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REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
January 16, 2007

Honorable Members of the
Law and Legislation Committee

Title: Campaign Finance

Location/Council District: Citywide

Recommendation: Staff recommends the Law and Legislation Committee approve and forward the proposed ordinance to the Mayor and City Council.

Contact: Mark Prestwich, Special Projects Manager, 808-5380

Presenters: Patti Bisharat, Director of Governmental Affairs
Mark Prestwich, Special Projects Manager

Department: City Manager's Office

Division: Governmental Affairs

Organization No: 0320

Description/Analysis

Issue: In response to the Law and Legislation Committee's direction on December 5, 2006, staff has prepared a proposed ordinance that requires candidates accepting public funds to abide by the City's Fair Campaign Practices Code, restricts the transfer of funds between accounts, and restricts the use of matching public funds for qualified campaign expenditures.

Policy Considerations: None

Environmental Considerations: None

Commission/Committee Action: On December 5, 2006, the Law and Legislation Committee provided direction to staff regarding proposed

amendments to the Public Campaign Finance and Contribution Limits ordinances.

Rationale for Recommendation: Based on audit findings and Council concerns, revisions to further clarify and fine-tune the ordinances are appropriate. The proposed ordinance reflects the direction provided to staff by the Law and Legislation Committee on December 5, 2006.

Financial Considerations: None

Emerging Small Business Development (ESBD): None

Respectfully Submitted by: _____
Mark Prestwich
Special Projects Manager

Approved by: _____
Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

for Patti Bisharat
Gustavo F. Vina
Assistant City Manager

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Attachment 1

Background:

On September 9, 2003, the City Council adopted Ordinance 2003-046 providing for campaign spending limits and public campaign financing (Chapter 2.14 of the City Code). The first implementation of public campaign financing occurred during the March 2004 primary election. The public campaign financing ordinance complements the City's local campaign contribution limits ordinance which was re-established on November 21, 2000 by the adoption of Ordinance 2000-048 (Chapter 2.13 of the City Code).

At the request of the Mayor and City Council and at the direction of the City Manager, the City Auditor completed a limited scope audit of the City's public campaign financing and contribution limits ordinance following the March 2004 primary election. The Auditor's Report was presented to and filed with the City Council on September 13, 2005.

The City Auditor's Report determined that one candidate applied for and received public funds totaling $16,964 and that the candidate's usage of the matching funds complied with municipal criteria and requirements. However, the City Auditor did recommend the City Clerk establish written procedures for the distribution of matching funds before the next election. In addition to these findings, the Report determined that there was no prohibition on negative campaigning with matching funds and no requirement to sign an ethical statement as a condition of receiving matching funds.

The Auditor's report also noted several areas of concern including:

- Candidates can spend public funds on a wide range of campaign expenses to promote candidacy, including travel expenses outside of the City for transportation, lodging, and meals, except where specifically prohibited by The Political Reform Act;

- Candidates are not prohibited from using public funds for valid expenses that also confer a substantial personal benefit on the candidate, such as purchasing goods and services from a business in which the candidate has an ownership interest; and

- Candidates that use matching funds are not required to specifically identify expenses that are paid for with public funds.

The City Council also enacted administrative modifications to both Chapter 2.13 and 2.14 of the City Code at the September 13, 2005 meeting.

On December 5, 2006, staff presented the Law and Legislation Committee with several possible amendments to the campaign finance related ordinances and received direction to return with a draft ordinance.

The proposed ordinance reflects the Law and Legislation Committee's direction regarding measures to clarify and fine-tune the City's campaign finance ordinances. In addition to the narrative below, Attachment 1 to this report provides a summary of the proposed ordinance.

Chapter 2.13 Amendments (Contribution Limits)
The proposed amendments to the contribution limits code add a tracing/allocation requirement for candidates seeking to transfer funds from one campaign account that they control to another campaign account that they control (e.g., Councilmember X seeks to transfer funds from an account established for a 2004 election to an account set up for re-election in 2008).

The tracing/allocation rule requires a candidate to use FIFO (first in, first out) or LIFO (last in, last out) to account for funds. The amendment incorporates definitions of FIFO and LIFO. It should be noted that State law restricts the use of "surplus" funds from a state official's campaign account(s). Funds become surplus either when the official is defeated, the term is over, or the reporting period is over. Generally, the reporting period is either June 30th or December 31st.

Chapter 2.14 Amendments (Public Campaign Financing)
The amendments to this chapter include the following:

- A definition of "qualified campaign expenditures;"
- Restricts use of matching public funds to "qualified campaign expenditures;"
- Requires those who accept public funds to agree to abide by the code of fair campaign practices (chapter 1.20);
- Requires verifiable receipts and documentation of expenditures for "qualified campaign expenditures."

The Law and Legislation Committee also discussed the issue of whether it would be permissible to limit matching funds to contributions made by "local" contributions. The City Attorney's Office has advised that limiting matching funds in this manner should be considered permissible. A number of jurisdictions, including the City of Oakland, limit the contributions that may be matched with public funds to contributions made by residents of the jurisdiction.

Attachment 2

The following table summarizes the proposed ordinance:

CHAPTER	PROPOSED AMENDMENTS
2.13 [Contribution Limits]	1. Candidates transferring funds would be required to identify specific contributors on a FIFO (first in, first out) or LIFO (last in, last out) basis.
2.14 [Public Finance]	1. Defines "legitimate campaign expenses" as only for direct voter outreach purposes defined as campaign literature, publicity, postage and signage. 2. Requires verifiable receipts for campaign expenditures. 3. Prohibits public funds from being used for travel outside California, payments in cash, and payments in excess of the fair market value of services, materials, facilities or other things of value received in exchange. 4. Prohibits public funds from being paid to any candidate or family relative, or a business that the candidate or family member has an ownership interest in. 5. Requires those who accept public funds to agree to abide by the City's code of fair campaign practices (Chapter 1.20).

