
SPECIAL BULLETIN

LOS ANGELES CITY ETHICS COMMISSION

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New Charter Amendment Limits Bidder Contributions and Fundraising

On March 8, 2011, Los Angeles voters passed Charter Amendment H (Contract Bidder Campaign Contribution and Fundraising Restrictions), which restricts certain City bidders from making campaign contributions to and fundraising for certain City candidates and officeholders. The measure was filed with the Secretary of State and became effective on Friday, April 8, 2011. It will apply to contract solicitations beginning May 8, 2011.

A copy of the new Charter language is attached. The City Attorney's office is drafting an implementing ordinance to complement the new Charter language, and you will receive a copy of that once it is approved by the City Council.

Overview of Charter Amendment H

The new law prohibits persons who respond to City contract solicitations (bidders) from making campaign contributions to or engaging in prohibited fundraising activity for elected City officials, candidates for elective City office, and City committees controlled by elected City officials or candidates in the following scenarios:

1. If a contract is worth \$100,000 or more and requires approval by the City Council, the prohibition applies to contributions and fundraising for any elected officials, candidates, or City committees they control.
2. If a contract is worth \$100,000 or more and requires approval by an elected official other than the City Council, the prohibition applies to contributions and fundraising for that elected official, candidates for that office, and City committees they control. This includes but is not limited to contracts that are worth at least \$100,000 and are subject to Executive Directive 3 (contracts for professional services).
3. If a contract for the Harbor Department, the Department of Water and Power, or Los Angeles World Airports is worth at least \$100,000 but does not require City Council approval, the prohibition applies to contributions and fundraising for the City Attorney and Controller, candidates for those offices, and City committees they control.

Contracts that trigger the prohibitions include but are not limited to contracts for goods and services, leases, concessions, and franchises. The prohibitions apply to bidders and their principals, as defined in Charter section 470(c)(12)(F). The prohibitions also apply to a sub-contractor and its principals if the sub-contract is worth \$100,000 or more.

The prohibitions begin to apply on the date a bid is submitted. For successful bidders, they continue for 12 months after the contract is signed. For unsuccessful bidders, the prohibitions end on the date the contract is signed (or earlier, if the bid is withdrawn or canceled).

Charter Amendment H also revised the prohibitions on gifts and political contributions from underwriting firms in relation to noncompetitive sales of revenue bonds by proprietary departments.

Requirements for City Departments

For contracts that are worth at least \$100,000 and require the approval of an elected City official, City departments will need to do two things. The first is to include standard language in contract solicitations. The City Attorney's office is currently drafting the standard language, and it will be forwarded to you once it is finalized.

The second is to include a form in the contract packet, which bidders must submit to you at the time of bid submission. The form will require a bidder to disclose specific information, including the names of its principals, any sub-contractors known at the time, the principals of the sub-contractors, and a certification that the bidder will comply with the new law. The Ethics Commission is in the process of creating the form, and it will be presented to the members of the Ethics Commission for approval at their next meeting on May 10, 2011. A copy of the form will be forwarded to you once it is approved.

We will keep you apprised of developments in the implementation of this new law. Please feel free to contact us at (213) 978-1960 if you have any questions.

Statutes of 2011, Charter Chapter _____

Amendments to the Charter of the City of Los Angeles approved by the voters of the City of Los Angeles at the Primary Nominating Election held on March 8, 2011.

Filed with the Secretary of State _____

The Charter of the City of Los Angeles is hereby amended to read as follows: Article IV by amending Section 1, subsection (a) of Section 470, Subsection (c) of Section 470 to add after the heading and before subdivision (1); Subsection (12) of Subsection (c) of Section 470; Subdivision (2) of Subsection (a) of Section 471; Subsection (c) of Section 471; and Article VI by amending Subsection (e) of Section 609, all as detailed below:

Section 1. Subsection (a) of Section 470 is amended to read:

(a) **Purpose.** The purpose of this section is to encourage a broader participation in the political process and to avoid corruption or the appearance of corruption in city decision making, and protect the integrity of the City's procurement and contract processes by placing limits on the amount any person may contribute or otherwise cause to be available to candidates for election to the offices of Mayor, City Attorney, Controller and City Council and promote accountability to the public by requiring disclosure of campaign activities and imposing other campaign restrictions.

