



City of Long Beach

Working Together to Serve

Memorandum

Office of the City Attorney

DATE: April 18, 2017

To: Honorable Mayor and City Councilmembers

FROM: Amy R. Webber, Deputy City Attorney, Ext. 82227 *ARW*

SUBJECT: Amendment of LBMC Sections 2.01.380 and 390, Pertaining to Officeholder Accounts

On March 14, 2017, the Elections Oversight Committee of the Long Beach City Council forwarded a request to the City Council to study aligning elected official officeholder accounts to those of state and Fair Political Practices Commission ("FPPC") regulations. On April 4, 2017, the City Council directed this office to amend the Long Beach Municipal Code by modifying Section 2.01.380; and by repealing Section 2.01.390, both relating to officeholder accounts, to be consistent with the provisions of Sections 89510 through 89522 of the California Government Code. Pursuant to Council direction, on April 11, 2017, this office presented the requested amendment.

As proposed in the motion, Municipal Code Section 2.01.390 "Transfer of Funds" is being repealed. This section stated that officeholder funds may not be used as a transfer, loan or contribution to any other candidate for local, state or federal office. This section was originally adopted in 1999 and amended in 2014 to eliminate the prohibition on the use or contribution of campaign funds for this purpose. In 2014 the Council also amended Section 2.01.395 "Intra-Candidate Transfers" to eliminate the conflict with state law. This section placed a strict prohibition on Intra-candidate transfers. The section was amended to allow for these types of transfers consistent with state law.

Because contribution limitations are a limitation on political speech, they have been held to be protected by the First Amendment (see *Citizens United v. Federal Elections Commission* (2010) 558 US 310).

SEIU v. Fair Political Practices Commission (9th Cir., 1992) 955 F.2d 1312 invalidated state law limiting contributions and candidate transfers. These contributions are considered speech and restrictions are therefore subject to strict judicial scrutiny, and must be narrowly drawn to avoid abridgement of First Amendment rights. State law and the courts have provided candidates and elected officials with the ability to contribute funds from their campaign or officeholder accounts to other candidates. The proposed amendment eliminates the potential conflict between our Municipal Code and state law.

Officeholder accounts have been and continue to be subject to the requirements of California Government Code sections 89510-89522, which require a political, legislative or governmental purpose for the expenditure. (See Gov. Code section 89512) The proposed amendment to LBMC section 2.01.380 specifically retains the limitations contained in those sections. The amendment to this section removes the prohibitions relating to contributions and loans to candidates, political parties or committees for the same reasons as stated above.

ARW:bg

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cc: Patrick H. West, City Manager
Tom Modica, Assistant City Manager
Charles Parkin, City Attorney