City of Long Beach
Working Together to Serve

Office of the City Attorney

Memorandum

DATE: February 15, 2022

TO: Honorable Mayor and Members of City Council

FROM: Taylor M. Anderson, Deputy City Attorney

SUBJECT: Campaign Finance Law Overview and Reform Options

At the request of City Council, please find attached a memo from outside counsel with an overview of campaign finance laws for candidates and officeholders running for election in the City of Long Beach and options to amend the Long Beach Campaign Reform Act (LB Reform Act).

Some highlights of the memo include:

- State law allows cities like Long Beach to impose campaign finance requirements on candidates and officeholders, subject to applicable Constitutional limits. However, because the LB Reform Act was adopted by a citizen's initiative approved by the voters, the City Council may not amend it without another vote of the people unless the amendment is consistent with and in furtherance of the purposes of the Ordinance itself, and subject to applicable Constitutional and Campaign Reform Act of 1974 limits.

- Since increasing the contribution limits or voluntary expenditure ceilings could be contrary to the purposes of the LB Reform Act, the Council is likely prohibited by the Elections Code from making these changes without voter approval. Other amendments may be possible without voter approval if the amendments comply with Constitutional limits and are in furtherance of the LB Reform Act's stated purposes.

If you have further questions regarding these issues, please let us know.

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cc: Charles Parkin, City Attorney
Dawn McIntosh, Assistant City Attorney
Gary Anderson, Assistant City Attorney
Thomas B. Modica, City Manager
Laura Doud, City Auditor
Doug Haubert, City Prosecutor

BEST BEST & KRIEGER LLP
ATTORNEYS AT LAW

Memorandum

ATTORNEY - CLIENT PRIVILEGED DOCUMENT

To: J. Charles Parkin, City Attorney
From: Ruben Duran, Special Counsel
Date: December 9, 2021
Re: *Campaign Finance Law Overview and Reform Options*

I.
BACKGROUND

The City Council asked the City Attorney's office for an overview of the campaign finance laws that govern candidates and officeholders running for election in the City of Long Beach ("City"), and for options to amend the Long Beach Campaign Reform Act.

II.
ANALYSIS

A. Authority to Adopt Local Campaign Contribution Limits

The California Political Reform Act, Government Code section 81000 *et seq*. ("Act") and the regulations enacted by the Fair Political Practices Commission ("FPPC") set forth a comprehensive legal framework governing campaign finance in state and local elections in California. However, the Act expressly permits local agencies to enact local campaign finance regulations that do not conflict with the provisions of the Act. Government Code section 81013 provides that a "local agency [may impose] additional requirements on any person if the requirements do not prevent the person from complying with [the Act]."

Under this authority, the City may enact its own campaign finance regulations, which may, for example, limit campaign contributions to Council candidates and their controlled committees to a specified dollar amount.

B. First Amendment Considerations

In addition to the statutory limitations under the Government Code, local campaign finance ordinances are subject to certain limitations under the First Amendment to the U.S. Constitution, because contribution[1] and expenditure[2] limitations infringe on the ability to engage in free communication and association.

[1] "Contribution" is broadly defined to include, among other things, a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment." (Gov. Code, § 82015.) It also includes the purchase of tickets for events such as dinners, luncheons, rallies, and similar fundraising events.

Limitations on contributions will only be upheld if the agency both: (1) demonstrates a sufficiently important interest, and (2) employs means "closely drawn" to avoid unnecessary abridgement of associational freedoms.[3] To date, the courts have recognized only corruption, the appearance of corruption, and circumvention of otherwise valid campaign finance regulations as sufficiently important governmental interests to support a restriction on campaign contributions. (*Id.* at p.26.) The government's interest in preventing corruption is strongest with respect to contributions given directly to candidates and to candidate-controlled committees.

In comparison, expenditure limits are subject to stricter constitutional scrutiny than contribution restrictions.[4] An expenditure limit will only be upheld "if such regulation promotes a compelling interest and is the least restrictive means to further the articulated interest." The U.S. Supreme Court has consistently held that mandatory expenditure limits are an unconstitutional restraint on First Amendment rights; as such, the expenditure limits must be voluntary. Further, mandatory contribution restrictions are more directly linked to political corruption, such as *quid pro quo* agreements.

C. The Long Beach Campaign Reform Act

1. *Overview of the Long Beach Campaign Reform Act*

The Long Beach Campaign Reform Act, known as Proposition M, (the "Ordinance") is a citizen's initiative adopted by the voters of Long Beach in 1994. Among other things, it was intended to:

- Ensure that individuals and interest groups in Long Beach have a fair and equal opportunity to participate in Municipal elective and governmental processes.

