



# ***Atascadero City Council***

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## ***Staff Report - City Attorney***

### **Campaign Finance Ordinances and Related Issues**

#### **REPORT-IN-BRIEF:**

As requested by the Council, the City Attorney's Office (CAO) has researched legal questions that arise in connection with campaign finance ordinances, and has reviewed other ordinances and ethics codes adopted by other California cities. This Memorandum will discuss various legal issues arising from these topics and will attach examples of different ordinances and ethics codes adopted by other cities.

#### **DISCUSSION:**

This discussion, and the attachments, will include a legal analysis, chart on campaign finance ordinance, categories and examples of campaign finance ordinances, examples of codes of ethics, a copy of the State voluntary declaration of ethical principals for candidates and the rules on disclosure of campaign contributions.

#### **Legal Analysis**

Campaign finance ordinances are heavily regulated by federal and state law. There are certain legal issues which should be noted regarding local campaign finance regulations.

First, local governments may impose mandatory contribution limits, but not mandatory expenditure limits. This arises from the principle that the government may regulate how much money a candidate takes from others, but cannot regulate how much money the candidate spends.

Second, contribution limits interfere with the right of association and free speech so cities must demonstrate "a sufficiently important interest and [employ] means closely drawn to avoid unnecessary abridgement of associational freedoms." *Buckley v. Valeo* (1976) 424 U.S. 1, 25.

Third, regarding the findings necessary to support an ordinance imposing mandatory

limit on campaign contributions, we call your attention to the 2007 case *Citizens for Clean Government v. City of San Diego* (9<sup>th</sup> Cir. 2007) 474 F.3d 647, in which the Ninth Circuit Court of Appeals stated that a local agency, in order to support an ordinance imposing contribution limits, should cite specific instances of corruption or other malfeasance in its findings before implementing a mandatory contribution limit. Mere hypotheticals or statements that contributions may corrupt the system will not meet this test.

A further discussion of the legal issues presented with campaign finance ordinances, is included in the paper entitled "A Primer on Local Campaign Regulations," prepared by City of Fremont Deputy City Attorney Prasanna W. Rasiah, for a League of California Cities presentation given in February 2008. A copy of this Primer is attached to this Memorandum as Attachment 1.

### **Chart on Campaign Finance Ordinances In California Cities**

Richard Maidich of the Olson, Hagel, and Fishburn law firm prepared a comprehensive chart in 2007 listing campaign finance regulations for California cities. A copy of this chart is attached to this Memorandum as Attachment 2. There are 480 incorporated cities in California. Of the 413 cities listed on the chart, 100 have campaign contribution limits.

### **Categories of Campaign Finance Ordinances**

California cities have implemented several different types of campaign finance ordinances. Although there are many variations of campaign finance ordinances, our office has identified six basic categories of ordinances which include the following:

1. No limits on campaign contributions or expenditures

Only the City of San Luis Obispo in San Luis Obispo County has limits on campaign contributions or expenditures. San Luis Obispo is a charter city.

2. Voluntary limit on expenditures with no limit on contributions

An example of a city with voluntary expenditure limits, but no contribution limits is the City of Danville. A copy of the Danville ordinance is attached as Attachment 3. The voluntary expenditure limit for all candidates for the Danville Town Council and the controlled committees of such candidates is fifty (\$.50) cents per resident. This expenditure limit is voluntary, and candidates choosing to accept or reject the limit shall comply with the provisions of Government Code Sections 85400 through 85404.

Government Code Section 85400 describes voluntary expenditures on specific candidates for statewide office. Section 85401 requires that each candidate for elective state office to file a statement of acceptance or rejection of the voluntary expenditure limits set forth in Section 85400. Section 85402 provides that "[a]ny candidate for elective state office who has filed a statement accepting the voluntary expenditure limits is not bound by those limits if an opposing candidate contributes personal funds to his

or her own campaign in excess of the limits set forth in Section 85400.” Any candidate who files a statement of acceptance pursuant to section 85401 and makes campaign contributions in excess of the limit, knowingly or willfully, is guilty of a misdemeanor, pursuant to Government Code Sections 85403 and 91000. Finally, section 85404 has been repealed.

