

CITY ETHICS COMMISSION DISGORGEMENT POLICY REGARDING EXCESS CONTRIBUTIONS

(Adopted by the CEC on September 22, 2004 and amended on August 9, 2005)

Introduction

While the City Ethics Commission (“Commission”) continues and herein reaffirms its commitment to the fullest possible enforcement of the laws under its jurisdiction, the Commission has determined that, in the circumstances described in this policy, Candidates/Controlled Committees may return or refund certain excess contributions to avoid potential investigation and subsequent enforcement actions by the Commission. The Commission, therefore, hereby adopts this “Disgorgement Policy,” to be applied under the specified and limited circumstances and conditions (“Eligibility Factors”) set forth below. This Disgorgement Policy will be considered only for those cases meeting all of the Eligibility Factors, and the Commission staff reserves the right to use its discretion (“CEC Staff Discretion”), as set forth below, in determining whether the Policy may or may not be applied.

Definitions

For purposes of this Policy, the following definitions shall apply:

The term “Candidate/Controlled Committee” means a candidate seeking elective City office and committee(s) organized for the purpose of seeking elective City office. Each Primary Nominating and General Municipal Election Controlled Committee organized by the same candidate shall be treated as separate Controlled Committees.

The term “Calendar days” means actual days, not business days, and includes weekends and holidays.

The term “Disgorgement” means the ability of the Candidate/Controlled Committee to return or refund, within the established time-frame, an otherwise excess contribution to the person(s) who contributed those funds to the Candidate/Controlled Committee during an election.

The term “Election” means either a Primary Nominating or General Municipal Election.

The term “Election Year” means any calendar year, covering the period January 1 through December 31, in which a municipal election is being held for the office sought by the Candidate/Controlled Committee.

The term "Excess Contributions" means contribution(s) accepted by Candidates/Controlled Committees in excess of the limits set forth in Charter Sections 470(c)(3) & (4).

The term "Non-election year" means any calendar year, covering the period January 1 through December 31, in which a municipal election is not being held for the office sought by the Candidate/Controlled Committee.

The term "Person" means an individual, proprietorship, firm, joint venture syndicate, business trust, company, corporation, limited-liability company, committee, association, and any other organization.

The term "Sufficient Documentation" refers to documents evidencing the return or refund of any contribution(s) under the guidelines of this Policy. This includes a copy of the contribution check(s) or other evidence of a contribution, evidence of deposit of the contribution into the Committee's checking account, and a copy of the Committee's check returning the contribution with evidence that the check cleared the Committee's checking account within 30 days of its issuance. If the Committee's check has not cleared within that time period, a copy of a cashier's check issued to the contributor to evidence the disbursement must be provided no later than 30 calendar days after verification that the original Committee check had not cleared, but in no event later than the date of the commencement of the Commission's mandatory audit cycle for that election period.

Applicability

This Policy shall be available for application following the formal adoption of this Policy by the City Ethics Commission on September 22, 2004. This policy shall not be applied retroactively.

Any excess contribution(s) received by a candidate/controlled committee and returned or refunded to a contributor, that meet all eligibility factors described below will be noted in the Commission's audit report for that Candidate/Controlled Committee and will not be the subject of Commission investigation or enforcement action.

For purposes of applying this policy to any candidate and controlled committee that is subject to a mandatory campaign audit in connection with the March 8 and May 17, 2005 municipal elections, "sufficient documentation" evidencing a returned or refunded contribution must be obtained no later than September 9, 2005.

Eligibility Factors

This Policy shall be applicable to any excess contribution(s) returned or refunded to any person by the Candidate/Controlled Committee provided that each of the following factors is met:

- a. the Candidate/Controlled Committee returns or refunds the excess contribution(s) to the contributing person:
 - (i) no later than 14 calendar days following the date of the filing deadline for any pre-election campaign statement in which the candidate/committee is required by City and/or state law to report those contributions, but no later than the date of the election.
 - (ii) no later than 30 calendar days following the date of the filing deadline for any semi-annual and quarterly reports in which the Candidate/Controlled Committee is required by city and/or state law to report those contributions;
- b. any public matching funds received by the Candidate/Controlled Committee for the returned or refunded excess contribution(s) were returned to the City's Public Matching Funds Trust Fund within 14 calendar days of receipt of the public matching funds, if within an election year, or within 30 calendar days of receipt of the public matching funds, if within a non-election year; and
- c. the Candidate/Controlled Committee has sufficient documentation in its records to substantiate that all eligibility factors have been met.

CEC Staff Discretion

Whether this Policy is available in any given situation is limited to those cases meeting all of the Eligibility Factors, and the Commission staff shall solely determine whether the Eligibility Factors have been satisfied in any given case.

In addition to the Eligibility Factors of this Policy set forth above, the Policy shall not apply if extenuating circumstances exist in the judgment of the Commission Staff. These circumstances will be determined on a case by case basis.