per person contribution limits contained in Charter Section 470 (c) (3).

Los Angeles Municipal Code Section 49.7.2 states that contributions and/or expenditures from two or more persons will be aggregated and considered to be made by a single person for the purposes of the City’s contribution limits, if any of the following circumstances is applicable. These requirements are commonly referred to as “aggregation of payments” requirements.

- A. One person controls the other’s contribution or expenditure activity.
- B. One person is the sponsoring organization (as defined under Government Code § 82048.7 and 2 California Code of Regulations § 18419) of the other.
- C. Two entities share the same individuals that make up the majority of the members of their boards of directors.
- D. Two entities share the same officers or majority of officers (a member of the board of directors is not considered an officer for this purpose).
- E. A corporation or limited liability company (“LLC”) shares the same majority shareholder *and/or* member, or holds a majority of voting rights in another corporation or LLC.
- F. Two corporations are in a parent-subsidary relationship, provided that at least one of them is not publicly traded.
- G. An individual who owns an investment of 50% or more, or holds a majority of voting rights in any corporation, LLC, firm, joint venture, syndicate, business trust, company or other business entity that is *not* a sole proprietorship, or a general or limited partnership.
- H. An individual who owns any sole proprietorship.
- I. A general partner who owns an investment of 50% or more, or holds a majority of the voting rights in any general or limited partnership.

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In order to comply with these laws, Los Angeles City Charter Section 470 (i), adopted to supplement the Political Reform Act of 1974, requires the candidate and treasurer to maintain detailed accounts and records necessary to prepare campaign statements and enable committees to maintain complete contributor information on a cumulative election-cycle basis.

Finding

The Committee received and deposited two sets of contributions from two contributors that when cumulated exceeded the \$500 per person contribution limits established in Charter Section 470 (c) (3). (See Attachment A.) The Committee, therefore, received excess contributions totaling \$1,000. However, the Committee disgorged a total of \$1,000 to these contributors in accordance with the guidelines of the CEC’s Disgorgement Policy.

Committee Response

No response necessary.

Issue #2 – Spending Limit Notification

Los Angeles Municipal Code 49.7.15 states that a candidate who declines matching funds and spends 100% of the applicable expenditure ceiling must notify the City Ethics Commission by telephone and by confirming facsimile on the day expenditures made exceed the expenditure limit. Pursuant to Los Angeles Municipal Code 49.7.13, the expenditure ceiling for City Council matching funds participants in the 2007 primary election was \$330,000. When a candidate who declines matching funds exceeds the expenditure limit, the expenditure limit is lifted for the opponents of this candidate who are matching funds participants on the same day the limit is exceeded. In addition when a candidate who declines matching funds exceeds the expenditure limit, the \$150,000 limit on total non-individual contributions is lifted for the opponents of this candidate on the same day the limit is exceeded.

Finding

The Committee failed to notify the City Ethics Commission on the day its total expenditures exceeded the \$330,000 expenditure notification threshold. Auditors determined that the Committee’s expenditures exceeded the \$330,000 on March 2, 2007. The Committee’s failure to notify the City Ethics Commission may have prevented the other candidates from receiving contributions exceeding the \$150,000 total non-individual contribution limits and may have prevented matching funds participants from making expenditures exceeding the \$330,000 limit.

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Committee Response

Mr. Gould of David L. Gould Company responded that:

“The committee by oversight neglected to notify the City Ethics Commission on the day its expenditures exceeded the \$330,000 notification threshold. Note, the committee did not reach this amount until a few days before the election. In fact, the going over of this amount was not made by the payment of the committee of expenses exceeding that cap but by receiving invoices dated prior to the election; these were not even received by the committee until Election Day itself. Also, the only opponent of any significance was not affected by the lack of notification as his campaign was no where near its expenditure cap and it was so close to the election in any event.”

Issue #3 – Prohibited Lobbyist and Lobbying Firm Contributions

Los Angeles City Charter Section 470 (c) (11) states, in pertinent, that no elective City officer or candidate for elective City office, nor any of his or her City controlled committees, shall solicit or accept any contribution to the officer or candidate, or to any of his or her City controlled committees, from any lobbyist or lobbying firm registered to lobby the City office for which the candidate is seeking election, or the current City office for which the candidate is seeking election, or the current City office.

Finding

Effective December 13, 2006, contributions from registered lobbyists and lobbying firms to elective City officers or candidates for elective City office and their City controlled committees are prohibited. The Committee received and deposited six contributions totaling \$3,000 from lobbyists or lobbying firms prohibited by Charter Section 470 (c) (11). (See Attachment B.)

Committee Response

Mr. Gould of David L. Gould Company responded that:

“These violations were made by oversight to an entirely new area of law, we do not feel that we should be penalized for these and would like to be given the opportunity to refund the funds received for these items.”

Attachment A
Re-Elect Jose Huizar (ID# 1291807)
Contributions Requiring Cumulation

Set Number	Check Date	Check Number	Date Received	Contributor	Contribution Amount	Excess
1	2/5/2007	954	3/6/2007	Bernardino, Rafael	\$500.00	
	4/26/2007	975	5/7/2007	Bernardino, Rafael	\$500.00	<u>\$500.00</u>
CEC Comment: The excess contribution received on 5/7/2007 was disgorged on 8/21/2007. The refund check #1168 dated on 8/21/2007 has not cleared the bank as of the end of the audit.						
2	10/27/2006	4132	11/3/2006	WL Homes LLC	\$500.00	
	11/22/2006	1689	12/1/2006	WL Homes LLC	\$500.00	<u>\$500.00</u>
CEC Comment: The excess contribution received on 12/1/2006 was disgorged on 1/12/07. The refund check #1020 dated on 1/12/2007 for \$500 cleared on 1/24/2007.						
Total:					<u><u>\$2,000.00</u></u>	<u><u>\$1,000.00</u></u>

ATTACHMENT B
Re-Elect Jose Huizar (ID# 1291807)
Prohibited Contributions From Lobbyists and Lobbying Firms Per LACC 470 (c) (11)

Item Number	Check Date	Check Number	Date Received	Contributor	Contribution Amount
1	12/13/2006	18267	12/20/2006	Jeffer, Mangels, Butler & Marmaro LLP	\$500.00
				Committee Response: Mr. Gould stated that, "This was an oversight by the Fundraising Firm and Treasurer which allowed these contributions to have been accepted."	
2	11/2/2006	1688	12/14/2006	Grumpy Old Men	\$500.00
				Committee Response: Mr. Gould stated that, "Although this contribution was accepted by the committee, it was made prior to the law going into effect. This acceptance was again an oversight as noted above."	
3	12/18/2006	1093	12/20/2006	Dominick W. Rubalcava Attorney At Law	\$500.00
				Committee Response: Mr. Gould stated that, "This was an oversight by the Fundraising Firm and Treasurer which allowed these contributions to have been accepted."	
4	12/28/2006	2391	12/29/2006	Forbes, Amy R.	\$500.00
				Committee Response: Mr. Gould stated that, "This was an oversight by the Fundraising Firm and Treasurer which allowed these contributions to have been accepted."	
5	2/19/2007	1007	2/23/2007	Holguin, Steven	\$500.00
				Committee Response: Mr. Gould stated that, "This was an oversight by the Fundraising Firm and Treasurer which allowed these contributions to have been accepted."	
6	2/26/2007	5110	3/6/2007	Mickey Ibarra & Associates, Inc.	\$500.00
				Committee Response: Mr. Gould stated that, "This was an oversight by the Fundraising Firm and Treasurer which allowed these contributions to have been accepted."	
Total:					<u><u>\$3,000.00</u></u>