

INFORMATION CALENDAR January 22, 2013

To: Honorable Mayor and Members of the City Council

From: Christine Daniel, City Manager

Submitted by: Mark Numainville, Acting City Clerk

Subject: Council Referral: Prohibit Contributions from Public Works Contractors

and Parties to Land Use Applications

#### INTRODUCTION

This report is in response to the referral from the City Council on July 17, 2012.

## **CURRENT SITUATION AND ITS EFFECTS**

The Berkeley Election Reform Act (BERA) limits contributions to candidates to \$250 and limits the source of those contributions to exclude businesses, non-profit organizations and labor unions.

# **BACKGROUND**

The referral proposes further limiting contributions to candidates by prohibiting contributions from certain Public Works contractors that do business with the City and from parties to land use applications pending before the Zoning Adjustments Board (ZAB) or City Council.

Contributions to general purpose committees and ballot measure committees are not currently limited by source or amount. The referred policy would not change these regulations.

The City Council referral from July 17, 2012 requested that the scope of the land use prohibition be limited to large projects, that staff provide information on the costs for administration and tracking, and that staff determine the frequency to which these types of contributions generally occur.

To ascertain the extent to which the new policy would further limit contributions, staff used data from the 2010 election, the most recent election for which we have electronic data. For the 2010 General Election, 15 of 20 candidate controlled committees used the City's electronic filing system for campaign statements. The e-filing system provides for the electronic download of contribution data from e-filed campaign statements.

Staff then ran reports from the FUND\$ system to capture the contract data for the calendar year 2010. The results were manually filtered to produce the report for Public Works contracts of \$300,000 or more.

For the land use provision, staff researched the active projects from 2010 and created a spreadsheet for comparison to the contributor data. The scope was limited to the applicant, owner, or appellant for projects in one of four categories, 1) Residential projects of 10 - 49 units, 2) Projects with 10,000 to 49,000 sq. ft. of industrial or commercial space, 3) Residential projects of 50 or more units, 4) Projects with 50,000 or more sq. feet of commercial or industrial space.

The data set used for the analysis consisted of the following:

Number of contributions downloaded: 1,264

Number of Public Works contracts over \$300,000: 17

Number of land use projects (all categories): 8

Cross referencing the data from the contracts and land use projects with the contributor data resulted in the following:

Number of contributions from a prohibited Public Works contractor: 1

Number of contributions from a prohibited party to a land use project: 5

The five contributions in the land use category were from two appellants to a land use application while it was pending before Council.

To produce the list of prohibited contractors, staff must run a report of all contractors and then manually sort by contract amount and by department. Staff must also select out contract amendments to ensure that the contract amount is accurate for the purposes of the \$300,000 threshold. In order to ensure that campaign committees have up to date information on prohibited sources, it is anticipated that staff would need to produce this report weekly for much of the election cycle and perhaps daily in the final 3-6 month of the election cycle. This would require significant staff hours.

The report run by the contract management system does not have the ability to include subcontractors. Subcontractor names are not captured in the contracting process. Further, it is unclear if contributions would be prohibited from any employee of the contracting company, or just those with an ownership share.

In the process of sorting the data, staff identified a total of 54 contracts that exceed \$300,000 (including the 17 public works contracts).

The total staff time required to create the reports and distill the data for the analysis in this report was approximately 12 hours.

For both prohibitions (land use and contracts) the duration of the prohibition should be considered. For contracts, the period may include the entire life of the contract, or just

the RFP process through Council approval. For land use matters, the prohibition period is somewhat uncertain as a project may advance through the system during an election cycle, yet the parties to the project will not know if the project will be appealed at a later date. The contribution may not be prohibited when it is made, but may become prohibited later. One option would be to prohibit all applicants/appellants/owners from contributing until final approval of the project.

### POSSIBLE FUTURE ACTION

Refer to FCPC for consideration and possible amendment to the BERA.

## FISCAL IMPACTS OF POSSIBLE FUTURE ACTION

Significant staff time dedicated to creating lists of prohibited contributors, and conducting the review and enforcement of the new requirement.

### **CONTACT PERSON**

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