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REPORT TO LAW & LEGISLATION COMMITTEE
City of Sacramento

915 I Street, Sacramento, CA 95814-2671

STAFF REPORT
February 17, 2009

Honorable Members of the
Law and Legislation Committee

Title: Report Back Related to the City's Campaign Contribution Limitations Code

Location/Council District: Citywide

Recommendation: Provide direction to staff regarding potential modifications to the City's campaign contribution limits and potential repeal of City Code provisions related to contributions to independent expenditure committees.

Contact: Rich Archibald, Assistant City Attorney, 808-5346
Patti Bisharat, Director of Governmental Affairs, 808-8197

Presenter: Patti Bisharat, Director of Governmental Affairs, 808-8197

Department: City Attorney's Office/City Manager's Office

Description/Analysis

Issue:

On January 20, 2009, staff presented a report to the Law and Legislation Committee noting that recent court decisions have called into question the legality of the City's existing campaign contribution limits on independent expenditure committees. At the meeting, the Committee expressed interest in considering potential changes to the independent expenditure committees in conjunction with potential modifications to the City's campaign contribution limits. This report provides information requested by the Committee related to campaign contribution limits and seeks direction on potential changes to Chapter 2.13 (Campaign Contribution Limitations) of the City Code.

Policy Considerations:

Repealing the limits on contributions to independent expenditure committees will reduce the potential of legal challenges against the City. The Committee may also desire to modify existing campaign contribution limits to align them with state or federal limits.

Environmental Considerations: None.

Sustainability Considerations: None.

Committee/Commission Action: None.

Rationale for Recommendation:

No action at this time could result in legal challenges against the City.

Financial Considerations: None.

Emerging Small Business Development (ESBD): None.

Respectfully submitted by: Patti Bisharat

Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

Ray Kerridge
City Manager

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BACKGROUND

On January 20, 2009, staff presented a report to the Law and Legislation Committee recommending the Committee approve suspending or repealing provisions of the City's code related to independent expenditure committee contributions. The recommendation was based on recent court decisions calling into question the legality of the City's limitations on contributions to independent expenditure committees and the City's decision not to enforce these limitations during the November 2008 mayoral election.

At the meeting, the Committee expressed interest in considering potential changes to the independent expenditure committee contribution limits in conjunction with potential modifications to the City's campaign contribution limits. Accordingly, this report provides information requested by the Committee related to campaign contribution limits and seeks direction on potential changes to Chapter 2.13 (Campaign Contribution Limitations) of the City Code.

The provisions of the City Code recommended for repeal currently limit independent expenditure committee contributions to $900 for individuals and $3,500 for committees. Contribution limits of the same amount also currently apply to City Council candidates and City Council candidate controlled Political Action Committees (PACs). Contribution limits to mayoral candidates and mayoral controlled committees are set slightly higher at $1,150 and $5,850 respectively.

In other large California cities, contribution limits for local elective office range from $100 to $3,600 for individuals and $100 to $$7,200 for committees. Like Sacramento, some agencies link their limits to an index that provides for periodic adjustment of their contribution limits.

Contribution limits also exist at the state and federal level. Contribution limits for positions in the California State Legislature (e.g. Assembly and Senate) are currently $3,900 for individuals and $7,800 for committees; and contribution limits for statewide office other than Governor are currently $6,500 for individuals and $12,900 for committees. Contribution limits for candidates for Governor are much higher. The contribution limits for federal elective office are more complicated (see Attachment 3). Generally, individuals may contribute $2,400 per election per candidate, while committees may contribute $2,400 or $5,000 depending on the type of committee.

Attachment 2

California Contribution Limits

What You Need to Know Before You Contribute – Fast Facts

Candidates seeking a state office and committees that make contributions to state candidates are subject to contribution limits from a single source. Contributions from affiliated entities are aggregated for purposes of the limits. (Regulation 18215.1.) The chart below shows the current limits per contributor and type of office sought. The primary, general, special, and special run-off elections are considered separate elections.

