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2009 JUN -2 A 10: 59

May 28, 2009

VIA E-MAIL & U.S. MAIL

Fred de Funiak, Chair  
San Jose Elections Commission  
c/o Lee Price, City Clerk  
200 E. Santa Clara St.  
San Jose, CA 95113

RE: Proposed Changes to City's Campaign Finance Law

Dear Chair de Funiak:

On behalf of our client, the San Jose Silicon Valley Chamber of Commerce Political Action Committee ("COMPAC"), we submit the following comments in connection with the proposed changes to the City's campaign finance law which City Clerk Lee Price forwarded to us last week. (Copy of 5/21/09 e-mail enclosed.)

1. "Electioneering communications" disclosure. COMPAC has always supported increased disclosure for electioneering communications – and in fact submitted just such a proposal to the Elections Commission and City Council in September and October 2006.<sup>1</sup> COMPAC has always stood fully behind any mailers, advertisements or any other communications which it distributes discussing where City officials stand on various public policy issues, and will of course comply with any disclosure law which the City Council enacts.

However, we do not support using the City of San Diego's electioneering communications law as a model, for several reasons. Most notably, the law is ridiculously broad and a "trap for the unwary," covering basically all types of communications, including such innocuous forms of communication as verbal conversations, invitations to charitable fundraisers where a Councilmember is honored, regularly published newsletters, etc. Instead, we recommend that you look to the federal electioneering communications law, which was drafted with a more limited scope, based on academic studies and public hearings about which

<sup>1</sup>We refer you to the enclosed copies of our earlier correspondence to the Commission and Council suggesting that the City adopt an electioneering communications disclosure law for a more thorough outline of the policy and legal issues raised by this proposal.

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types of communication sent at what time could most affect the electorate. Although we do not necessarily agree that the City should limit its electioneering communications law to TV and radio ads, as the federal law does (i.e., the City would most likely also be justified in including mail pieces within its law, because mail pieces are used so frequently in City elections), and do not have an opinion on whether the appropriate time period is 30, 60, 90 or some other number of days before an election, drafting a law based on the realities of the electoral process in San Jose seems most appropriate.

Perhaps more importantly, San Diego's law was enacted before the United States Supreme Court issued its seminal opinion about electioneering communications law in FEC v. Wisconsin Right to Life (2007) 557 U.S. 499. This decision severely limits the ability of the government to restrict communications unless they "expressly advocate" the election or defeat of a candidate or are the "functional equivalent of express advocacy." Before adopting the San Diego model, or any electioneering communications law, we recommend that the Elections Commission ask the City Attorney's office for updated legal parameters, based on this Supreme Court precedent.<sup>2</sup>

2. Limits on contributions to independent committees. We re-iterate the position that COMPAC has taken on numerous occasions over the last three years that any limits on contributions to PACs which the PACs use to make independent expenditure supporting or opposing candidates are unconstitutional. Though San Diego currently imposes a \$500 limit, the San Diego law has never been analyzed by a court – unlike the more recent court decisions invalidating the \$500 limit under San Francisco and Oakland laws (not to mention the recent, comprehensive federal appellate court decision in North Carolina Right to Life).<sup>3</sup> The City can not simply ignore this wave of judicial precedent.

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<sup>2</sup>For example, a federal district court just threw out the State of Florida's electioneering communications law last week because it went beyond the federal law definition as limited by the Wisconsin Right to Life case. (Broward Coalition of Condominiums v. Browning (5/22/09) Case No. 4:08CV445.)

<sup>3</sup>We find it ironic that the San Jose Elections Commission is recommending maintaining these limits at the same that the Sacramento City Council has, on its own motion, just repealed that City's \$900 limit on contributions to independent expenditure PACs, based on the constitutional concerns raised in the San Francisco, Oakland and North Carolina cases. (Sacramento City Council Ord. No. 2009-020; see also 4/14/09 Report to Council; copies enclosed.)

Fred de Funiak, Chair  
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As the City Attorney's office has pointed out to the Commission on several occasions, the Ninth Circuit Court of Appeals is set to rule on this issue in the Long Beach case, with oral argument now set for later this summer. Instead of recommending that the City Council adopt a law which so clearly contradicts existing court precedent, we recommend that the Commission instead consider postponing any recommendation until the Ninth Circuit issues its decision.

From a policy perspective, we again question the Commission's continued focus on limiting contributions to independent committees. As we have asked on several occasions, what public policy does it serve to limit the ability of a group of neighbors to pool their resources to pay for yard signs supporting a candidate? Or to limit the ability of small businesses on a commercial corridor to take out an advertisement in a neighborhood newspaper opposing a candidate? Saying that you are only proposing a limit on how much a PAC may raise from each person but not in any way limiting how much the PAC can spend does not solve this public policy issue, considering the cost of yard signs, newspaper advertisements, mailers and other forms of mass communications (and also does not solve the legal issues identified by the courts).

Equally puzzling is your reliance on two "studies" of independent expenditures on the national and state level, while completely ignoring the findings of a study about San Jose elections which the Commission itself commissioned. The conclusions of this study completely contradict the Commission's continued focus on independent expenditures:

The team's review found that expenditures by [independent committees], as a percentage of total campaign expenditures, were not an indicator of campaign success. That is, as shown above, candidates who had large amounts expended on their behalf by outside groups had no more and no less of a chance of succeeding in their election campaign than those who had smaller percentages of expenditures.

(MGT of America, Inc., "Analysis of 2006 Election Cycle Activity – Final Report" (8/8/08) at pp. 29-33; copy of applicable pages enclosed.)

This study therefore supports what the courts keep telling municipalities: that independent spending is a form of core political speech which the government need not fear nor restrict.

Fred de Funiak, Chair  
May 28, 2009  
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Thank you very much for the consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Jim Sutton".

