

Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle
City Attorney

SUBJECT: Campaign Ordinance
Amendments

DATE: 11/10/2004

RECOMMENDATION

Adoption of an Ordinance amending Chapter 12.06 of Title 12 the San Jose Municipal Code by amending the Campaign Contribution Ordinance relating to definitions, amending Chapter 12.04 relating to penalties and notice of violations and Chapter 12.02 to delete an obsolete definition.

BACKGROUND

On October 28, 2004, the Blue Ribbon Task Force reviewed amendments to the City's Campaign and Officeholder Contribution Ordinance (SJMC Chapter 12.06). At its November 10, 2004 meeting, the Blue Ribbon Task Force recommended that certain changes to the City's Campaign Ordinance be forwarded to the City Council. This memorandum will summarize the draft changes to the City's Campaign Contribution Ordinance, which is attached, for review and discussion at the City Council Meeting.

DISCUSSION

1. Definitions and State Political Reform Act (SJMC 12.06.010)

The Task Force recommended that the current Campaign Ordinance clearly reflect that the provisions of the state Political Reform Act administered by the Fair Political Practices Commission (FPPC) be used to interpret the Municipal Code unless otherwise provided in the Ordinance. Although Section 12.02.020 already provides that the state Act applies to all the Ethics Ordinances in Title 12, the proposed language has also been inserted in the Campaign Contribution Ordinance to provide additional clarification.

2. Definition of "Independent Expenditure" (SJMC 12.06.130)

The current definition of "Independent Expenditure" references a definition under federal law and has been difficult to interpret and apply. The proposed definition tracks the language of the Political Reform Act and would be interpreted in accordance with the regulations of the FPPC. The proposed change also provides that an expenditure

which is not an "independent expenditure" is a contribution to a candidate and subject to the limits.

3. Definition of "Agent" (SJMC 12.06.220)

The draft ordinance amends and clarifies the current definition of "Agent" to include any person with the express or implied authority to make or authorize expenditures on behalf of a candidate. The term has also been expanded to include any person who is serving in an advisory, decision-making, or strategic role with a campaign, with or without compensation, where the person's duties or actions reflect or require direct knowledge of the campaign strategy, plans or needs. The term "Agent" is not defined in the Political Reform Act or the FPPC regulations.

4. Civil Penalties (SJMC 12.04.110)

This proposed amendment reflects the changes recommended by the Election Commission and already approved for the Lobbyist and Revolving Door Ordinances that the penalty of up to \$5,000 be assessed for each violation instead of each complaint. It should be noted that Section 12.04.120 currently provides for penalties of up to \$5,000 or the value of any contributions or gifts received in violation of Chapter 12.06, the Campaign Contribution Ordinance.

5. Notice of Potential Violation – City Clerk and City Attorney (SJMC 12.04.120)

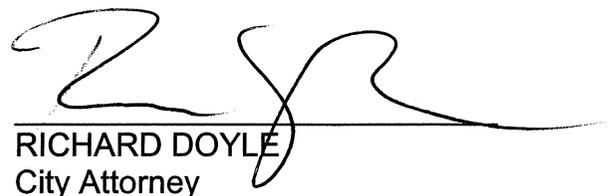
The proposed amendment reflects the recommendation by the Task Force that the City Attorney and City Clerk be authorized to put candidates and campaign consultants on notice of a potential violation whether or not a complaint is filed with the Elections Commission.

6. Technical Clean-up Amendment

The proposed amendment deletes the old definition of "Local governmental lobbyist" which has been replaced by the new Lobbying Ordinance.

PUBLIC OUTREACH

Not applicable.



RICHARD DOYLE
City Attorney

cc: Del Borgsdorf
Lee Price
Attachment

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 12.02 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO REPEAL AN OBSOLETE DEFINITION, AMENDING CHAPTER 12.04 RELATING TO PENALTIES AND NOTICE OF VIOLATIONS, AND AMENDING CHAPTER 12.06 BY AMENDING THE CAMPAIGN CONTRIBUTION ORDINANCE RELATING TO DEFINITIONS

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 12.02.060 of Chapter 12.02 of Title 12 of the San José Municipal Code is hereby repealed.

12.02.060 — Local governmental lobbyist.

A. ~~“Local governmental lobbyist” means any individual who receives two thousand dollars or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are to communicate directly or through his or her agents with any public official, officer or designated employee for the purpose of influencing any governmental, legislative or administrative action of the city or the San José Redevelopment Agency.~~

SECTION 2. Section 12.04.110 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.04.110 Civil Penalties

A. Civil penalties shall be imposed by resolution of the commission.

- B. Except as otherwise specified in ~~this Chapter~~Title 12, the commission may impose penalties of up to Five Thousand Dollars (\$5,000) for each ~~complaint~~sustained violation.
- C. If any civil penalty imposed by the commission is not timely paid, the City Clerk shall refer the debt to the Director of Finance for collection.

SECTION 3. Section 12.04.120 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.04.120 Campaign Contribution Violations

- A. In determining if penalties should be imposed for violations of Chapter 12.06 and the amount of any such penalties, the commission shall consider all the relevant circumstances surrounding the case including:
1. The severity of the violation;
 2. The presence or absence of any intention to conceal, deceive, or mislead;
 3. Whether the violation was deliberate, negligent or inadvertent;
 4. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this Chapter;
 5. Whether the respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
 6. The degree to which the respondent cooperated with the investigation;

7. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this Chapter;
- B. The amount of the penalties, other than for a late contribution report pursuant to Section 12.06.910 shall be up to Five Thousand Dollars (\$5,000) and/or the value of any contribution(s) or gift received in violation of Chapter 12.06.
- C. A candidate or committee failing to file a late contribution report pursuant to Section 12.06.910 shall be required to pay a penalty in an amount equal to the unreported contribution, but not less than One Thousand Dollars (\$1,000).
- D. The City Clerk or City Attorney may put persons on notice of a potential violation of the requirements of Chapter 12.06, whether or not a complaint is filed with the Commission.

SECTION 4. Section 12.06.010 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.06.010 Definitions

The definitions set forth in this part shall govern the application and interpretation of this chapter. The following definitions used in this Chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this Chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000, et seq.) and the regulations of the California Fair Political Practices Commission, as amended.

SECTION 5. Section 12.06.130 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.06.130 Independent Expenditure

- A. “Independent expenditure” shall mean an expenditure which is not made with the cooperation or the prior consent of, or in consultation with, or at the request of a candidate or any agent or an authorized or controlled committee of such candidate or which is an independent expenditure as set forth in the regulations of the Federal Election Commission at 11 CFR Section 109.1. made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee. -An expenditure that is made to or at the behest of a candidate or controlled committee is not an independent expenditure.
- B. Any expenditure in aid or in opposition to a Council or Mayoral candidate which is not an “independent expenditure” is deemed to be a contribution to that candidate, subject to the limitations of this Chapter.

SECTION 6. Section 12.06.220 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.06.220 Applicability to Agents

- A. “Agent” shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate or who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. ~~include a candidate's campaign consultant,~~

~~the consultant's employees, and any other person authorized by a candidate, the candidate's controlled committee or the candidate's consultant to take any action to bring about the candidate's nomination for or election to any elective city office. An "agent" is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans or needs.~~

- B. The prohibitions and requirements of this Chapter applicable to a candidate shall also apply to the candidate's agent.

PASSED FOR PUBLICATION of title this _____ day of _____, 2004, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

RON GONZALES
Mayor

ATTEST:

LEE PRICE, CMC
City Clerk