This section is intended to supplement the Political Reform Act of 1974.

Section 2. Subsection (c) of Section 470 is amended to add after the heading and before subdivision (1):

In addition to the provisions of the Charter, the City may adopt additional restrictions by ordinance.

Section 3. Subdivision (12) of Subsection (c) of Section 470 of the Charter of the City of Los Angeles is added to read:

(12) (A) The following persons shall not make a campaign contribution to any elected City official, candidate for elected City office, or City committee controlled by an elected City official or candidate:

(i) A person who bids on or submits a proposal or other response to a contract solicitation that has an anticipated value of at least \$100,000 and requires approval by the City Council;

(ii) Subcontractors that are expected to receive at least \$100,000 as a result of performing a portion of the contract obligations of a person defined in subparagraph (i); and

(iii) Principals of persons defined in subparagraphs (i) and (ii).

(B) The following persons shall not make a campaign contribution to the Mayor, the City Attorney, the Controller, a City Council member, a candidate for any of those elected City offices, or a City committee controlled by a person who holds or seeks any of those elected City offices:

(i) A person who bids on or submits a proposal or other response to a contract solicitation that has an anticipated value of at least \$100,000 and requires approval by the elected City office that is held or sought by the person to whom the contribution would be given;

(ii) Subcontractors that are expected to receive at least \$100,000 as a result of performing a portion of the contract obligations of a person defined in subparagraph (i); and

(iii) Principals of persons defined in subparagraphs (i) and (ii).

(C) The following persons shall not engage in prohibited fundraising for any elected City official, candidate for elected City office, or City committee controlled by an elected City official or candidate as further provided by ordinance:

(i) A person who bids on or submits a proposal or other response to a contract solicitation that has an anticipated value of at least \$100,000 and requires approval by the City Council;

(ii) Subcontractors that are expected to receive at least \$100,000 as a result of performing a portion of the contract obligations of a person defined in subparagraph (i); and

(iii) Principals of persons defined in subparagraphs (i) and (ii).

(D) The following persons shall not engage in prohibited fundraising for an elected City official, candidate for the elected City office, or City committee controlled by a person who holds or seeks the elected City office as further provided by ordinance:

(i) A person who bids on or submits a proposal or other response to a contract solicitation that has an anticipated value of at least \$100,000 and requires approval by the elected City office that is held or sought by the person for whom the fundraising would be conducted;

(ii) Subcontractors that are expected to receive at least \$100,000 as a result of performing a portion of the contract obligations of a person defined in subparagraph (i); and

(iii) Principals of persons defined in subparagraphs (i) and (ii).

(E) The prohibitions in paragraphs (A) and (B) shall apply from the time the bid or proposal is submitted until the contract is signed, the bid or proposal is withdrawn by the bidder or proposer, or the City rejects all proposals for the contract, whichever is earlier. The prohibitions shall continue for 12 months after the contract is signed for the successful bidder or proposer, its principals, its subcontractors of at least \$100,000, and the principals of those subcontractors.

(F) For purposes of this subdivision, a principal of a person who is a bidder, proposer, or subcontractor means the person's board chair, president, chief executive officer, chief operating officer, or the functional equivalent of those positions; any individual who holds an ownership interest in the person of 20 percent or more; and any individual authorized by the bid or proposal to represent the person before the City.

(G) This subdivision shall not apply to:

(i) Contributions to or fundraising on behalf of elected officials or candidates for elected City office where that official's approval is required only by section 262, 271(d), or 370 of the Charter other than contracts required to be approved by the City Council that have an anticipated value of at least \$100,000 and proprietary department contracts that have an anticipated value of at least \$100,000;

(ii) Contributions to or fundraising on behalf of members of the City Council where the City Council's approval authority is only through Charter section 245 except as further restricted by ordinance;

(iii) Any contract governed by Charter section 609(e);

(iv) A governmental entity; and

(v) A candidate for elected City office who is a bidder, proposer, subcontractor or subcontractor's principals with regard to using personal funds or engaging in fundraising on the candidate's own behalf for the candidate's election for City office.