James R. Sutton

Enclosures

cc: Mayor Chuck Reed  
All Members of the City Council  
Jay Ross, Esq.  
Pat Dando

JRS/lc  
#1220.08



**James Sutton**

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**From:** Price, Lee [Lee.Price@sanjoseca.gov]  
**Sent:** Thursday, May 21, 2009 8:11 PM  
**To:** James Sutton  
**Subject:** Feedback Request: San Jose Elections Commission

Dear Jim, as you know, the Elections Commission has been discussing possible revisions to the laws governing independent committees, contribution limits and disclosure. At the June 10th meeting, the Commission is expected to discuss the topic and consider a draft ordinance amending the campaign regulations as it relates to independent committees (non-candidate controlled committees). The Commission has heard several specific suggestions:

1. Adopt a strong disclosure law and repeal contribution limits to independent committees;
2. Adopt public financing and "fair fight funds"; and
3. Adopt the federal standards for disclosure and contribution limits for independent committees.
4. The regulations should be simple and easy to understand.

The Subcommittee of the Elections Commission on Independent Committees, Contribution Limits and Disclosure is considering the following proposals for the following reasons:

1. Revise the definition of "independent committee" to reflect the definitions for non-candidate controlled committees under State law for consistency since the committees are required to use FPPC forms. See <http://www.fppc.ca.gov/index.html?ID=505>

2. Adopt an "electioneering communications" disclosure ordinance. While the federal model is useful, the City of San Deigo has implemented an electioneering communications disclosure ordinance that is applicable to municipalities. See pages 4, 36 and 37 of <http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division29.pdf>

3. Revise the contribution limits to independent committees that receive contributions to mirror the language - including the amount of \$500 - in the San Diego ordinance. See pages 17 and 18 of <http://docs.sandiego.gov/municode/MuniCodeChapter02/Ch02Art07Division29.pdf>

The Commission believes that limits on contributions to committees not controlled by candidates is necessary. The City has imposed limitations on campaign contributions to independent committees since the 1980s for the purpose of preventing the circumvention of contribution limits to candidates for City Council and Mayor and their controlled committees by large individual contributions to independent committees engaged in activity to influence City Council and Mayoral elections. This is particularly important in light of two recent studies.

The National Institute on Money in State Politics concluded in a report dated August 1, 2007 that independent expenditures are the largest loophole contributors use to circumvent limits on direct campaign contributions. In addition, the California Fair Political Practices Commission concluded in a report dated June 2008 that independent expenditures have thwarted the will of the people and dramatically undermined California's campaign finance laws and that there is no question that the influence of independent expenditures is at the highest point ever in California's history.

Finally, only contributions to independent committees would be regulated - not expenditures by independent committees.

If you wish to provide comments, please respond to me by Thursday, May 28th. I will forward them to the Subcommittee. After receiving your input, the Subcommittee will be proposing an ordinance that the Elections Commission will consider at its June 10, 2009 meeting. Our plan is to post a draft ordinance on June 3rd to meet "sunshine" requirements. You are also invited to attend the meeting and/or submit written input.

Thanks in advance for your time and input.

Lee Price, MMC

5/26/2009





150 Post Street, Suite 405    ■    San Francisco, CA 94108  
Tel: 415/732-7700    ■    Fax: 415/732-7701    ■    www.campaignlawyers.com

October 3, 2006

VIA E-MAIL ONLY

The Honorable Mayor and City Council of the City of San Jose  
c/o Ms. Lee Price, San Jose City Clerk  
200 E. Santa Clara St.  
San Jose, CA 95113

RE:    Proposed Urgency Ordinance; City Council Agenda No. 3.9

Dear Mayor and Councilmembers:

We have reviewed the proposed ordinance submitted to the City Council for consideration in response to the federal court decision by Judge James Ware invalidating San Jose Municipal Code section 12.06.310. In our opinion, the proposed ordinance violates the exact same First Amendment concerns cited by Judge Ware's order, and exposes the City to additional attorneys fees arising from a possible legal challenge. We suggest that, instead of adopting this blatantly unconstitutional ordinance, the City work with our client, the San Jose/Silicon Valley Chamber of Commerce Political Action Committee ("COMPAC"), and other interested parties in drafting an ordinance which strikes a better balance between First Amendment rights and the policy objectives of the City's campaign finance laws.

The proposed ordinance would limit contributions to independent committees to \$500 (as opposed to \$250 under the old law) when the committee uses these funds for three purposes: (1) making direct contributions to City candidates; (2) paying for "issues advocacy" pieces distributed 30 or 60 days before an election (called "electioneering communications"); or (3) paying for "independent expenditures" (mailers which explicitly say "Vote for Smith" but which are not coordinated with the candidate) distributed 30 to 60 days before an election.

Judge Ware's court order contains two key holdings. First, laws which regulate political activities must be clear, and provide citizens with adequate notice of the legal pitfalls surrounding their activities; this is the "vagueness" concern raised by the Fourteenth Amendment. (Order Granting Plaintiffs' Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment (9/20/06) Case No. C06-04252JW

at pp. 10-14.) Second, the First Amendment prohibits the City from placing restrictions on political activities conducted by political committees acting independently of candidates. (Court Order at pp. 5-10.) As Judge Ware noted in his order, while the City may limit contributions to candidates themselves as a way to prevent corruption (or the appearance of corruption) of the candidates, the City may not restrict contributions to political committees unaffiliated with City candidates.

The City Attorney evidently believes that the proposed ordinance does not conflict with the court order because it is not worded as vaguely as the old law, and because it increases the limit on contributions to independent committees to \$500 and indexes this limit to inflation. (See 9/28/06 City Attorney Memorandum at p. 3.) Although the proposed ordinance would only be triggered by communications which mention a City candidate within a certain time frame before an election,<sup>1</sup> it ignores the other ground for Judge Ware's ruling: the First Amendment. Although participants in the political process may be able to figure out what they can and can not do under this new law, the City Attorney's office has ignored the underlying fact that the City can not constitutionally regulate activities undertaken independently of candidates.

