

# REQUEST FOR CHARTER REVIEW COMMISSION ACTION

MEETING DATE(S): 11/03/2009

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**SUBMITTED TO:** HB Charter Review Commission

**SUBMITTED BY:** Mark D. Bixby, Charter Review Commissioner *MDB*

**SUBJECT:** Add new charter section to make the conflict of interest restrictions of Political Reform Act section 84308 apply to city elected officials

**Statement of Issue:** There is an unhealthy phenomenon where project applicants with large projects pending before the city make large campaign contributions to favored elected officials. This amendment would prohibit such contributions greater than \$250 while a project is pending, and would disqualify elected officials from voting on such projects if more than \$250 was contributed in the 12 months prior to the final decision.

**Recommended Action: Motion to:**

Add new Huntington Beach charter section as follows:

All elected City officers shall be subject to the provisions of Political Reform Act Section 84308 with respect to proceedings pending before the city.

(In other words, 84308 applies in its entirety after deleting the 84308(a)(3) clause that exempts “local governmental agencies whose members are directly elected by the voters”.)

**Analysis:**

I have performed in-depth campaign finance analysis for every city election since 2004, and a repeated correlation exists where applicants with large projects pending before the city make large campaign contributions to favored elected officials. And once the particular project milestone is approved, the applicants back off on their campaign donations. This bears an unhealthy resemblance to “pay to play” in my opinion.

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The California Political Reform Act in Government Code section 84308 strictly regulates campaign contributions by people with financial interests in pending projects, and the ability of elected officials to vote on those projects after receiving such contributions. But section 84308(a)(3) exempts elected city officials from these requirements regarding projects before the city. However, the same section does apply to elected city officials serving as voting members of other agencies (i.e. OCTA, OC Sanitation District, etc).

My recommended action above makes elected city officials subject to the requirements of section 84308 in a city context. It does not make sense for elected officials to be subject to strong PRA conflict of interest rules when serving on external agencies, yet subject to weaker conflict of interest rules in their city roles. My proposed amendment brings much needed consistency to this area.

In a nutshell, my amendment would:

- Prevent elected city officials from accepting more than \$250 in campaign contributions from parties with financial interest in projects while the projects are pending before the city and for three months after the final decision.
- Prevent parties with financial interest in projects from contributing more than \$250 to elected city officials while the projects are pending before the city and for three months after the final decision.
- Prevent elected city officials from voting on projects if parties with financial interest in the projects have contributed more than \$250 in the preceding 12 months.

## Attachment(s):

- Political Reform Act section 84308 (important portions **bolded and underlined** for emphasis)

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## § 84308. Contributions to Officers; Disqualification.

- (a) The definitions set forth in this subdivision shall govern the interpretation of this section.
- (1) “Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
  - (2) “Participant” means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.
  - (3) “Agency” means an agency as defined in Section 82003 **except that it does not include** the courts or any agency in the judicial branch of government, **local governmental agencies whose members are directly elected by the voters**, the Legislature, the Board of Equalization, or constitutional officers. **However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency.**
  - (4) “Officer” means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency.
  - (5) “License, permit, or other entitlement for use” means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

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- (6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.
- (b) **No officer of an agency shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest,** as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.
- (c) **Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant has a financial interest in the decision,** as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the

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proceeding.

- (d) **A party to a proceeding before an agency involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer of the agency. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before any agency and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer of that agency during the proceeding and for three months following the date a final decision is rendered by the agency in the proceeding.** When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.
- (e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.