

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL  
COUNCIL APPOINTEES

**FROM:** San Jose Elections  
Commission

**SUBJECT:** Status of City Council Referrals  
to the Elections Commission

**DATE:** January 8, 2009

This memo shall serve as a status update on a variety of referrals from the City Council to the Elections Commission from the past two years. The referrals and status are as follows:

1. Public financing of municipal campaigns, referred by Council on or about March, 2006. **REFERRAL COMPLETE – Commission decided to make no recommendation about public financing.**
2. Limits on contributions to independent expenditure committees, referred by Council on October 10, 2006. **REFERRED TO SUBCOMMITTEE (MERTENS/SMITH/CAO) – Appeal to 9<sup>th</sup> Circuit resulted in remand and order to District Court to dismiss COMPAC’s case; time for COMPAC to appeal to United States Supreme Court will expire approximately 90 days from December 8, 2008.**
3. Reed Reform # 19 - referred by Council on January 9, 2007 (as recommended by Mayor Reed in his memo dated December 22, 2006): Plug loopholes in the campaign financing ordinance that make it possible to contribute unlimited amounts of money in the form of paid campaign workers. **REFERRAL COMPLETE – Council adopted Ordinance No. 28280 on March 25, 2008.**
4. Campaign Finance Reform Recommendations a – i from the Reed Transition Committee/Government Reform and Ethics Subcommittee dated January 8, 2007 - referred by Rules and Open Government Committee on January 24, 2007 (as recommended by Mayor Reed in his memo dated January 17, 2007, asking the Elections Commission for review and comment in order to help define the scale and scope of the election audit they will be conducting) and approved by Council on February 13, 2007:
  - a. If money is spent in San Jose the committee making the expenditure must file its report in San Jose with the City Clerk’s office within 24 hours of making the expenditure. **REFERRAL COMPLETE – per memo from the CAO dated August 30, 2007, the current law already requires that**

**reports be filed within 24 hours of making the expenditure during the last 16 days before the election.**

- b. Re-initiate the contribution limits on independent expenditures (the City Attorney's office is currently appealing the court case that threw out the contribution limits). *[Note: this is somewhat duplicative of the referral from Council to the Elections Commission on October 10, 2006.]* **REFERRED TO SUBCOMMITTEE (MERTENS/SMITH/CAO) – Appeal to 9<sup>th</sup> Circuit resulted in remand and order to District Court to dismiss COMPAC's case; time for COMPAC to appeal to United States Supreme Court will expire approximately 90 days from December 8, 2008.**
- c. Increase penalties for violations dramatically, possibly as much as the expenditure. **REFERRAL COMPLETE – Council adopted Ordinance No. 28213 on January 8, 2008.**
- d. Increase the budget and staff of the Elections Committee and allow the Elections Committee to use the District Attorney's office to investigate election complaints. **REFERRED TO SUBCOMMITTEE (MERTENS/DEFUNIAK).**
- e. Penalize the consultant as well as the committee for failure to follow Independent Expenditure Laws. **REFERRAL COMPLETE - Same as 4.c above.**
- f. Disallow the coordination of candidate committees and party organizations in non-partisan races. **REFERRED TO CAO FOR LEGAL OPINION RE CONSTITUTIONALITY.**
- g. Require Independent Expenditure committees to disclose on written material a disclaimer that says “this piece was paid for by an independent committee with funds that were raised in amounts greater than the limits imposed on campaign committees.” The same disclaimer would have to be read on all radio and television commercials. **REFERRAL COMPLETE - Council adopted Ordinance No. 28213 on January 8, 2008.**
- h. Prohibit consultants from working for a candidate committee and an Independent Expenditure Committee supporting the same candidate. **REFERRED TO CAO FOR LEGAL OPINION RE CONSTITUTIONALITY.**
- i. The Transition Committee also recommends the city staff looks into the Instant Run Off System to see if this method could save money. **COMMISSION CONSIDERED AND TOOK NO ACTION IN APRIL 2008 BUT AGREED TO REVISIT THIS ISSUE IN ONE YEAR OR SOONER IF THERE IS FURTHER INTEREST OR NEW DEVELOPMENTS.**

5. Recommendations 5 and 6 by Mayor Reed (formerly Councilmember – District 4) in his memo dated September 29, 2006, concerning independent expenditure committees, which were referred to the Elections Commission on October 10, 2006:
  - a. Review the City ordinance to determine any changes that need to be made, or any other steps that can be taken, such as education or auditing, to address the following problems which appeared in campaign reports filed in the last election:
    - i. Accepting campaign contributions prior to the campaign contribution start date. (Municipal Code Sections 12.06.290; 12.06.330)
    - ii. Failing to disclose names of contributors. (Government Code Section 85700, Municipal Code Section 12.06.910)
    - iii. Failing to disclose expenditures made by subvendors (Government Code Section 84303; FPPC Reg. 18431)
    - iv. Failing to disclose late expenditures in a timely manner. (Government Code Section 84204)
    - v. Reporting contributions in excess of the \$500 per person limit. (Municipal Code Section 12.06.540)

***INITIALLY HELD PENDING RESULTS OF THE ELECTION AUDIT OF THE 2006/07 ELECTION CYCLE; MGT OF AMERICA INC. REPORT IS COMPLETE; COMMISSION MAY WANT TO REVIEW THIS REFERRAL AGAIN IN LIGHT OF INFORMATION CONTAINED IN THAT REPORT***

- b. Review the ordinance to determine if changes should be made to regulate political party expenditures to ensure full disclosure along the lines of the rules promulgated in San Diego. ***REFERRAL COMPLETE – Council adopted Ordinance No. 28213 on January 8, 2008. Clerk conducted outreach with campaign committees and monitored compliance during the 2008 election cycle.***