San Jose is not the first city in California to confront this constitutional barrier in efforts to regulate independent political activity. San Francisco and San Diego, for instance, have reviewed the controlling court cases and adopted laws requiring citizens to disclose the money which they raise and spend to finance electioneering communications, but no city has attempted to limit how much money someone may raise for this purpose. (The City Attorney in fact offers disclosure as an alternative for you to consider in his 9/28/06 Memorandum) In fact, the federal law upheld by the Supreme Court in McConnell only requires disclosure and only applies to TV and radio ads; in contrast, the proposed ordinance limits money which political committees may raise for virtually any type of communication mentioning a City candidate, including newsletters, websites and newspaper ads. As Judge Ware made clear, when limits on contributions to political committees are triggered by only certain types of communications, they function as a "content-based expenditure limit" and implicate the most stringent form of constitutional

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<sup>1</sup>While the definition of a electioneering communication under the proposed ordinance is loosely modeled after the definition under federal law (11 C.F.R. section 100.29) which was upheld by the Supreme Court in McConnell v. FEC (2003) 540 U.S. 93, the proposed ordinance covers significantly more types of communications and omits the numerous exceptions contained in the federal law.

The Honorable Mayor and City Council  
October 3, 2006  
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scrutiny. (Court Order at p. 8.)

In sum, the only substantive difference between the old, invalid law and this proposed ordinance is that the restrictions would now only apply to ads distributed 60 days before the election. Within this 60 day window, however, the court's analysis still applies. Therefore, in our opinion, the proposed ordinance directly contradicts the findings in Judge Ware's order and violates the First Amendment – and will be immediately vulnerable to a legal challenge. Any successful challenge to the ordinance would also subject the City to additional liability for attorneys fees.

We therefore urge the Council to reject this proposed ordinance, and instead instruct the City Attorney to draft an ordinance focusing on disclosure rather than limits, and which does not otherwise run afoul of the First Amendment.

Sincerely,

A handwritten signature in cursive script that reads "James R. Sutton".

James R. Sutton

cc: Mike Fox, COMPAC Chair  
Pat Dando, San Jose/Silicon Valley Chamber of Commerce CEO

JRS/lc  
#1220.02





October 4, 2006

VIA OVERNIGHT DELIVERY

Rick Doyle, Esq.  
San Jose City Attorney  
San Jose City Hall  
200 E. Santa Clara St.  
San Jose, CA 95113

RE: "Electioneering Communications" Laws

Dear Mr. Doyle:

Following up on the City Council's consideration of a new ordinance regulating independent committees earlier this week, we thought it may be helpful for you to have copies of the "electioneering communications" laws recently enacted in San Diego and San Francisco. As we have discussed with your office on several occasions over the last several weeks, and as we also discussed in our pleadings in the court case, San Diego and San Francisco enacted these laws as a way to regulate "issue advocacy" pieces (like the ones distributed by COMPAC before the June election) within the constitutional parameters set out in the McConnell decision.

As you can see from the enclosed copies of these laws, they focus on disclosure: requiring the people who pay for certain types of ads before an election to disclose on public filings how they paid for the ads, and also requiring them to indicate on the ads who paid for them. These laws do not, however, place any limits on how people may finance these ads.<sup>1</sup>

We note two significant limitations on the City's authority to adopt an electioneering communications disclosure law. First, in upholding the federal electioneering

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<sup>1</sup>Although the ordinance considered by the Council earlier this week was clearly modeled after the federal electioneering communications law (2 U.S.C. section 434(f); 11 Code Fed. Regs. section 100.29), we were surprised that it omitted the exceptions contained in the federal law and deviated from the federal law in other significant ways. We have therefore also enclosed a copy of the complete federal law, as well as explanatory materials published by the Federal Elections Commission.

Rick Doyle, Esq.  
October 4, 2006  
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communication law, the United States Supreme Court relied heavily on extensive empirical research conducted by foundations and citizen watchdog groups about the impact of issues advocacy TV and radio ads on federal elections. We therefore believe that a city must undertake some similar type of research, and perhaps hold public hearings, in order justify the need for this type of law. Second, the Supreme Court also focused on the fact that the federal electioneering communications law only applies to TV and radio ads, both because of the proven impact that these types of ads have on federal elections, and in order to avoid overbreadth concerns. We therefore question the authority of cities to enact electioneering communications laws covering different types of communications.

In sum, we believe that a City ordinance requiring disclosure of issues advocacy pieces distributed shortly before an election, which is limited to certain types of communications shown by empirical evidence to impact local elections, could – if drafted properly – survive constitutional scrutiny under the First and Fourteenth Amendments, and not run afoul of Judge Ware’s court order. However, any law which attempts to limit the money raised or spent on these types of ads, which covers communications which have not been proven to have an impact on local elections, or which does not contain the important exemptions identified in the federal, San Diego and San Francisco laws, would violate citizens’ constitutional rights.

We again reiterate our offer to work with your office on drafting an ordinance which complies with these constitutional principles.