(H) Every contract solicitation regarding a contract subject to this provision shall include notice of the prohibitions of this subdivision. At the time of submitting a bid or proposal for a contract subject to this section, the bidder or proposer must complete a form identifying the names of its principals, subcontractors of at least \$100,000, the principals of those subcontractors, and certify that the bidder or proposer will comply with and notify its principals and subcontractors of the prohibitions in this subdivision; and provide any other information determined necessary.

(I) In addition to any other penalties that may apply, any person found to have violated this section is subject to contract debarment as further provided by ordinance. If the determination is made to impose debarment, the minimum terms of debarment shall be one year for the first violation, two years for the second violation, three years for the third violation, and four years for the fourth violation.

(J) The City Council may adopt ordinances as necessary to carry out the purposes of this provision. Nothing contained in this subdivision (c)(12) shall be construed or applied to limit the authority of the City Council by ordinance to adopt additional regulations, including sanctions, for the conduct or activities that is the subject matter addressed herein.

Section 4. Subsection (e) of Charter Section 609 shall be amended to read:

(e) Prohibition of Underwriters Gifts and Political Contributions.

(1) No underwriting firm which, within the prior 12 months, made one or more gifts totaling fifty dollars (\$50) or more, or one or more political contributions totaling one hundred dollars (\$100) or more, to any City elected official, any member of the board of the department whose bonds are the subject of the sale, or any other City official having the authority to make or participate in making decisions concerning the sale, shall be selected by the Council or by a department as the underwriter for a sale of Revenue Bonds where the selection of the underwriting firm is made on a basis other than by competitive bidding (referred to hereafter as "noncompetitive sale"). In addition, no underwriting firm, its principals, subcontractors and subcontractor's principals shall make any contribution to or engage in prohibited fundraising on behalf of elected City officials or candidates for City office as further provided by ordinance. An underwriting firm seeking selection shall cause one of its officers to certify under oath that no such gifts or contributions were made and will comply with and notify its principals and subcontractors of the prohibitions in this subsection and disclose the name of its principals, subcontractors of at least \$100,000 and those subcontractor's principals and any other information determined necessary by ordinance. That certification shall be filed prior to the date on which a selection is made. If the selected underwriting firm made any of the gifts, fundraising or contributions specified above, but the certification was nevertheless made, the underwriting firm and any other person responsible for the error in the certification shall be subject to the penalties provided for violation of Section 470.

(2) No underwriting firm selected as the underwriter for a noncompetitive sale of Revenue Bonds including its principals and subcontractors and subcontractor's principals shall make one or more gifts totaling fifty dollars (\$50) or more or lower amount set by ordinance, or any political contributions to any official referenced in subsection (e)(1) or candidate for such office during the 12 months after the contract is signed. In addition, no selected underwriting firm, its principals, subcontractors and subcontractor's principals shall engage in prohibited fundraising on behalf of those officials or candidates as further provided by ordinance. Any person violating the provisions of this subsection shall be subject to the penalties provided for violations of Section 470 and 470(c)(12).

(3) A gift or contribution shall be considered as having been made by an underwriting firm if that gift or contribution was made by the firm itself; by any other business entity related to the firm as a parent, subsidiary or other related business entity; by any political action committee controlled or primarily financed by the firm or by a business entity related to the firm as a parent, subsidiary or other related business entity; by the president, chairperson of the board, chief executive officer, or chief operating officer of the firm; by any vice president, assistant vice president or managing director employed in the public finance unit of the firm; by any other individual who communicates with one or more City officers or employees for the purpose of influencing the City's selection of an underwriter for a particular bond issue; or by any person owning a 20% or greater investment in the firm. These persons are also the underwriter's principals. A subcontractor that is expected to receive at least \$100,000 as a result of performing a portion of the contract obligations of the underwriter and its principals shall be subject to the limitation described above. A subcontractor's principals shall include the firm or individual itself; the subcontractor's board chair, president, chief executive officer, chief operating officer, or the functional equivalent of those positions; any individual who holds an ownership interest in the subcontractor of 20 percent or more; and any individual who communicates with one or more City officers or employees for the purpose of influencing the City's selection of an underwriter for a particular bond issue.

(4) A contribution and prohibited fundraising shall be considered as having been made to or on behalf of any of the officials referenced in subsection (e)(1) if it is made to the official or to any City controlled committee of the officer or candidate for that office.

