

**WEST HOLLYWOOD
ETHICS REFORM TASK FORCE
SPECIAL MEETING AGENDA
TUESDAY, JULY 14, 2015
6:30 P.M.**

**PLUMMER PARK COMMUNITY CENTER, ROOMS 5 & 6
7377 SANTA MONICA BOULEVARD, WEST HOLLYWOOD, CALIFORNIA 90046**

1. **CALL TO ORDER** (Robert Stern)
 - A. Pledge of Allegiance
 - B. Reminder to Speak Clearly into Microphone and to Silence All Mobile Devices
 - C. Roll Call

2. **REGULATION OF CAMPAIGN FINANCE, LOBBYISTS & GOVERNMENT ETHICS**

PUBLIC COMMENT: This time is set aside for members of the public to address the Task Force on matters related to ethics reform and the City's regulations. The City Council created the Task Force to develop recommendations relating to regulation of campaign finance, government ethics, and lobbyists. The Task Force is looking to hear from community members and all other interested persons on these topics. **PLEASE NOTE THAT YOU MAY ALSO EMAIL YOUR COMMENTS TO THE TASK FORCE AT ethics@weho.org.** Emails sent to the Task Force are public records.

TASK FORCE comments, questions, deliberations

3. **COMMENTS FROM STAFF**

This time is set aside for staff to provide any announcements or updates relevant to the Task Force's business and to confirm the next meeting agenda.

4. **ADJOURNMENT** – The Ethics Reform Task Force will adjourn to its next meeting which is scheduled for Tuesday, August 11, 2015 at 6:30 at City Hall.

ETHICS REFORM TASK FORCE MEMBERS: Joseph Guardarrama, Elizabeth Ralston, Robert Stern
STAFF: Melissa Crowder, Assistant City Clerk; Christi Hogin, Assistant City Attorney

If you require special assistance to participate in this meeting (e.g., a signer for the hearing impaired), you must call, or submit your request in writing to the Office of the City Clerk at (323) 848-6356 at least 48 hours prior to the meeting. The City TDD line for the hearing impaired is (323) 848-6496.

Special meeting-related accommodations (e.g., transportation) may be provided upon written request to the Office of the City Clerk at least 48 hours prior to the meeting. For information on public transportation, call 1-323-GO-METRO (323/466-3876) or go to www.mta.net.

This agenda was posted at City Hall, the West Hollywood Library on San Vicente Boulevard, and the West Hollywood Sheriff's Station.

If you would like additional information on any item appearing on this agenda, please contact Melissa Crowder at (323) 848-6356 or via email at mcrowder@weho.org.

SUBJECT: **CITY'S SCOPE OF AUTHORITY TO REGULATE GOVERNMENT ETHICS**

This staff report outlines state and federal law affecting the City's authority to regulate government ethics

INITIATED BY: CITY ATTORNEY'S OFFICE
(Christi Hogin, Assistant City Attorney)

PREPARED BY: CITY ATTORNEY'S OFFICE
(Shahiedah Coates, Assistant City Attorney)

STATEMENT OF THE SUBJECT:

The Task Force was created by City Council to evaluate the City's laws and regulations pertaining to government ethics and, if warranted, recommend revisions. West Hollywood strives toward the highest standards of open and transparent government; its ability to regulate in these areas is constrained by certain state and federal laws. This report outlines some state and federal law affecting the City's authority to regulate government ethics.

RECOMMENDATION:

Receive and file.

BACKGROUND ANALYSIS: The City Council created the Task Force to evaluate the current City laws and regulations pertaining to government ethics and identified four key areas to be addressed by the Task Force: (1) Government Ethics; (2) Campaign Finance; (3) Lobbyists; and (4) Enforcement. The scope of the City's authority to enact and enforce rules in each area is impacted by the federal and state laws outlined below.