Sincerely,



James R. Sutton

cc: Mayor Ron Gonzalez  
All Members of the City Council  
George Rios, Esq.  
Pat Dando

Enclosures  
JRS/lc  
#1220.02





# REPORT TO COUNCIL

## City of Sacramento

915 I Street, Sacramento, CA 95814-2604  
www. CityofSacramento.org

Staff Report  
April 14, 2009

Honorable Mayor and  
Members of the City Council

**Title:** Ordinance Amending and Repealing Various Sections of Title 2 of the Sacramento City Code Relating to the City's Campaign Chapters (Contributions and Spending)

**Location/Council District:** Citywide

**Recommendation:** 1) Adopt an Ordinance amending Sacramento City Code Sections 2.13.050, 2.13.065, 2.13.080, 2.13.085, 2.13.120 and repealing Chapter 2.14

**Contact:** Patti Bisharat, Director of Governmental Relations, (916) 808-8197

**Presenter:** Patti Bisharat, Director of Governmental Relations, (916) 808-8197

**Department:** City Manager's Office

**Division:** Not applicable

**Organization No:** 02001011

### Description/Analysis

**Issue:** The legality of the City's Contribution Limits Code relating to contributions made to independent expenditures committees has been called into question in a series of court decisions involving ordinances of other California jurisdictions (including the cities of Oakland, San Jose and San Francisco). The independent expenditure committee contribution limits in these cities were held to be unconstitutional restrictions on expenditures.

The proposed ordinance will repeal the City's contribution limits for independent expenditure committees, modify the remaining campaign contribution limits and their adjustment process, and repeal the Campaign Reform Fund. ]

### Policy Considerations:

Repeal of contribution limits for contributions to independent expenditure committees will reduce the potential of legal challenges against the City. It also allows the Council (if legal challenges are resolved in favor of limits) to re-enact limits, if desired, to:

- a. Control the timing to be coordinated with election periods

- b. Modify the language, if necessary, to conform with final court rulings
- c. Adjust the limits at a time determined to be appropriate

The amendment of Section 2.13.050, 2.13.065, 2.13.080, and 2.13.085 will increase candidate campaign contribution limits for candidates to offset the unlimited fundraising ability of independent expenditure committees.

The amendment of Section 2.13.120 will extend by 30 days the time in which City Clerk provides the Council with recommended cost of living adjustments to the contribution limits. The current deadline of March 1 does not provide the City Clerk's Office with adequate time to prepare the necessary adjustments because of the timing of data provided by the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U).

Repeal of Chapter 2.14 (Campaign Reform Fund) removes a provision of City Code for public financing of campaigns that has been ineffective, difficult to administer and understand, and utilized only once in the three election cycles it has been in place.

**Environmental Considerations:** Not applicable.

**Commission/Committee Action:** On January 20, 2009, the Law and Legislation Committee discussed proposed changes to the City's Campaign Reform Codes related to contributions to independent expenditure committees. At the meeting, the Committee expressed an interest in considering potential repeal of Section 2.13.050(D) in conjunction with potential modifications to the City's campaign contribution limits. At the March 17, 2009 Law and Legislation Committee meeting, the Committee adopted a motion to draft an ordinance(s) to repeal or suspend contributions to independent expenditure committees and public financing of campaigns, and modify campaign contribution limits.

**Sustainability Considerations:** Not applicable.

**Rationale for Recommendation:** The repeal of contribution limits for independent expenditure committees reduces the City's legal exposure. Since the removal of these limits will allow independent expenditure committees to raise as much funding as they wish or are able to, staff is recommending candidate contribution limits be increased to help offset this potential competitive disadvantage. Finally, repealing Chapter 2.14 will end General Fund appropriations to fund candidate election expenditures, a process that has been ineffective, proved administratively complex, and used by only one candidate in the three election cycles since the ordinance was adopted.

**Financial Considerations:** The repeal of Chapter 2.14 will eliminate General Fund appropriations for candidate expenditures. The City has appropriated up to \$300,000 of General Fund money during recently election cycles to fund candidate election expenditures.

Emerging Small Business Development (ESBD): Not applicable.

Respectfully Submitted by: MP  
Mark Prestwich, Special Projects Manager

Recommendation Approved:

Ray Kerridge  
Ray Kerridge, City Manager

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## Background

On January 20, 2009, staff presented a report to the City's Law and Legislation Committee recommending repeal of the City's limits on contributions that persons make to independent expenditure committees. Independent expenditure committees make contributions to candidates for city elective office, or make contributions for or against a candidate for city elective office. Subsection D of Section 2.13.050 of the City Code provides:

- D. Contributions to Committees. No person shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any person a contribution or contributions totaling more than nine hundred dollars (\$900.00) in a calendar year; and no large political committee shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any large political committee a contribution or contributions totaling more than three thousand five hundred dollars (\$3,500.00) in a calendar year. The provisions of this subsection shall not apply to contributions to candidates and candidate-controlled committees, which shall be subject to the limits set forth in subsections A and B of this section.

Section 2.13.050, adopted in 2000 (Ord. No. 2000-048), was patterned after a similar provision in the campaign code for the City and County of San Francisco. The San Francisco provision was successfully challenged in the federal district court for the northern District of California, in a decision issued in late 2007. The court found that the limits on contributions to independent expenditure committees served as both contribution limits as well as expenditure limits; that for expenditure limits to be upheld, there had to be a showing of a compelling reason, or compelling governmental interest, for their enactment, and also a showing of no less restrictive alternative; that the ordinance was not supported by a compelling governmental interest and was not the least restrictive alternative. See Comm. On Jobs Advocacy v. Herrera, 2007 U.S. District Court LEXIS 73736 (N.D. Cal. 2007). The case is currently pending before the Ninth Circuit.

Several other jurisdictions have had similar limits on contributions to independent expenditure committees struck down on constitutional grounds. These include the California cities of Irvine [Lincoln Club v. City of Irvine, 292 F.3d 934 (9<sup>th</sup> Cir. 2002)]; Oakland [Oakpac v. City of Oakland, 2006 U.S. Dist Ct. LEXIS 96900 (2006)]; and San Jose [San Jose Silicon Valley Chamber of Commerce Political Action Comm. v. City of San Jose, 2006 U.S. Dist Ct. LEXIS 94338 (Sept. 2006), vacated and remanded by 2008 U.S. App. LEXIS 21767] (Oct. 2008) (reversed on *Younger* abstention grounds, and not on substantive grounds). In the Oakland decision, the court also called into question the contribution limits for independent expenditure committees as an impermissible content-based restriction.