Per-election Limits on Contributions to State Candidates

(For elections held on or after January 1, 2009)

Contributor	Legislature	Statewide Except Governor	Governor
Person	$3,900	$6,500	$25,900
Small Contributor Committee	$7,800	$12,900	$25,900
Political Party	NO LIMIT	NO LIMIT	NO LIMIT

Calendar Year Limits on Contributions to Other State Committees

(2009 and 2010)

Contributor	Committee (Not Political Party) that Contributes to State Candidates	Political Party for State Candidates	Small Contributor Committee	Committee/Political Party Not for State Candidates
Person	$6,500	$32,400	$200	NO LIMIT*

*State committees (including political parties) may receive contributions in excess of the limits identified above as long as the contributions are NOT used for state candidate contributions. (Regulation 18534.)

Calendar Year Limits on Contributions to State Officeholder Committees

Elected state officeholders may set up officeholder accounts subject to contribution limits specified below.

Contributor	Legislature	Statewide Except Governor	Governor
Any Source Person, Small Contributor Committee or Political Party	$3,200	$5,400	$21,500
	Legislature	Statewide Except Governor	Governor
Aggregate From all Sources	$53,800	$107,500	$215,000

- **Legal Defense Funds**

Contributions raised for a legal defense fund are not subject to contribution limits or the voluntary expenditure ceiling. However, a candidate or officeholder may raise, in total, no more than is reasonably necessary to cover attorney's fees and other legal costs related to the proceeding for which the fund is created. (Section 85304; Regulation 18530.4.)

- **Recall Elections**

A state officeholder who is the subject of a recall may set up a separate committee to oppose the qualification of the recall measure and, if the recall petition qualifies, the recall election. Neither contribution limits nor voluntary expenditure ceilings apply to the committee to oppose the recall that is

controlled by the officeholder who is the target of the recall attempt. Candidates running to replace an officeholder who is the target of a recall are subject to the contribution limits and the expenditure limits applicable to the election for that office. (Section 85315; Regulation 18531.5.)

- **Ballot Measure Committees**

Contributions to ballot measure committees controlled by a candidate for elective state office are not limited. For additional information, see Contributions from State Candidates and Officeholders.

- **Contributions from State Candidates and Officeholders**

A state candidate or state officeholder may not contribute more than $3,900 to a committee controlled by another state candidate or state officeholder (including a state or local election committee, legal defense fund, officeholder account, recall committee, or ballot measure committee). This limit applies on a per election basis and includes, in the aggregate, contributions made from the candidate's or officeholder's personal funds and from campaign funds. (Section 85305; Regulation 18535.)

- **Communications Identifying State Candidates**

Any committee that makes a payment or a promise of payment totaling $50,000 or more for a communication that:

1. Clearly identifies a state candidate; but
2. Does not expressly advocate the election or defeat of the candidate; and
3. Is disseminated, broadcast, or otherwise published within 45 days of an election, may not receive a contribution from any single source of more than $32,400 in a calendar year if the communication is made at the behest of the candidate featured in the communication. (Section 85310.)

- **Contributions from State Lobbyists**

A state lobbyist may not contribute to a state officeholder's or candidate's committee if the lobbyist is registered to lobby the agency of the elected officer or the agency to which the candidate is seeking election. The lobbyist also may not contribute to a local committee controlled by any such state candidate. (Section 85702; Regulation 18572.)

- **Contribution Limits for Local Candidates and Committees**

Check with the pertinent local jurisdiction for information regarding limits imposed by a local campaign ordinance.

Expenditure Ceilings

Using the formula specified in Regulation 18544, the Commission has established the following voluntary expenditure ceilings for elections held on or after January 1, 2009:

Voluntary Expenditure Ceilings for Candidates for Elective State Offices

(For elections held on or after January 1, 2009)

Office	Primary/Special Election	General/Special Runoff Election
Assembly	$518,000	$906,000
Senate	$777,000	$1,165,000
Governor	$7,768,000	$12,946,000
Lt. Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Supt. of Public Instruction, Treasurer	$5,178,000	$7,768,000
Board of Equalization	$1,295,000	$1,942,000

