



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Richard Doyle, City Attorney
Lee Price, MMC, City Clerk

SUBJECT: PROPOSED REVISIONS TO
CHAPTER 12.06 OF THE
SAN JOSE MUNICIPAL CODE
RELATED TO THE CITY'S
CAMPAIGN FINANCE
REGULATIONS

DATE: November 4, 2010

RECOMMENDATION

As recommended by the Elections Commission, City Attorney and City Clerk, approve an ordinance amending parts of Chapter 12.06 of the San José Municipal Code related to campaign finance.

BACKGROUND

In August and October, 2009, the City Council approved amendments to the City's campaign finance regulations. Staff has since determined that some of the provisions should be clarified: (1) how to calculate increases to limits on contributions to candidates for Mayor and City Council in the City of San José; (2) what information independent committees should report; (3) what information the City Clerk should publish before an election for Mayor or City Council; and (4) what types of notices are required when making electioneering communications and who should file reports after making electioneering communications. The Elections Commission recommends changes to these provisions.¹

In addition, two decisions have been issued since the Council voted on August 11, 2009 to maintain contribution limits to independent committees. First, on January 21, 2010, the United States Supreme Court in *Citizens United v. Federal Election Commission* concluded by a 5-4 majority that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Second, on April 30, 2010, the Ninth Circuit Court of Appeals issued a decision in the *Long Beach Area Chamber of Commerce, et al. v. City of Long Beach* case. The Ninth Circuit, bound by the Supreme Court's decision in *Citizens United*, found that "Supreme Court precedent forecloses [Long

¹ The Commission met on May 12, 2010 to discuss most of the changes proposed now and agreed that any other changes that resulted in greater clarity should be made.

Beach's] argument that independent expenditures by independent expenditure committees . . . , like the Chamber PACs, raise the specter of corruption or the appearance thereof" and found Long Beach's provision unconstitutional. Consequently, the Elections Commission also recommends that the Council repeal Part 3 (Sections 12.06.310 – 12.06.330) of Chapter 12.06, which regulates contributions to independent committees.

ANALYSIS

A. The Proposed Ordinance Explains How to Calculate Increases to Contribution Limits

The proposed ordinance makes technical corrections to the sections that describe how to calculate increases to the contribution limits based on the Consumer Price Index. (See Sections 12.06.210(E) and 12.06.540(E).)

B. The Proposed Ordinance Repeals the Provisions Regulating Contributions to Independent Committees

Consistent with the decisions from the United States Supreme Court and Ninth Circuit Court of Appeals, the proposed ordinance also repeals the provisions that regulate contributions to independent committees.

C. The Proposed Ordinance Clarifies the Reports Independent Committees Should File

The proposed ordinance makes clear that independent committees, particularly committees not primarily formed or existing to support or oppose any candidate or measure in a San José election, must file campaign disclosure reports as required by the Political Reform Act. (See new Section 12.06.910(C).) The proposed ordinance also deletes requirements for independent committees not primarily formed or existing to support or oppose any candidate or measure in a San José election; according to advice we received from the Fair Political Practices Commission on July 14, 2010, the City cannot require committees not primarily formed in San Jose to submit reports beyond those reports already mandated to be filed by the Political Reform Act. (See new Section 12.06.910(D) and old Sections 12.06.910(D) and (E).) The proposed ordinance also explains that the only independent committees subject to late filing fines imposed by the City Clerk are those committees formed or existing to support or oppose any candidate or measure in a San José election, since an independent committee whose primary filing official is not the City Clerk is regulated by its own primary filing official. (See new Section 12.06.910(E).)

D. The Proposed Ordinance Explains What Information the City Clerk Must Publish

Earlier versions of Section 12.06.920(A) could have been construed to require the City Clerk to publish information from campaign finance reports that were not filed with the City Clerk. The proposed ordinance makes clear that the Clerk will publish (1) the total amount of contributions and expenditures for (a) each of the candidates; and (b) each candidate controlled committee; and (2) the total amount of independent expenditures made by each

independent committee in an election for Mayor or members of City Council of the City of San José. (See Section 12.06.920(A).)

E. The Proposed Ordinance Clarifies the Electioneering Communications Provisions

Chapter 12.06 includes provisions governing “electioneering communications”, which are any form of communication, for which payment is made, that refers to a clearly identified candidate for Mayor or City Council of the City of San José and is disseminated, broadcast, or otherwise published within ninety calendar days of an election for which the candidate is on the ballot.

The proposed ordinance makes several technical corrections:

- The word “notice”, rather than “disclosure”, is used to describe the “paid for by” information required to be included in all electioneering communications.
- The word “written” is substituted for “printed” to ensure that communications not technically “printed” are subject to the requirements.
- The requirement that a “street address” be provided has been changed to allow any address that a candidate or committee uses, which is, in many instances, a post office box.
- The size of the font for the “paid for by” notice has been revised to adjust to the size of the largest print on the communication – rather than requiring 12 point font, now the “paid for by” font must be no smaller than ¼ the size of the largest font on the communication, and, in no case, any smaller than 12 point font.
- The word “mailing” has been replaced with “electioneering communications” or “communications” to ensure that communications not mailed are subject to the requirements.

In addition, the proposed ordinance is revised to require the reporting obligations to apply to committees whose primary filing official is the City Clerk, since, consistent with the Political Reform Act, committees with another primary filing official may not be subjected to any “additional or different filing requirements” imposed by a local government agency.

PUBLIC OUTREACH/INTEREST

The Elections Commission reviewed a version of the proposed ordinance at its Regular Meeting on May 12, 2010. In addition, the Offices of the City Attorney and City Clerk have solicited input on the proposed ordinance from certain attorneys representing the candidates and committees subject to the campaign finance regulations.

CONCLUSION

The proposed ordinance clarifies: (1) how to calculate increases to limits on contributions to candidates for Mayor and City Council in the City of San José; (2) what information independent committees should report; (3) what information the City Clerk should publish;

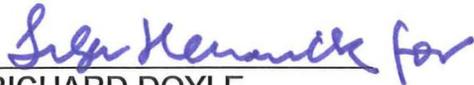
HONORABLE MAYOR AND CITY COUNCIL

November 4, 2010

Subject: Proposed Revisions to SJMC re: Campaign Finance Regulations

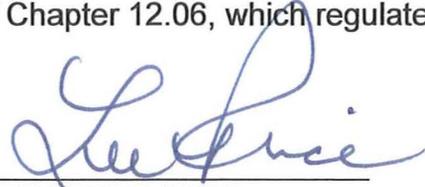
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and (4) what types of notices are required when making electioneering communications and who should file reports after making electioneering communications. In addition, in light of Supreme Court and Ninth Circuit decisions issued this year, the proposed ordinance also repeals Part 3 (Sections 12.06.310 – 12.06.330) of Chapter 12.06, which regulates contributions to independent committees.



RICHARD DOYLE

City Attorney



LEE PRICE, MMC

City Clerk

For questions please contact Lisa Herrick, Sr. Deputy City Attorney, at (408) 535-1900.