The issue of contribution limits for contributions to independent expenditure committees has arisen in other jurisdictions, and they have been held invalid in a number of decisions.

See e.g., N.C. Right to Life, Inc. v. Leake, 525 F.3d274 (4<sup>th</sup> Cir. 2008); Arkansas Right to Life State PAC v. Butler, 29 F.Supp. 2d 540 (W.D. Ark. 1998). It is not clear when the Ninth Circuit will address the issue of the constitutionality of the independent expenditure committee contribution limits at issue in the case involving San Francisco (as well as other cities).

The City's limits were called into question by attorneys representing independent expenditure committees interested in making independent expenditures in the most recent mayoral race, and the attorneys cited the adverse decisions in San Jose and other cases. This issue was raised during the final weeks of the mayoral race, and it is the understanding of the City's Attorney's Office that the inquiries were made to the City Clerk by attorneys representing two independent expenditure committees, one supporting former Mayor Fargo, and one supporting current Mayor Johnson. Based on consultation with and advice from the City Attorney's Office, the Clerk advised the attorneys that the City would not be enforcing its contribution limits during the last few weeks of the mayoral race. The full Council was apprised of this advice at the same time as, or prior to, the advice was conveyed to the Clerk and thereafter to the committee representatives. If the City had not taken this step, the provision would likely have been challenged in court, and a successful challenge would have resulted in significant attorneys' fees awarded to the challengers.

At the January 20, 2009 Law and Legislation Committee meeting, the Committee expressed interest in considering potential changes to the independent expenditure committees in conjunction with potential modifications to the City's campaign contribution limits. Accordingly, staff provided a report back to the Committee at its March 17, 2009 meeting and provided data on contribution limits in other large California cities, and at the state and federal level.

In other large California cities, contribution limits for local elective office range from \$100 to \$3,600 for individuals and \$100 to \$7,200 for committees. Like Sacramento, some agencies link their limits to an index that provides for periodic adjustment of their contribution limits. Contribution limits for positions in the California State Legislature (e.g. Assembly and Senate) are currently \$3,900 for individuals and \$7,800 for committees; and contribution limits for statewide office other than Governor are currently \$6,500 for individuals and \$12,900 for committees. Contribution limits for candidates for Governor are much higher. The contribution limits for federal elective office are more complicated. Generally, individuals may contribute \$2,400 per election per candidate, while committees may contribute \$2,400 or \$5,000 depending on the type of committee.

After lengthy conversation at the March 17, 2009 Law and Legislation Committee meeting, the Committee directed staff to draft an ordinance for Council consideration that accomplished the following:

- Reduced City legal exposure by repeal or suspension of contribution limits for independent expenditure committees
- Raised candidate contribution limits as recommended by the Committee to help offset the potential competitive disadvantage associated with the removal of contribution limits for independent expenditure committees

- Repealed or suspended Chapter 2.14 (Campaign Reform Fund) that has been utilized only once in the three election cycles it has been in place and which will end General Fund appropriations for candidate expenditures.

The proposed ordinance is consistent with the Committee's direction as noted above. The ordinance also extends by 30 days the time in which City Clerk provides the Council with recommended cost of living adjustments to the contribution limits. The time extension is recommended because the release date for Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) data does not provide adequate time for the City Clerk's Office to prepare the necessary adjustments. The proposed ordinance also provides additional flexibility to the City Council to adjust contribution limits at any point in time.

The City Attorney's Office recommends repeal of contribution limits for contributions to independent expenditure committees (vs. suspension) because it allows the Council to control the timing to be coordinated with election periods if the multiple legal challenges are ultimately resolved in favor of limits. Repeal also provides the Council with the ability to modify the language, if necessary, to conform to final court rulings and adjust the limits at a time determined to be appropriate. Repeal (vs. suspension) of public financing of campaigns is recommended in order to be consistent with the repeal of contribution limits for independent expenditure committees. Additionally, since its adoption nine years ago, the public financing Code has been ineffective, difficult to administer and understand, has been utilized only once; this resulted in an audit investigation and subsequent findings. The City has appropriated up to \$300,000 of General Fund dollars to fund candidate expenditures in past election cycles which today becomes more difficult given the City's budget challenges. Repeal does not preclude the Council, if desired, from re-enacting public financing when the budget environment improves and developing an updated, more effective ordinance at that time.

**ORDINANCE NO. 2009-020**

Adopted by the Sacramento City Council

April 14, 2009

**AMENDING SECTIONS 2.13.050, 2.13.065, 2.13.080, 2.13.085,  
AND 2.13.120 OF CHAPTER 2.13, AND AMENDING SECTIONS 2.14.050, 2.14.140, AND  
2.14.320 OF CHAPTER 2.14 OF THE SACRAMENTO CITY CODE RELATING TO  
CAMPAIGN CONTRIBUTION AND SPENDING LIMITS AND  
PUBLIC FUNDING OF CAMPAIGNS**

**BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:**

**BACKGROUND**

Section 1. **Section 2.13.050 of the Sacramento City Code is amended as follows:**

**A. Subsection A of Section 2.13.050 is amended to read as follows:**

- A. Council Members. Contributions to candidates for the office of city council member shall be subject to the following limitations in addition to the limitations established by Article 3 of Chapter 5 of the Political Reform Act (Government Code Sections 85301—85307):
1. Contributions by Persons. No person shall make, and no candidate for the office of city council member, or a controlled committee of such candidate, or person acting by or on behalf of such candidate or such candidate's controlled committee shall accept any contribution which would cause the total amount contributed by that person to the candidate, or to the candidate's controlled committee, to exceed one thousand five hundred dollars (\$1,500.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.
  2. Contributions by Large Political Committees. No large political committee shall make, and no candidate for the office of city council member, or a controlled committee of such controlled committee, or person acting by or on behalf of such candidate or such candidate's controlled committee shall accept, any contribution which would cause the total amount contributed by that large political committee to the candidate, or to the candidate's controlled committee, to exceed five thousand dollars (\$5,000.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