(5) Any term used herein which is defined in the California Political Reform Act of 1974, as amended, or in the regulations of the California Fair Political Practices Commission, as amended, shall have the meaning set forth in those provisions unless otherwise provided by ordinance.

(6) No provision of subsection (e) shall require any person to do or refrain from doing any act which would violate federal law.

Section 5. Sections 3 and 4 above shall apply only to contract solicitations released 30 days after the effective date of this provision.

Section 6. Subdivision (2) of Subsection (a) of Section 471 of the Charter of the City of Los Angeles is amended to read:

(2) Therefore, this section is enacted to accomplish the following purposes:

(A) To assist serious candidates in raising enough money to communicate their views and positions adequately to the public without excessive expenditures or contributions, thereby promoting public discussion of the important issues involved in political campaigns.

(B) To limit overall expenditures in campaigns, thereby reducing the pressure on candidates to raise large campaign funds for defensive purposes, beyond the amount necessary to communicate reasonably with voters.

(C) To provide a source of campaign financing in the form of limited public matching funds.

(D) To substantially restrict fund-raising in non-election years.

(E) To increase the value to candidates of smaller contributions.

(F) To reduce the excessive fund-raising advantage of incumbents and thus encourage competition for elective office.

(G) To help restore public trust in governmental and electoral institutions.

(H) To avoid corruption or the appearance of corruption by providing an alternate source of funding for campaigns and reducing real or perceived ties between elected officials and special interests.

Section 7. Subsection (c) of Section 471 of the Charter of the City of Los Angeles is amended to read:

(c) Appropriation of Funds.

(1) The City Council shall appropriate two million dollars (\$2,000,000) per fiscal year for public matching funds. The Council shall appropriate such funds for each following fiscal year. The amount of such appropriation shall be adjusted for cost of living changes based on the percentage increase or decrease in the Consumer Price Index (for all items other than housing) for the Los Angeles-Riverside-Orange County metropolitan statistical area using 1991 as the base year. The City Council, by a two-thirds vote, may reduce or eliminate the annual appropriation made during a fiscal year provided that: (a) the City Council has declared a fiscal emergency by resolution that is in effect for that fiscal year; (b) the trust fund balance is no less than eight million dollars (\$8,000,000) in 1991 dollars adjusted to the Consumer Price Index at the time of the appropriation; and (c) the City Council has considered the City Ethics Commission's analysis regarding projected costs and estimated public funding needs for the next four years.

(2) All such funds shall be appropriated into a trust fund established by the Council by ordinance with interest accruing to the fund. In addition to the authority provided by Charter section 340, the City Council, by a two-thirds vote, may temporarily transfer funds from the trust fund to meet obligations of the City in any fiscal year, provided that: (a) the City Council

has declared a fiscal emergency by resolution that is in effect for that fiscal year; (b) the City Council has considered the City Ethics Commission's analysis regarding projected costs and estimated public funding needs for the next four years; and (c) the funds transferred are limited to funds above a trust fund balance of eight million dollars (\$8,000,000) in 1991 dollars adjusted to the Consumer Price Index. Any transferred funds shall be reimbursed to the trust fund by either (a) the date the City Ethics Commission determines the funds are needed for their intended purposes, or (b) before the end of the next fiscal year, whichever is earlier.

(3) If there are insufficient funds to provide the maximum matching funds available to a candidate in any election, as specified by ordinance, the limitations on total contributions from persons other than individuals imposed by Section 470 shall not apply to any of the candidates for the same office.

(4) The funds used to make payments for matching funds shall come exclusively from City sources of revenues.

Section 8. Should any portion of this measure be held invalid or unconstitutional by the decision of any court, such decision shall not affect the remaining portions of the measure or provision.

We, the undersigned, do hereby certify the foregoing to be the full, true and correct version of the original final text of Charter Amendment H approved by a majority vote of the qualified electors of the City of Los Angeles at the City's Primary Nominating Election on March 8, 2011.



Eric Garcetti, President of the City Council
(Chairperson, Governing Body)



Patrice Lattimore, Council Clerk
(Clerk, Governing Body)

In Witness Whereof, I have hereunto set my hand and affixed the Seal of the City of Los Angeles, this 5th day of April, 2011.



City Clerk of the City of Los Angeles