



# Memorandum

**TO: Mayor and City Council**

**FROM: Councilmember  
Pyle & Williams**

**SUBJECT: 3.4 – Campaign Contributions**

**DATE: September 19, 2005**

Approved:

*Nancy Pyle  
Forest Williams*

Date:

*9/20/05*

## RECOMMENDATION

Accept no changes to the City's Campaign Ordinance that redefines a contribution in accordance with Councilmember Reed's proposed amendment.

## BACKGROUND

Councilmember Reed's memos of April 19, 2005 and August 15, 2005 recommend amending the Municipal Code to require that employers and employees report all political activity by employees, including de minimis activity and activity performed during the employee's vacation or other paid time off. However, the current law already prohibits the activities, which the memos describe as "loopholes." The state law has been in place since 1976, is followed by all other major local jurisdictions in California, and in all the state and local elections held over the past 39 years, there have been no major enforcement proceedings or concerns of substantial abuse under the existing rules.

In short, the rules in question have not been associated with any problems or ethics violations. It is therefore difficult to see why changes to the rules would now be needed.

The proposed amendment to the City's Campaign Ordinance:

- would represent a departure from state law, and would make San José the only known local jurisdiction not following the state rule for volunteer time,
- would have no effect on the activities of concern, which are already prohibited, and
- would discourage employees from engaging in occasional volunteer political activity.

Under state law, any employer who compensates an employee for spending more than 10% of that employee's time in any given month on political activity must report all of the compensated activity as a political contribution or expenditure. In addition, the law permits employees to engage in voluntary political activity of the employee's choosing on vacation time, or pursuant to a "uniform policy" allowing employees to engage in political activity. This law has been in effect for all state and local elections throughout California since 1976.

Councilmember Reed, in his memo of August 15, 2005, expresses a concern that under the uniform policy exception, "Employers are now allowed to help candidates by paying their employees unlimited amounts to work for a candidate." This is not the case. **The uniform policy exception does not permit the employer to direct or request its employees to engage in activities supporting a**

**particular candidate, issue, or position; any employer doing so would be required to report its activities as political expenditures or contributions.** A uniform policy must permit employees to freely choose the political activities in which they wish to engage.

The theoretical activities outlined in Councilmember Reed's memo of August 15, 2005, which include a cardroom allowing its employees to engage in political activity but limiting their activity to support candidates who favor 24-hour operations for cardrooms, would not qualify for the uniform policy exception. In this example, the cardroom is directing its employees towards certain types of political activity, and would therefore be required to report their activity.

According to the City Attorney, in his memo dated August 12, 2005, "the loophole concerns raised in Councilmember Reed's April 19, 2005, Memo to the Rules Committee are addressed by existing legislation." A second memo from the City Attorney, on September 16, 2005, further warns "the proposal to eliminate two exceptions to the definition of a contribution under state law – for vacation time and activities undertaken pursuant to a uniform policy – might raise constitutional concerns."

The ability to freely engage in voluntary political activity is a constitutionally protected right. Creating an onerous new reporting requirement would chill employees' efforts to exercise these rights. A typical employee who wishes to volunteer his or her time for a political activity, but is not versed in campaign law, may feel constrained to refrain from volunteering rather than risk falling afoul of the law. At the same time, a change in the rules would inhibit employers from accommodating legitimate requests by their employees for time off to volunteer for political activities, discouraging employers' efforts to support community involvement by their employees. Finally, it would create confusion for employers who operate in multiple California cities or employees who have previously volunteered in other cities, as every other major California municipality, to the best of our knowledge, follows the state law.

Active involvement by residents in civic life, whether in neighborhood organizations, community groups, or political campaigns, should be encouraged not disparaged by the City. **It is when the public does not become involved in political debates, meetings and campaigns that special interests gain excessive influence.**

The law at issue has been in effect statewide since 1976, and in that time, there is no evidence to suggest that the uniform policy exception has been widely abused. The supposed "loopholes" raised as concerns in the April 19, 2005 and August 15, 2005 memos are already prohibited under existing law. Indeed, it is difficult to understand how the theoretical examples in the August 15, 2005 memo could be presented as qualifying for uniform policy exceptions, given that even a cursory reading of the applicable regulations or of the August 12, 2005 memo by the City Attorney unmistakably shows that the example activities would not qualify as uniform policies, but would have to be reported.

### **Conclusion**

Based upon the above analysis, we recommend against the proposed amendments to the City Campaign Ordinance, which do not address any substantive concerns, would divert resources from investigating and preventing real ethics complaints in municipal campaigns, and would have the effect of discouraging San José residents from exercising their constitutionally protected rights.