**B. Subsection B of Section 2.13.050 is amended to read as follows:**

**B. Mayor.** Contributions to candidates for the office of mayor shall be subject to the following limitations in addition to the limitations established by Article 3 of Chapter 5 of the Political Reform Act (Government Code Sections 85300—85307):

1. **Contributions by Persons.** No person shall make, and no candidate for the office of mayor, or a controlled committee of such candidate, or person acting by or on behalf of such candidate or such candidate's controlled committee, shall accept into the candidate's campaign contribution account, any contribution which would cause the total amount contributed by that person to the candidate, or to the candidate's controlled committee to exceed three thousand dollars (\$3,000.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.
2. **Contributions by Large Political Committees.** No large political committee shall make, and no candidate for the office of mayor, or a controlled committee of the candidate or such candidate's controlled committee, or person acting by or on behalf of such candidate or such candidate's controlled committee shall accept, any contribution which would cause the total amount contributed by that large political committee to the candidate, or to the candidate's controlled committee, to exceed ten thousand dollars (\$10,000.00) in any of the following periods: a primary election period; a general election period; or a special election period; provided that, to the extent the Political Reform Act establishes a lower limit for special elections, the lower limit shall apply.

**C. Subsection F is added to Section 2.13.050 to read as follows:**

**F.** Subsection D of this section 2.13.050 relating to contributions to committees shall be of no further force and effect until further legislative action is taken by the City Council by ordinance.

**D. Except as specifically amended by the amendments to subsections A and B, and the addition of subsection F, Section 2.13.050 shall remain unchanged and in full force and effect.**

**Section 2. Section 2.13.065 of the Sacramento City Code is amended to read as follows:**

**2.13.065** Written solicitations by candidates.

Any candidate or controlled committee of a candidate making a written solicitation for a contribution to the candidate's campaign for city elective office shall include one of the following written notices in no less than ten-point type on each solicitation:



Candidate Name	Total Votes	Total Expenditures	Expenditures per Vote
<b>November 2006 Election</b>			
<b>Mayor Runoff Election</b>			
Chuck Reed	117,394	\$728,012	\$6.20
Cindy Chavez	80,720	\$561,076	\$6.95
<b>City Council, District 3 Runoff Election</b>			
Sam T. Liccardo	7,883	\$106,848	\$13.55
Manny Diaz	4,977	\$40,002	\$8.04
<b>City Council, District 6</b>			
Pierluigi Oliverio	6,984	\$39,050	\$5.59
Steve Tedesco	4,938	\$35,095	\$7.11
Clark Williams	4,889	\$43,255	\$8.85
Jim Spence	4,638	\$129,524	\$27.93
<b>March 2007 Election</b>			
<b>City Council, District 6 Runoff Election</b>			
Pierluigi Oliverio	7,020	\$107,521	\$15.32
Steve Tedesco	5,042	\$94,311	\$18.71
<b>City Council, District 4</b>			
Kansen Chu	2,952	\$7,924	\$2.68
Hon Thi Lien	2,356	\$41,196	\$17.49
Bryan Do	1,758	\$41,825	\$23.79
Jim Foran	1,002	\$18,709	\$18.67
<b>June 2007 Election</b>			
<b>City Council, District 4 Runoff Election</b>			
Kansen Chu	7,247	\$121,822	\$16.81
Hon Thi Lien	3,949	\$72,243	\$18.29

## Independent Committee Expenditures Analysis

In June 2008, the FPPC issued a study—*Independent Expenditures: the Giant Gorilla in Campaign Finance* with the results of its analysis of how independent expenditures affect candidates and elections within California. As noted in this report, California voters approved Proposition 34 in November 2000, with the intent of establishing contribution limits for candidates and ensuring equity in elections. However, since this time, the FPPC report noted that independent expenditures, made by third-parties on behalf of, or against, a particular candidate have skyrocketed. The FPPC report indicates that in 2000, when candidates did not have contribution limits, independent expenditure spending for legislative candidates totaled \$376,000. By 2006, independent expenditures had increased to \$23.48 million, or an increase of 6,144 percent.

MGT's analysis of IC expenditures made on behalf of or against candidates within our review found similarly large expenditures made from ICs. MGT identified over \$3.3 million in expenditures made by ICs within the period of its review. This amount is more than 63 percent of total expenditures made directly by candidates on their own behalf. MGT cautions that this amount may be understated because our review only searched for these expenditures in selected reporting arenas, as disclosed in the Scope and Methodology.

Table 18 identifies the total expenditures by candidate for those expenditures made only on *behalf* of a candidate, and compares these amounts to the totals expended directly by that candidate or his or her

committee. Expenditures made against candidates are summed at the bottom of Table 18. The team found that some candidates had the majority of their total expenditures coming from ICs.