- Reduce the influence of large contributors with a specific financial stake in matters before the City Council, thus countering the perception that decisions are influenced more by the size of contributions than the best interests of the people of the City.

The Ordinance is codified in the Long Beach Municipal Code ("L.B.M.C.") as Chapter 2.01 and provides for (1) contribution limits adjusted for inflation on January 1 of each odd-numbered year, (2) voluntary expenditure ceilings to receive City matching funds for a campaign and (3) certain campaign account controls (e.g., how surplus funds may be disposed.)

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[2] "Expenditure" is defined to mean a payment, a forgiveness of a loan, a payment of a loan by a third party… [f]or purposes of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure." (Gov. Code, § 82025.)

[3] *Nixon v. Shrink Missouri Gov't PAC* (2000) 528 U.S. 377, 378 & 387.

[4] *Fed. Election Comm'n v. Colorado Republican Fed. Campaign Comm*. (2001) 533 U.S. 431, 440.

a. *Long Beach Campaign Reform Act Contribution Limits*

The City's contribution limits set a maximum permissible donation to a candidate during an "election cycle" from any "person." The Ordinance broadly defines "person" to include individuals, PACs, unions and the candidate's political party. (L.B.M.C. § 2.01.210(D).) "Election cycle" is defined elsewhere in the Municipal Code to mean "that period commencing with January 1 of an odd-numbered year and ending December 31 of the following year." (L.B.M.C. § 1.15.030.) For a special election, the election cycle "commences with the declaration of a vacancy in an elective office and ends six (6) months after the special election date." (L.B.M.C. § 1.15.030.)

For the upcoming 2022 regular election cycle, the Ordinance sets the following contribution limits:

- For City Council candidates: A maximum of $400[5] for the municipal primary election, and a maximum of $400 for the municipal general election. (L.B.M.C., § 2.01.310(A).)
- For candidates for City Attorney, City Auditor or City Prosecutor: A maximum of $600[6] for the municipal primary election and a maximum of $600 for the municipal general election. (L.B.M.C., § 2.01.310(A).)
- For Mayoral candidates: A maximum of $900[7] for the municipal primary election and a maximum of $900 for the municipal general election. (L.B.M.C., § 2.01.310(A).)

There is a parallel provision in L.B.M.C. section 2.01.310(B) that applies these limitations to contributions to any committee "which supports or opposes any candidate." Additionally, a separate provision applies to special elections and provides as follows:

> [N]o 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)[8]; and no political committee (as defined in California Government Code Section 82013) shall make

[5] While the L.B.M.C. provides for a limit of $250, effective January 1, 2021, this amount has been increased to $400. (Adjusted Contribution Limits Memo, dated January 20, 2021.)
[6] While the L.B.M.C. provides for a limit of $350, effective January 1, 2021, this amount has been increased to $600. (Adjusted Contribution Limits Memo, dated January 20, 2021.)
[7] While the L.B.M.C. provides for a limit of $500, effective January 1, 2021, this amount has been increased to $900. (Adjusted Contribution Limits Memo, dated January 20, 2021.)
[8] Pursuant to L.M.B.C. § 2.01.80, this amount would be increased to $1,800 for the 2022 election cycle.

> 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)[9].

(L.B.M.C., § 2.01.310(C).)

In addition to setting monetary limits on contributions, the Ordinance also limits *when* candidates may receive contributions. The Ordinance provides that no candidate or officeholder or a controlled committee thereof, may "accept any contribution *except during an election cycle* in which the candidate or officeholder intends to run or be a written-in candidate for office for which the contribution is made." (L.B.M.C., § 2.01.320) [emphasis added]. Recall that a candidate's election cycle is defined to mean "that period commencing with January 1 of an odd-numbered year and ending December 31 of the following year," and a candidate may not accept contributions outside of that time.

Therefore, for example, a candidate running for City Council in 2022 may receive contributions from January 1, 2021 through December 31, 2022, after which the candidate may no longer receive contributions toward the 2022 campaign. If the candidate wished to run again for the same City Council seat in 2026, he or she would have to wait for two years (until January 1, 2025 when the new "election cycle" for that seat commences) before receiving contributions from donors to support his or her 2026 campaign. (L.B.M.C., § 1.15.030.)