1. Campaign Finance (including electronic filings, matching funds, independent expenditure disclosure, requirements for signatures, and regulation of contributions from lobbyists and city contractors). Campaign Finance regulations generally fall into two areas: 1) limits on contributions and expenditures and 2) disclosure and reporting requirements. The City has significant authority to require disclosure and reporting of contributions and expenditures, limited authority to restrict contributions to candidates and candidate-controlled committees, and no authority to restrict contributions to independent expenditure committees. The City also may not spend public funds on election campaigns and therefore may not have publicly-funded campaigns or matching funds.

Contribution limits to candidate-controlled committees

- A. State law authorizes the City to impose limits on campaign contributions. Elections Code § 10202 provides that a “city may, by ordinance, limit campaign contributions in municipal elections.” Gov. Code § 81013 authorizes cities to impose “additional requirements” on any person that do not prevent compliance with the Political Reform Act. The city’s interest in avoiding corruption outweighs an individual’s First Amendment right to make unlimited contributions to a candidate. The contribution limit must be sufficiently high enough that it serves this important interest. The current contribution limit is \$500.

Use of Public Funds in Campaigns

- B. State law prohibits the use of public funds and other public resources (i.e., City computers, work time, etc.) in campaigns for office or to support or defeat a ballot measure. This prohibition precludes a general law city from enacting publicly-financed election campaigns.

Independent Expenditure Committees

- C. At one time, the City imposed limits on the amount that could be contributed to independent expenditure committees; however, it repealed that portion of its campaign finance laws with Ordinance 11-866, based on court decisions regarding the unconstitutionality of such regulations.
- D. The United States Supreme Court held that government limits on campaign expenditures of for-profit and non-profit organizations violates the First Amendment right of free speech.¹
- E. Independent expenditure committees are created when: 1) any person (including a corporation); 2) makes expenditures totaling \$1,000 or more in a calendar year; 3) in connection with a communication; 4) which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or; 5) taken as a whole and in context, unambiguously urges a particular result in an election but is not made to or at the behest of the affected candidate or committee.² The City may not prohibit their operation within the City’s boundaries.

¹ *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310; *McCutcheon v. Federal Election Commission* (2014) 572 U.S. ___.

² Gov. Code §§ 82013, 82031, and 82047.

- F. The City may require independent expenditure committees to complete disclosures beyond those required by the Fair Political Practices Commission.³ The City does not currently impose local disclosure requirements upon independent expenditure committees.

Use of Campaign Funds

- G. Both the Political Reform Act and WHMC place restrictions on the use of campaign funds. State law allows campaign funds to be used for donations to charitable organizations, refunds to contributors, and tickets to political fundraiser events, for instance.⁴ WHMC § 2.76.050 prohibits the use of funds raised in a campaign for one election to campaign in a subsequent election. The City may impose additional restrictions that do not conflict with permissible uses under state law.

Contributions from Lobbyists and Contractors

- H. Because restrictions on campaign contributions implicate freedom of speech issues, regulation of lobbyists and contractors must be narrowly tailored to accomplish a compelling government interest, which would be to prevent corruption and bias.
- I. An appointed official may not receive a contribution exceeding \$250 from a “party” or “participant” while a proceeding involving a license, permit or other entitlement is pending before the body on which the official serves and for three months following the date of a final decision.⁵
- J. Officials and employees are prohibited from receiving a gift or gifts totaling more than \$460 in a calendar year from certain sources, and gifts over \$50 must be reported on the annual Statement of Economic Interests. The FPPC periodically adjusts the dollar amount of the gift limit. The City’s gift policy appears in Administrative Regulation No. 102, and prohibits City officials and employees from accepting a gift from any person or entity with business before the City unless the gift: (i) is edible and can be shared (such as candy); (ii) can be displayed publicly in City Hall (such as flowers and art) and is conveyed to the City Manager immediately upon receipt; or (iii) is turned over to the City Manager

³ *Citizens United v. Federal Election Commission* (2010) 558 U.S. 310, 366; *McCutcheon v. Federal Election Commission* (2014) 572 U.S. ___, at p. 36.