**Table 18: Independent Expenditures as a percentage of Total Campaign Expenditures**

Candidate Name	Expenditures by Independent Committees	Expenditures by the Candidate or His or Her Committee	Total Expenditures	IC Expenditures as a percentage of Total Expenditures	Election Outcome
Hon Lien	\$268,908	\$113,438	\$382,346	70%	Unsuccessful
Kansen Chu	\$209,661	\$129,746	\$339,407	62%	Successful
Cindy Chavez	\$1,902,073	\$1,274,601	\$3,176,674	60%	Unsuccessful
Steve Tedesco	\$115,470	\$129,407	\$244,877	47%	Unsuccessful
Nora Campos	\$11,333	\$21,762	\$33,095	34%	Successful (Ran Unopposed)
Manny Diaz	\$58,093	\$126,557	\$184,650	31%	Unsuccessful
Judy Chirco	\$11,022	\$24,758	\$35,780	31%	Successful
Madison Nguyen	\$42,237	\$120,104	\$162,341	26%	Successful (Ran Unopposed)
Jim Spence	\$41,048	\$129,524	\$170,572	24%	Unsuccessful
Jay James	\$14,430	\$46,227	\$60,657	24%	Unsuccessful
Clark Williams	\$10,231	\$43,255	\$53,486	19%	Unsuccessful
Pierluigi Oliverio	\$26,946	\$146,571	\$173,518	16%	Successful
Dave Cortese	\$96,369	\$734,355	\$830,724	12%	Unsuccessful
Pete Constant	\$5,383	\$48,117	\$53,500	10%	Successful
Chuck Reed	\$98,434	\$1,260,413	\$1,358,847	7%	Successful
Sam Liccardo	\$1,350	\$201,334	\$202,684	1%	Successful
Michael Mulcahy	\$1,500	\$818,929	\$820,429	0%	Unsuccessful
Bryan Do	\$0	\$41,825	\$41,825	0%	Unsuccessful
David Pandori	\$-	\$238,757	\$238,757	0%	Unsuccessful
David Cueva	\$-	\$9,768	\$9,768	0%	Unsuccessful
Jim Foran	0	\$18,709	\$18,709	0%	Unsuccessful
Sub Total, IC Expenditures	\$2,914,487				
Expenditures by ICs Against Candidates	\$439,970				
<b>GRAND TOTALS</b>	<b>\$3,354,457</b>	<b>\$5,678,160</b>	<b>\$9,032,617</b>	<b>37%</b>	

The team's review found that expenditures by ICs, as a percentage of total campaign expenditures, were not an indicator of campaign success. That is, as shown above, candidates who had large amounts expended on their behalf by outside groups had no more and no less of a chance of succeeding in their election campaign than those who had smaller percentages of expenditures.

The team analyzed election outcome results by race (Mayor and individual City Council District races) to determine whether IC expenditures influenced any of the races. In Tables 19 and 20 on the following pages, the team presents the data for IC expenditures for candidates as well as IC expenditures made against candidates. The IC expenditures made against candidates were grouped in the column as benefiting the candidate who most benefited from these expenditures. For example, in the Mayoral election, the campaign expenditures made against one candidate (Chuck Reed) were all from groups

who spent large sums in support of only one other candidate (Cindy Chavez). Therefore, the team included all expenditures against Mr. Reed as benefits reaped by Ms. Chavez.

In the Mayoral race, the person with the largest amount of IC expenditures, both on behalf of herself and against another candidate, was ultimately unsuccessful in the race. However, because this candidate did accrue sufficient votes to qualify for the runoff election, it is possible that the IC expenditures did play a part, somewhat, in the general election results.

**Table 19: IC Expenditures Analysis – Mayoral Election**

Candidate Name	IC Expenditures FOR the Candidate		IC Expenditures AGAINST OTHER Candidates		Candidate Expenditures		Actual Expenditures	Election Outcome
	\$	%	\$	%	\$	%	\$	
Chuck Reed	\$98,434	7.2%	\$0	0%	\$1,260,413	92.8%	\$1,358,847	Qualified for runoff and was successful
Cindy Chavez	\$1,902,073	53.0%	\$413,808	11.1%	\$1,274,601	35.5%	\$3,590,482	Qualified for runoff and was unsuccessful
David Pandori	\$0	0%	\$0	0%	\$238,757	100%	\$238,757	No
Dave Cortese	\$96,369	11.6%	\$0	0%	\$734,355	88.4%	\$830,725	No
Michael Mulcahy	\$1,500	0.2%	\$0	0%	\$818,929	99.8%	\$820,429	No

Similarly, as shown in Table 20 below, we did not find that independent expenditures generally played a large role in determining candidate success. In all elections, the successful candidate spent more of his or her own funds (or their committee's funds) on a percentage basis, than ICs spent on behalf of them.

**Table 20: IC Expenditures Analysis – City Council Elections**

Candidate Name	IC Expenditures FOR the Candidate		IC Expenditures AGAINST OTHER Candidates		Candidate Expenditures		Actual Expenditures	Election Outcome
	\$	%	\$	%	\$	%	\$	
City Council, District 1								
Peter Constant	\$5,383	10.1%	\$0	0%	\$48,117	89.9%	\$53,500	Successful
Jay James	\$14,430	23.8%	\$0	0%	\$46,227	76.2%	\$60,657	Unsuccessful
City Council, District 3								
Sam Liccardo	\$1,350	0.7%	\$5,442	2.6%	\$201,334	96.7%	\$208,126	Qualified for runoff and was successful
Manny Diaz	\$58,093	31.5%	\$0	0%	\$126,557	69.5%	\$184,650	Qualified for runoff and was unsuccessful
City Council, District 5								
Nora Campos	\$11,333	34.2%	\$0	0%	\$21,762	65.8%	\$33,095	Successful
City Council, District 7								
Madison Nguyen	\$42,237	26.0%	\$0	0%	\$120,104	74.0%	\$162,341	Successful