Attachment 3

Federal
Contribution Limits for 2009-10

Donors	Recipients				Special Limits
	Candidate Committee	PAC[1]	State, District and Local Party Committee[2]	National Party Committee[3]	
Individual	$2,400* per election[4]	$5,000 per year	$10,000 per year combined limit	$30,400* per year	Biennial limit of $115,500* ($45,600 to all candidates and $69,900[5] to all PACs and parties)
State, District and Local Party Committee	$5,000 per election combined limit	$5,000 per year combined limit	Unlimited transfers to other party committees		
National Party Committee	$5,000 per election	$5,000 per year	Unlimited transfers to other party committees		$42,600* to Senate candidate per campaign[6]
PAC Multicandidate[7]	$5,000 per election	$5,000 per year	$5,000 per year combined limit	$15,000 per year	
PAC Not Multicandidate	$2,400* per election[8]	$5,000 per year	$10,000 per year combined limit	$30,400* per year	

* These limits are indexed for inflation in odd-numbered years.

[1] These limits apply both to separate segregated funds (SSFs) and political action committees (PACs). Affiliated committees share the same set of limits on contributions made and received.

[2] A state party committee shares its limits with local and district party committees in that state unless a local or district committee's independence can be demonstrated. These limits apply to multicandidate committees only.

[3] A party's national committee, Senate campaign committee and House campaign committee are each considered national party committees, and each have separate limits, except with respect to Senate candidates — see Special Limits column.

[4] Each of the following is considered a separate election with a separate limit: primary election, caucus or convention with the authority to nominate, general election, runoff election and special election.

[5] No more than $45,600 of this amount may be contributed to state and local parties and PACs.

[6] This limit is shared by the national committee and the Senate campaign committee.

[7] A multicandidate committee is a political committee that has been registered for at least six months, has received contributions from more than 50 contributors and — with the exception of a state party committee — has made contributions to at least five federal candidates.

[8] A federal candidate's authorized committee(s) may contribute no more than $2,000 per election to another federal candidate's authorized committee(s). 2 U.S.C. §432(e)(3)(B) and 11CFR 102.12(c)(2).

Sacramento City Code

2.13.050 Contribution limitations.

A. Council Members. Contributions to candidates for the office of city council member shall be subject to the following limitations in addition to the limitations established by Article 3 of Chapter 5 of the Political Reform Act (Government Code Sections 85301—85307):

1. Contributions by Persons. No person shall make, and no candidate for the office of city council member, or a controlled committee of such candidate, or person acting by or on behalf of such candidate or such candidate's controlled committee shall accept any contribution which would cause the total amount contributed by that person to the candidate, or to the candidate's controlled committee, to exceed nine hundred dollars ($900.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

2. Contributions by Large Political Committees. No large political committee shall make, and no candidate for the office of city council member, or a controlled committee of such controlled committee, or person acting by or on behalf of such candidate or such candidate's controlled committee shall accept, any contribution which would cause the total amount contributed by that large political committee to the candidate, or to the candidate's controlled committee, to exceed three thousand five hundred dollars ($3,500.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

B. Mayor. Contributions to candidates for the office of mayor shall be subject to the following limitations in addition to the limitations established by Article 3 of

Chapter 5 of the Political Reform Act (Government Code Sections 85300—85307):

1. Contributions by Persons. No person shall make, and no candidate for the office of mayor, or a controlled committee of such candidate, or person acting by or on behalf of such candidate or such candidate's controlled committee, shall accept into the candidate's campaign contribution account, any contribution which would cause the total amount contributed by that person to the candidate, or to the candidate's controlled committee to exceed one thousand one hundred fifty dollars ($1,150.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

2. Contributions by Large Political Committees. No large political committee shall make, and no candidate for the office of mayor, or a controlled committee of the candidate or such candidate's controlled committee, or person acting by or on behalf of such candidate or such candidate's controlled committee shall accept, any contribution

which would cause the total amount contributed by that large political committee to the candidate, or to the candidate's controlled committee, to exceed five thousand eight hundred fifty dollars ($5,850.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

C. Contributions by a Candidate to the Candidate's Campaign. Nothing in subsections A and B of this section is intended to limit the amount that a candidate may contribute to his or her own campaign from his or her personal funds.

D. Contributions to Committees. No person shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any person a contribution or contributions totaling more than nine hundred dollars ($900.00) in a calendar year; and no large political committee shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any large political committee a contribution or contributions totaling more than three thousand five hundred dollars ($3,500.00) in a calendar year. The provisions of this subsection shall not apply to contributions to candidates and candidate-controlled committees, which shall be subject to the limits set forth in subsections A and B of this section.