Even though the municipal election dates in the City are now later in the calendar year as a result of aligning the City's municipal elections with statewide elections pursuant to SB 415, the "election cycle" remains the same two-year period under the Ordinance.

b. *Long Beach Campaign Reform Act Voluntary Expenditure Ceiling*

The Ordinance also includes a voluntary expenditure ceiling. A candidate may receive matching funds from the City for contributions raised if the candidate agrees to the applicable voluntary expenditure ceiling. (L.B.M.C., § 2.01.410.) To be eligible for matching funds, the candidate, at the time of filing his or her nomination papers, must file a "statement of acceptance of expenditure ceilings." (L.B.M.C., §§ 2.01.410; 2.01.510.)

The voluntary expenditure ceiling for City Council candidates running in a primary election is $40,000 and $20,000 in the runoff election. And the voluntary expenditure ceiling for candidates for Mayor is $200,000 in a primary election and $100,000 in a runoff election. These figures may be increased by the following formula: for each district where the number of registered voters exceeds the mean number of voters in all districts, the City Clerk must increase

[9] Pursuant to L.M.B.C. § 2.01.80, this amount would be increased to $4,500 for the 2022 election cycle.

the $40,000 voluntary expenditure ceiling by two dollars ($2.00) for each registered voter in excess of the mean. (L.B.M.C., § 2.01.410 A.4.)

Agreeing to a voluntary expenditure ceiling only makes a candidate for elected office *eligible* for matching funds. He or she must satisfy two additional requirements. First, they must raise at least $5,000 in total contributions consisting of individual donations of $250.00 or less. However, only the first $100 of each of these individual contributions count for purposes of achieving the qualifying total of $5,000. (L.B.M.C., § 2.01.410 A.2.) For example, a donation of $250 would only be credited as $100, but a donation of $50, would be fully credited as $50 for purposes of qualifying for matching funds. The second requirement to qualify for matching funds is that the candidate must be opposed by another candidate who has also qualified for matching funds or who has raised $10,000. (*Id.*)

D. Options to Amend or Modify the Long Beach Campaign Reform Act

As noted above, any amendments to the Ordinance would have to satisfy Constitutional limits and not prevent a candidate from complying with the Political Reform Act. Additionally, the City Council's authority to amend the Ordinance is limited because it was passed by voter initiative.

Article II, section 11(a) of the California Constitution provides in relevant part: "Initiative and referendum powers may be exercised by the electors of each city and county under procedures that the Legislature shall provide." And Elections Code section 9217 provides, in pertinent part:

> *No ordinance that is either proposed by initiative petition and* adopted by the vote of the legislative body of the city without submission to the voters, or *adopted by the voters, shall be* repealed or *amended except by a vote of the people, unless provision is otherwise made in the original ordinance.*

Therefore, the Council cannot amend the Ordinance without voter approval unless the Ordinance so allows by its own terms.

The Ordinance contains a provision authorizing the City Council to amend it, "from time to time by ordinance by a two-thirds (2/3) vote of the members of the City Council upon a finding by the Council that such amendment is consistent with and in furtherance of the purposes of [the Long Beach Campaign Reform Act]." (L.B.M.C., § 2.01.1240(A).) However, this consistency/furtherance requirement will necessarily limit the scope of any amendments the Council may wish to consider. Any amendment adopted by the City Council must be consistent with and in furtherance of the stated purposes of the Ordinance, such as "to reduce the influence of large contributors" or "to assist candidates…without excessive expenditures or contributions." It is therefore unlikely that any amendment to increase contribution limit amounts or voluntary expenditure ceilings would be found consistent with or in furtherance of

these purposes. Accordingly, any amendment to the Long Beach Campaign Reform Act to increase contribution limits or voluntary expenditure ceilings would likely require majority voter approval.

III.
CONCLUSION

State law allows cities like Long Beach to impose campaign finance requirements on candidates and officeholders, subject to applicable Constitutional limits as outlined above. However, because the Long Beach Campaign Reform Act was adopted by a citizen's initiative approved by the voters, the City Council may not amend it without another plebiscite unless the amendment is consistent with and in furtherance of the purposes of the Ordinance itself, and subject to applicable Constitutional and Campaign Reform Act limits as outlined above. Because they could be contrary to the purposes of the Reform Act, the Council is likely prohibited by the Elections Code from increasing the contribution limits or voluntary expenditure ceilings without voter approval. Other amendments may be possible without voter approval if they comply with Constitutional limits and are in furtherance of the Reform Act's stated purposes.

Please feel free to contact our office with any questions or concerns.

RUBEN DURAN