*Continued*

Candidate Name	IC Expenditures FOR the Candidate		IC Expenditures AGAINST OTHER Candidates		Candidate Expenditures		Actual Expenditures	Election Outcome
	\$	%	\$	%	\$	%		
City Council, District 9								
Judy Chirco	\$11,022	30.8%	\$0	0%	\$24,758	69.2%	\$35,780	Successful
David Cueva	\$0	0%	\$0	0%	\$9,768	100%	\$9,768	Unsuccessful
Kevin Fanning	\$0	0%	\$0	0%	\$0	0%	\$0	Unsuccessful
City Council, District 6								
Pierluigi Oliverio	\$26,946	15.5%	\$0	0%	\$146,572	84.5%	\$173,518	Qualified for runoff and was successful
Steve Tedesco	\$115,470	47.2%	\$0	0%	\$129,407	52.3%	\$244,877	Qualified for runoff and was unsuccessful
Clark Williams	\$10,231	19.1%	\$0	0%	\$43,255	80.9%	\$53,486	Unsuccessful
Jim Spence	\$41,048	24.1%	\$0	0%	\$129,524	75.9%	\$170,572	Unsuccessful
City Council, District 4								
Kansen Chu	\$209,661	58.2%	\$20,720	5.8%	\$129,746	36.0%	\$360,127	Qualified for runoff and was successful
Hon Thi Lien	\$268,908	70.3%	\$0	0%	\$113,438	29.7%	\$382,342	Qualified for runoff and was unsuccessful
Bryan Do	\$0	0%	\$0	0%	\$41,825	100%	\$41,825	Unsuccessful
Jim Foran	\$0	0%	\$0	0%	\$18,709	100%	\$18,709	Unsuccessful

The top committees who contributed funds on behalf of (or against) candidates in the election were as shown below in Table 21.

**Table 21: Top Ten Independent Committees Supporting or Opposing Candidates in the 2006 Election Cycle (San Jose)**

Committee Name	IC Expenditures		Candidates Supported or Opposed
	\$	%	
Santa Clara County Democratic Campaign	\$1,706,334	50.9%	<ul style="list-style-type: none"> <li>• Chuck Reed (Opposed)</li> <li>• Cindy Chavez (Supported)</li> <li>• Clark Williams (Supported)</li> <li>• Jay James (Supported)</li> <li>• Judy Chirco (Supported)</li> <li>• Kansen Chu (Supported)</li> <li>• Madison Nguyen (Supported)</li> <li>• Nora Campos (Supported)</li> <li>• Pierluigi Oliverio (Supported)</li> </ul>
Strengthening Our Lives Through Education, Community Action, and Civic Participation, a Coalition of Labor Organization Candidate PAC	\$272,576	8.1%	<ul style="list-style-type: none"> <li>• Cindy Chavez (Supported)</li> </ul>

Committee Name	IC Expenditures		Candidates Supported or Opposed
	\$	%	
San Jose Silicon Valley Chamber of Commerce PAC (COMPAC)	\$393,294	11.7%	<ul style="list-style-type: none"> <li>• Chuck Reed (Supported)</li> <li>• Cindy Chavez (Opposed)</li> <li>• Hon Lien (Supported)</li> <li>• Madison Nguyen (Supported)</li> <li>• Manny Diaz (Opposed)</li> <li>• Michael Mulcahy (Supported)</li> <li>• Pete Constant (Supported)</li> <li>• Sam Liccardo (Supported)</li> <li>• Steve Tedesco (Supported)</li> </ul>
San Jose Police Officers Association	\$261,524	7.8%	<ul style="list-style-type: none"> <li>• Cindy Chavez (Supported)</li> <li>• Hon Lien (Supported)</li> <li>• Jim Spence (Supported)</li> <li>• Judy Chirco (Supported)</li> <li>• Manny Diaz (Supported)</li> <li>• Nora Campos (Supported)</li> <li>• Pete Constant (Supported)</li> <li>• Steve Tedesco (Supported)</li> <li>• Dave Cortese (Supported)</li> </ul>
San Jose Firefighters PAC	\$156,447	4.7%	<ul style="list-style-type: none"> <li>• Dave Cortese (Supported)</li> <li>• Hon Lien (Supported)</li> <li>• Jay James (Supported)</li> <li>• Jim Spence (Supported)</li> <li>• Judy Chirco (Supported)</li> <li>• Madison Nguyen (Supported)</li> <li>• Manny Diaz (Supported)</li> <li>• Nora Campos (Supported)</li> <li>• Pete Constant (Supported)</li> <li>• Pierluigi Oliverio (Supported)</li> <li>• Steve Tedesco (Supported)</li> <li>• Sam Liccardo (Supported)</li> </ul>
Committee on Political Education (C.O.P.E.)	\$93,112	2.8%	<ul style="list-style-type: none"> <li>• Cindy Chavez (Supported)</li> <li>• Hon Lien (Opposed)</li> <li>• Kansen Chu (Supported)</li> <li>• Madison Nguyen (Supported)</li> </ul>
South Bay AFL-CIO Labor Council Committee on Political Education	\$114,136	3.4%	<ul style="list-style-type: none"> <li>• Cindy Chavez (Supported)</li> <li>• Hon Lien (Opposed)</li> <li>• Kansen Chu (Supported)</li> <li>• Madison Nguyen (Supported)</li> </ul>
San Jose First	\$63,105	1.9%	<ul style="list-style-type: none"> <li>• Chuck Reed (Opposed)</li> </ul>
Association of Retired San Jose Police Officers and Firefighters PAC	\$33,986	1.0%	<ul style="list-style-type: none"> <li>• Jim Spence (Supported)</li> <li>• Kansen Chu (Supported)</li> <li>• Manny Diaz (Supported)</li> </ul>
Santa Clara County Republican Party	\$24,437	0.7%	<ul style="list-style-type: none"> <li>• Hon Lien (Supported)</li> </ul>
International Union of Painters	\$13,500	0.4%	<ul style="list-style-type: none"> <li>• Cindy Chavez (Supported)</li> <li>• Jay James (Supported)</li> <li>• Kansen Chu (Supported)</li> <li>• Madison Nguyen (Supported)</li> <li>• Manny Diaz (Supported)</li> </ul>
ALL OTHER COMMITTEES	\$222,005	6.6%	Various
<b>TOTAL</b>	<b>\$3,354,457</b>	<b>100%</b>	