Attachment 3

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING SECTION 1.20.020 OF TITLE 1 OF THE SACRAMENTO CITY CODE AND ADDING SECTION 2.14.105 TO TITLE 2 OF THE CITY CODE TO ESTABLISH A REQUIREMENT THAT THOSE ACCEPTING PUBLIC FUNDS UNDER THE SPENDING LIMITS CODE MUST ABIDE BY THE FAIR CAMPAIGN PRACTICES CODE; AMENDING SECTION 2.13.070 OF TITLE 2 OF THE SACRAMENTO CITY CODE TO RESTRICT THE TRANSFER OF FUNDS FROM ONE CONTROLLED CAMPAIGN ACCOUNT TO ANOTHER CONTROLLED CAMPAIGN ACCOUNT OF THE SAME CANDIDATE; AND AMENDING SECTIONS 2.14.040 AND 2.14.2OO OF TITLE 2 OF THE SACRAMENTO CITY CODE TO RESTRICT THE USE OF MATCHING PUBLIC FUNDS UNDER THE SPENDING LIMITS CODE TO QUALIFIED CAMPAIGN EXPENDITURES

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

Section 1

Section 2.13.070 of Title 2 of the Sacramento City Code is amended to read as follows:

Section 2.13.070 Transfer of funds or contributions by committees to controlled committees of candidates for city elective office

A. Except as provided in subsection B below, any transfer of funds or contributions by a committee to a controlled committee of a candidate for city elective office including an elected councilmember or mayor, shall comply with the contribution limits set forth in Section 2.13.050; and any contribution or transfer of funds by a committee to another committee which makes contributions to a candidate for city elective office, including an elected councilmember or mayor, or which makes expenditures for or against a candidate for city elective office, including an elected councilmember or mayor, shall comply with the contribution limits set forth in Section 2.13.050.

B. Intra-candidate transfer of funds: Except as otherwise prohibited by state law, a candidate for City elective office, including an incumbent running for the same or different City elective office, may transfer funds from any other committee controlled by

the candidate to the candidate's committee for election to City elective office, provided both of the following requirements are met.

(1) The contributions transferred to the candidate's committee for election to a City elective office are attributed to specific contributors to the campaign contribution account from which they were transferred. Contributions shall be allocated and attributed to individual contributors on a "First in, first out" or "Last in, first out" basis. For purposes of this section, the terms "First in, first out" and "Last in, last out" shall have the following meanings:

> "First in, first out" means the campaign funds being transferred are attributed to the transferring committee's contributors in chronological order beginning with the earliest of its contributors or, if there has been a prior transfer, beginning with the earliest contributor for which unattributed contributions remain.
>
> "Last in, first out" mans that campaign funds being transferred are attributed to the transferring committee's contributors in reverse chronological order beginning with the most recent of its contributors or, if there has been a prior transfer, beginning with the most recent contributor for which unattributed contributions remain.

(2) the contributions transferred to the candidate's committee for election to a City elective office, when aggregated with all other contributions from, and transfers attributable to, the same contributor do not exceed the amount that the contributor could have contributed to the candidate, or the controlled committee of the candidate, pursuant to Section 2.13.050.

Section 2

Section 2.14.040 of Title 2 of the Sacramento City Code is amended by adding a definition of "qualified campaign expenditures" to read as follows:

> "Qualified campaign expenditures" means an expenditure for which matching public funds may be used pursuant to section 2.14.200.

Section 3

Section 2.14.200 of Title 2 of the Sacramento City Code is amended to read as follows:

Section 2.14.200 Qualified campaign expenditures

A. Matching public funds provided under this chapter may be used only for expenditures for direct voter outreach purposes, defined to mean campaign literature, publicity, postage and signage; provided that matching public funds may not be spent for the following:

1. payments made to the candidate or a family relative, or a business in which the candidate or family relative has an ownership interest. For purposes of this

provision, the definition of "family relative" set forth in Section 2.16.140 of Title 2 of the City Code shall apply.

2. payments in excess of the fair market value of services, materials, facilities or other things of value received in exchange;

3. payments in cash;

4. payments made for travel outside of California and expenses related to such travel .

C. Candidates who accept matching public funds under this chapter shall obtain and maintain verifiable written receipts, invoices or other written documentation of the purpose and nature of expenditures. Expenditures for which there is no such documentation shall be excluded from consideration in determining whether public funds were spent on permissible purposes.

Section 4

Section 2.14.105 is added to Title 2 of the City Code to read as follows:

Any candidate who files a statement of acceptance pursuant to Section 2.14.100 shall be required to comply with the Code of Fair Campaign Practices set forth in Chapter 1.20 and no matching public funds shall be furnished pursuant to this chapter unless the candidate has filed a statement pursuant to that chapter that the candidate will abide by the Code.

Compliance with the Code of Fair Campaign Practices shall not be subject to the provisions of Article VII of this Chapter (Secs. 2.14.330-2.14.360).

Section 5

Section 1.20.050 of Title 1 of the Sacramento City Code is amended to read as follows:

Except to the extent that Section 2.14.105 requires candidates who file a statement of acceptance of matching public funds under Chapter 2.14 to also agree to abide by the Code of Fair Campaign Practices as a condition for receiving matching public funds under that chapter, no candidate for City elective office shall be required to subscribe or endorse the code.