City of Long Beach
Working Together to Serve

Office of the City Attorney

Memorandum

DATE: June 14, 2023

TO: Honorable Mayor and City Council

FROM: Taylor Anderson, Deputy City Attorney

SUBJECT: Repayment of Campaign Loans After Election Cycle

In preparation for the 2024 election, the City Attorney and City Clerk's Offices are collaborating on an ordinance for your consideration with legally necessary changes to the Long Beach Municipal Code (LBMC) related to the City's election process.

As a part of our effort, I have undertaken a review of recent cases related to election law, which included the US Supreme Court (Court) case *Federal Election Commission (FEC) v. Cruz* (2022) 212 L.Ed.2d 654 (*Cruz*). In *Cruz,* the Court held that the federal law which imposed limits on the repayment of personal loans burdened political speech for First Amendment purposes and therefore was unconstitutional.

The Court noted that the only permissible reason the government can restrict political speech is due to "quid pro quo" corruption or its appearance. To justify burdening the First Amendment, the government must show record evidence or legislative findings demonstrating the need to address a special problem. Mere conjecture is not enough to burden the First Amendment.

The Court held that since the FEC regulations already imposes campaign contribution limits on candidates to prevent corruption or its appearance, the loan-repayment limit designed to accomplish the same result places an additional restriction on pre-election expenditures and post-election contributions, which intrudes on fundamental rights of speech and association, without serving a substantial government interest. Further, the FEC was unable to point to a single case of quid pro quo corruption or a legislative finding to justify the added restriction.

Similar to the federal law at issue in *Cruz*, the LBMC imposes campaign contribution limits in addition to prohibiting a candidate, officeholder, or their controlled committee from accepting contributions outside an election cycle (see LBMC § 2.01.320). This prohibition on accepting contributions outside of an election cycle prohibits loan repayments via contributions once the election cycle has concluded. Currently, the City does not have evidence of quid pro quo corruption or a legislative finding to justify this restriction.

Since the City's local restrictions are similar to the federal law found unconstitutional in *Cruz*, the City should not enforce its local laws that prevent soliciting and accepting contributions after an election cycle to repay outstanding campaign debts, subject to applicable contribution limits.

In the coming months, the City Attorney Office and City Clerk's Offices will propose an ordinance related to the City's election laws, which will include an amendment to address outstanding debt repayment after an election cycle. In the meantime, candidates, officeholders, and their controlled committees will be allowed to accept contributions outside of an election cycle to repay campaign debts incurred during an election, subject to the contribution limits imposed by the Long Beach Campaign Reform Act and in accordance with applicable provisions of Long Beach Municipal Code and State law.

Please feel free to reach out to me if you have any questions.

TMA: kad
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cc: Tom Modica, City Manager
Linda Tatum, Assistant City Manager
Dawn McIntosh, City Attorney
Gary Anderson, Assistant City Attorney
Monique De La Garza, City Clerk