

# Memo

To: Commission

From: Wayne Barnett

Date: March 24, 2017

Re: Contribution limits and vouchers

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## **RELEVANT SEATTLE MUNICIPAL CODE SECTIONS**

### **2.04.370 - Mandatory limitations on contributions.**

A. No person shall make a contribution to any candidate for Mayor, member of the City Council, or City Attorney of the City, except in the election cycle for that candidate as defined in Section 2.04.010.

B. No person shall contribute more than \$500 to any candidate for Mayor, member of the City Council, or City Attorney of the city, in any election cycle.

C. A candidate for Mayor, member of the City Council, or City Attorney of the City, may only accept or receive a campaign contribution during an election cycle as defined in Section 2.04.010.

D. No candidate for Mayor, member of the City Council or City Attorney of the City shall solicit or receive campaign contributions of more than \$500 from any person in any election cycle.

E. The limitations imposed by this section 2.04.370 shall not apply to:

1. A candidate's contributions of his or her own resources to his or her own campaign or contributions to the candidate's campaign by the candidate or the candidate's spouse or state registered domestic partner of their jointly owned assets;

2. Independent expenditures as defined by this Chapter 2.04;

3. The value of in-kind labor; and

4. Contributions consisting of the rendering of clerical or computer services on behalf of a candidate or an authorized political committee, to the extent that the services are for the purpose of ensuring compliance with City, county, or state election or public disclosure laws.

**2.04.630 - Candidates to Qualify By Showing Grass Roots Support and Agreeing to New Campaign and Contribution Limits; Redemption of Democracy Vouchers; New Limits on Use of Funds.**

(b) Requirements for Program. . . [A] candidate for Mayor shall not solicit or accept total contributions from any individual or entity in excess of a total of \$500 during one election cycle, and a candidate for City Attorney or City Council shall not solicit or accept total contributions from any individual or entity in excess of a total of \$250 during one election cycle (including any contribution used to qualify for Democracy Vouchers, but *excluding the value of Democracy Vouchers assigned to such candidate*) (subject to exceptions provided herein). (Emphasis added.)

...

(f) Remedies for Exceeding Campaign Spending Limit. If a qualified candidate demonstrates to SEEC that he or she has an opponent (whether or not participating in the Program) whose campaign spending has exceeded the Campaign Spending Limit for the position sought as indicated above, where SEEC deems the excess material it shall allow such candidate to choose to be released from the Campaign Spending Limit and *campaign contribution limits for the Program*, in which case SEEC shall allow such candidate to redeem his or her Democracy Vouchers received theretofore or thereafter up to the amount of the Campaign Spending Limit only, then allow such candidate to engage in campaign fundraising without regard to any Program requirements. SEEC shall also release a qualifying candidate from the Campaign Spending Limit to the extent that it is shown (on application of a Seattle candidate or citizen) that said qualified candidate faces independent expenditures as defined in SMC 2.04.010 adverse to the candidate or in favor of an opponent and the sum of such independent expenditures plus said candidate's opponent's campaign spending materially exceeds the Campaign Spending Limit for that office. (Emphasis added.)

**PROPOSITION**

SMC 2.04.370 applies to all candidates and SMC 2.04.630 applies only to candidates participating in the voucher program. While the language in SMC 2.04.630(b) excluding the value of Democracy Vouchers from the Program's campaign contribution limit, coupled with the language in SMC 2.04.630(f) regarding the conditions under which a participating candidate is released from the campaign contribution limits for the Program creates some ambiguity over whether such candidates would be permitted to collect \$500 in monetary contributions *and* \$100 in Democracy Vouchers, staff interprets SMC 2.04.370 as barring *any* candidate from collecting in excess of \$500. To do otherwise would create a situation where a participating candidate faced a higher contribution limit than a non-participating candidate, creating constitutional problems

under *Davis v. Federal Election Comm'n*, 554 U.S. 724 (2008), (“We have never upheld the constitutionality of a law that imposes different contribution limits for candidates who are competing against each other, and we agree with Davis that this scheme impermissibly burdens his First Amendment right to spend his own money for campaign speech.”) If a statute is susceptible to more than one reasonable construction, the Commission should choose an interpretation that avoids raising constitutional problems.

Staff also interprets these sections, taken together to bar a participating mayoral candidate from accepting more than \$500 in total from any person when candidates for that seat are eligible to participate in the program in 2021.