⁴ Gov. Code §§ 89510 *et seq.*

⁵ Gov. Code § 84308.

immediately upon receipt and used as a raffle prize, the proceeds from which shall be donated to charity or deposited in the City's general fund.

3. Lobbyist Regulation and Revolving Door Ordinance (including reporting and best practices).

Lobbyist Regulation

- A. State law does not regulate individuals or entities that lobby cities or other local government agencies. However, cities may regulate lobbyists appearing before city boards and agencies, if regulations are consistent with the First Amendment.
- B. The City requires lobbyists communicating with any elective official or any officer or employee of the City to register and pay a fee.⁶ Registration requires a lobbyist to provide the City with information specified in WHMC § 2.72.020 either in a written statement or a statement on the record at a public meeting.

Revolving Door Ordinance

- A. For one year after leaving governmental service, local elected officials and city managers are prohibited from being paid to communicate with their former agency in an attempt to influence the agency's decisions in an administrative or legislative action or any action involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. This restriction does not apply to a former elected official or city manager who is communicating on behalf of a board or as an employee of a public agency. The City may adopt a more restrictive ordinance or policy.⁷
- B. The City has extended the one-year ban to City Council deputies, members of the Planning Commission, department heads and division managers by Ordinance 14-941.⁸
- C. State law prohibits all public officials from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer.⁹

3. Government Ethics (including disclosures, recusals and behested payments).

⁶ WHMC Chapter 2.72.

⁷ Gov. Code § 87406.3.

⁸ WHMC § 2.72.090.

⁹ Gov. Code § 87407.

Disclosures

- A. Certain public officials are required by state law to file a Statement of Economic Interests (Form 700) disclosing their investments and sources of income, and the City broadened the list of officials required to make these financial disclosures. The City's designated filers and disclosure categories specifying the types of interests to be reported are detailed in the City's conflict of interest policy.¹⁰ The Task Force may recommend alterations to the list of additional officers designated to file but may not exempt those required to file by state law.

Conflicts of Interest

- B. The Political Reform Act prohibits public officials from making, participating in making, or in any way attempting to use an official position to influence a governmental decision in which he or she has a financial interest.¹¹ If a public official has a conflict of interest, he or she must, immediately prior to the consideration of the matter: 1) state the financial interest; 2) recuse himself or herself from discussing and voting on the matter; and 3) leave the room until the matter is concluded; however, the official may participate in public comment on the matter if it involves his or her primary residence.¹² This is state law and the City cannot enact laws that conflict with the requirements of the Political Reform Act.
- C. City officers and employees are prohibited from approving contracts and purchases in which they have a financial interest.¹³
- D. Under the common law of doctrine prohibiting conflicts of interest, public officials are prohibited from using their official positions for private benefit and must exercise the powers of their office for the benefit of the public. Violation of the common law doctrine can constitute official misconduct and result in a loss of office.

Behested Payments

- E. State law does not limit the amount of permissible behested payments (payments made at the behest of elected officials to be used for legislative, governmental or charitable purposes), but requires reporting of behested payments solicited by state elected

¹⁰ Gov. Code § 87300 *et seq.*

¹¹ Gov. Code § 87100.

¹² Gov. Code § 87105.

¹³ Gov. Code § 1090.

officials totaling \$5,000 or more per calendar year from a single source. The City may adopt a policy regarding behested payments solicited by local elected officials.

4. Enforcement.

- A. Violation of any ethics regulation codified in the WHMC is a misdemeanor, except where the WHMC makes such violation an infraction.¹⁴ If the Task Force recommends an ordinance amending the City's ethics rules, it should consider the appropriate penalty.

- B. Violation of any provision of the Political Reform Act is a misdemeanor and may also result in a fine of up to \$10,000; however, the Attorney General is responsible for enforcing the Act.¹⁵

Attachments: None.

¹⁴ WHMC § 1.08.010.

¹⁵ Gov. Code § 91000 *et seq.*