The Danville ordinance does not make express reference to Government Code Sections 85600 or 85601, but those sections are mentioned for completeness purposes. Section 85600 provides that, for candidates for statewide elective office, the Secretary of State shall designate in the state ballot pamphlet those candidates who have voluntarily agreed to the expenditure limits of Section 85400. For candidates for State Senate and Assembly, the local elections officers shall designate which of those candidates have voluntarily agreed to the expenditure limit in the voter information portion of the sample ballot.

Government Code Section 85601 allows candidates for statewide elective office who have accepted the contribution limits to purchase the space to place a statement up to 250 words in the state ballot pamphlet provided that the statement does not make reference to any opponent of the candidate. Candidates for State Senate and Assembly, who have agreed to the contributions limits, may purchase the space to place a statement in the voter information portion of the sample ballot up to 250 words and may not refer to any opponent in the statement.

Government Code Sections 85600 and 85601 provide an incentive for candidates to agree to the voluntary expenditure limits of Section 85400. Likewise, in the context of ordinances by cities that provide incentives, please refer you to Category 5, below, for a discussion of the ordinance of the City of Santa Cruz which provides incentives for voluntarily agreeing to the contribution limits and expenditure limit in that ordinance.

### 3. Limit on contributions without voluntary expenditure limit

Certain cities impose limits on campaign contributions, but have no limit on expenditures. One example of a city in this category is the City of San Luis Obispo. San Luis Obispo limits contributions from persons other than the candidate to \$200, unless the contributions are made by the candidate or the candidate’s immediate family. A copy of the San Luis Obispo campaign finance ordinance is attached to this Memorandum as Attachment 4.

### 4. Limits on contributions which vary depending upon compliance with voluntary expenditure limit

The City of Santa Clara imposes mandatory campaign contribution limits as well as a voluntary expenditure limit. The amount of permitted contributions rises, however, if the candidate accepts the expenditure limit. If the candidate does not accept the expenditure limit, contributions are limited to \$250 per person. If the candidate accepts the expenditure limit, the contribution limit is raised to \$500 per person. A copy of Santa Clara’s campaign finance ordinance is attached as Attachment 5.

5. Voluntary contribution limit and voluntary expenditure limit in exchange for incentives

Santa Cruz imposes voluntary campaign contributions and expenditure limits, but gives two incentives to candidates who agree to follow those limits:

First, subsection (b)(1) of Santa Cruz Municipal Code Section 2.10.030 provides:

“Committees formed in support of a city council candidate may maintain electronic campaign finance records from July first through January thirty-first for each election. The city will provide the vendor, as approved by the Secretary of State and the city will pay for the cost of maintaining the required filings during that period.”

We have verified with the City Clerk for the City of Santa Cruz that the City has not yet selected a vendor, but the City expects the selection to occur shortly. Thus, while there is a monetary value to this incentive, the amount of the monetary value is unknown at this time.

Second, pursuant to subsection (b)(2), candidates who accept the limits shall be identified prominently on the City’s website with a 400-word written statement. Candidates who do not agree to abide by such limits will not have their candidates statements displayed on the City’s website.

The Santa Cruz ordinance voluntarily limits contributions to \$250 from individuals other than the candidate (as indexed by the applicable cost of living adjustment) and \$600 (as indexed by the applicable cost of living adjustment). The ordinance also has a voluntary expenditure limit of \$0.35 per city resident. The example provided in the ordinance is that if the city population is 50,000 residents, then a candidate is authorized to spend a maximum of \$17,500 on his or her city council campaign. The Santa Cruz ordinance is attached as Attachment 6.

6. Campaign finance ordinances which have been repealed

Finally, some cities, such as Mission Viejo and Oceanside have implemented campaign finance ordinances, but subsequently repealed those ordinances. The CAO has been advised that the City of Fairfield is in the process of repealing its campaign finance ordinance.

**Code of Ethics**

Many cities have implemented codes of ethics as well as campaign finance regulations. Often these cities have implemented the code of ethics at the same time as the campaign finance regulations, as part of a comprehensive ethics package.