Exception. A committee may solicit and accept contributions in excess of the limits established by subsection 1 above if the committee makes expenditures for any lawful purpose other than supporting or opposing candidates for city elective office, provided that:

1. Funds received from contributions in excess of the limits set forth in subsection 1 above are used only for lawful purposes other than supporting or opposing candidates for city elective office or making contributions to candidates for city elective office; and

2. The committee shall establish a separate bank account to be used for making expenditures to support or oppose candidates for city elective office or for making contributions to candidates for city elective office. All expenditures to support or oppose candidates for city elective office and all contributions made by the committee to candidates for city elective office must be made with funds from this account. A committee may not deposit into this account any contributions that were solicited or accepted in excess of the limitations established by subsection 1 above.

E. Making and Acceptance of Contributions, Timing of Contributions and Contributions to Officeholders in Off-Election Years.

1. Making and Acceptance of Contributions. For purposes of this chapter, a contribution shall have been considered to have been "made" and "accepted" as follows:

a. Monetary Contributions.

i. Making of Monetary Contributions. For purposes of the contribution limitations of this chapter, a monetary contribution is made on the date the contribution is mailed, delivered, or otherwise transmitted to the candidate or a controlled committee. The date of the check or other negotiable instrument by which the contribution is made may be presumed by the candidate or controlled committee to be the date on which the contribution was mailed, delivered or otherwise transmitted, unless it is known to the candidate to be later than the date the contribution is mailed, delivered or otherwise transmitted, in which case the earlier date shall be considered the date on which the contribution is made.

ii. Acceptance of Monetary Contributions. For purposes of the contribution limits of this chapter, a monetary contribution shall be deemed "accepted" on the date that it is made; provided that a monetary contribution shall not be considered accepted for purposes of this chapter if it is not cashed, negotiated or deposited, and, in addition, is returned to the donor within fourteen (14) days of receipt.

b. Nonmonetary Contributions.

i. Making of Nonmonetary Contributions. A nonmonetary contribution is made by the contributor on the earlier of the following dates: (A) the date that funds are expended by the contributor for goods or services if the specific expenditure is made at the request of the candidate or controlled committee; (B) the date that the candidate or controlled committee or agent of the candidate or controlled committee obtains possession or control of the goods or services; or (C) the date that the candidate or controlled committee otherwise receives the benefit of the expenditure.

ii. Acceptance of Nonmonetary Contributions. A nonmonetary contribution is deemed accepted on the date that it is made by the contributor; provided that a nonmonetary contribution shall be deemed not to have been accepted for purposes of this chapter if it is returned within fourteen (14) days of having been made by returning to the contributor any of the following: (A) the nonmonetary contribution; (B) its monetary equivalent; or (C) the monetary amount by which the value of the nonmonetary contribution exceeds the contribution limits of this chapter.

2. Timing of Contributions. For purposes of this chapter, a contribution shall be deemed to be a contribution during a general election period only if it is made by the contributor on or after the first day of the month immediately following the month in which the primary election is held.

3. Contributions Made in Off-Election Years.

a. Contributions made to candidates for city elective office during an off-election year shall be attributed to, and shall be considered to have been made during, the primary election period, general election period or special election period for purposes of the contribution limits established by subsections A and B of this section.

i. Contributions to Officeholders in Off-election Years. Contributions to an incumbent mayor or an incumbent member of the city council made in an off-election year shall be considered contributions for the election in which the incumbent acquired his or her office, unless the contributions are accepted and deposited into a new campaign contribution account for a future election to the same or different office.

ii. Contributions to Nonincumbent Candidates in Off-election Years. Contributions made during an off-election year to a nonincumbent candidate for a future city elective office for which a primary or special election will be held shall be considered contributions made during the primary or special election period unless the contributions are accepted and deposited into a campaign contribution account established for a prior election or an election for a different office. (Ord. 2007-098 § 2; Ord. 2007-015 §§ 1—3; Ord. 2005-072 § 2: Ord. 2003-010 § 1; Ord. 2000-048 § 1 (part))