Several Channel Island Cities have adopted codes of ethics, including Morro Bay (Attachment 7), Pismo Beach (Attachment 8), Paso Robles (Attachment 9), San Luis Obispo (Attachment 10), Santa Maria (Attachment 11) and Goleta (Attachment 12).

Our office recently assisted the City of Santa Clarita in the preparation of a Code of Ethics, which was adopted by the City in May 2008, see Attachment 13.

### **Voluntary Candidate Declaration**

The California Fair Political Practices Commission also has a voluntary declaration of ethical principals that candidates may complete. A copy of that form is attached as Attachment 14.

### **Disclosure of Campaign Contributions**

#### 1. Form 460

Candidates must file campaign disclosure statements, commonly known as Form 460s, with the City Clerk. Some issues have arisen regarding posting of these forms on the internet because of privacy concerns arising from the posting of contributors' addresses. There does not appear to be a statute or regulation prohibiting or, alternatively, permitting local agencies posting these addresses online. However, the privacy concerns for contributors has led agencies to not post the contributor addresses online.

Because many contributors have confidential addresses, such as elected officials and criminal prosecutors, these addresses should not be posted online. It would require a significant amount of manpower to attempt to determine which of these addresses are confidential, or to redact all addresses. Accordingly, some cities post the summary page of the Form 460 online, which provides the name for the committee and what seat the candidate is running for, along with a summary of contributions and expenditures. The addresses are redacted on these online displays. A copy of Form 460 and its instructions is submitted with this Memorandum for reference (Attachment 15).

#### 2. Disclosure of Campaign Contributions during Council Meetings

One of the issues the CAO was requested to research relates to the possibility of an ordinance or policy requiring Council Members to disclose campaign contributions at the time an item is being considered at a Council meeting. In our research, the CAO has not found any state laws which would either require or prohibit such disclosure. The CAO also has not found any city with an ordinance that requires such disclosure by Council Members. The lack of such disclosure ordinances during Council meetings may be due to the fact that there are already legal requirements regarding disclosure of campaign contributions imposed by state law including the filing of Form 460, which is a public record available for public inspection, and copying.

### 3. Late Contribution Reports

State law requires a final pre-election campaign contribution report to be filed no later than 12 days before an election for the period ending 17 days before the election. In addition, for contributions of \$1000 or more received after the date of filing the final pre-election statement, candidates must file "late contribution reports" within 24 hours of receipt of that contribution.

Some cities impose candidate disclosure requirements beyond state requirements. See, for example, Section 2.76.040 of the West Hollywood Municipal Code (Attachment 16) which requires late contribution reports to be filed for contributions of \$1,000 or more within 45 days of the election as compared to only 12 days required by state law. Another modification of state law reporting requirements which has been adopted by some cities is a reduction of the threshold amount required to be reported in the late contribution reports. For example, Section 2.54.060 of the Whittier Municipal Code (Attachment 17) reduces the threshold amount to \$100 as compared to the \$1000 contribution amount found in state law.

### **FISCAL IMPACT:**

Depending upon the direction the CAO may receive from the City Council, we will then be in a position to provide an estimate of the expenses that would be associated with the preparation of any documents or further reports, the extent of staff time which would be involved with implementing Council direction and the cost of enforcement of any campaign ordinance.

### **ATTACHMENTS:**

1. Primer on Local Campaign Regulations
2. Olson, Hagel 2007 Chart of California Cities' Campaign Regulations
3. Danville Municipal Code §§ 2-25 *et seq.*
4. San Luis Obispo Municipal Code §§ 2.40.010 *et seq.*
5. Santa Clara Municipal Code §§ 2.130.010 *et seq.*
6. Santa Cruz Municipal Code §§ 2.10.010 *et seq.*
7. Morro Bay Code of Ethics
8. Pismo Beach Code of Ethics
9. Paso Robles Code of Ethics
10. San Luis Obispo Code of Ethics
11. Santa Maria Code of Ethics
12. Goleta Code of Ethics
13. Santa Clarita Code of Ethics
14. FPPC Declaration Regarding Campaign Conduct
15. Form 460 and Instructions
16. West Hollywood Municipal Code
17. Whittier Municipal Code