



DATE: May 24, 2016

CATEGORY: Unfinished Business

DEPT.: City Attorney's Office/City Clerk's Office

TITLE: **Ordinance Related to Campaign Finance Requirements and Voluntary Expenditure Limit Program and Implementation of an Electronic Filing System**

RECOMMENDATION

1. Introduce an Ordinance Amending Chapter 2, Article XII of the Mountain View City Code, Related to Campaign Finance Requirements and the Voluntary Expenditure Limit Program, to be read in title only, further reading waived, and set second reading for June 14, 2016 (Attachment 1 to the Council report).
2. Authorize the City Clerk to select a vendor for implementation of an electronic filing system. Direct staff to prepare an ordinance requiring campaign statements and Form 700s be filed electronically.

BACKGROUND

On March 22, 2016, the City Council directed staff to return with a proposed ordinance to enhance disclosure requirements related to local campaigns (Attachment 2). Specifically, the Council requested the top five cumulative contributors of donations made to local candidates above a \$2,500 threshold be disclosed on campaign communications made in support of or opposition to local candidates or ballot measures, including mass mailings, flyers, and newspaper ads. In addition, Council requested the proposed ordinance address transparency in campaign communications by requiring the disclosure of donations earmarked for a particular candidate or ballot measure and donations made by a committee who received the contribution from another committee (layering), if possible. Finally, Council requested staff return with options for electronic campaign reporting.

ANALYSIS

Proposed Disclosure Requirements

Top Contributors

State law authorizes cities to enact additional disclosure requirements so long as they do not conflict with or prevent compliance with the Political Reform Act. State law currently requires the top two contributors of \$50,000 or more be disclosed in advertisements. The proposed ordinance contains enhanced disclaimer requirements for campaign communications and would require the top five donors that contribute \$2,500 or more be disclosed on advertisements placed by a committee in support of or opposition to a municipal candidate or ballot measure. Small print advertisements of 20 square inches or less will be required to disclose the top three contributors because of the space limitations. This does not include advertisements by the candidates themselves or their controlled committees. These disclosure requirements would apply to all other committees, including State committees, that make independent expenditures in a municipal election. The proposed ordinance would apply to contributors of \$2,500 or more, thus covering the gap in State law which requires disclosure of those who contribute \$50,000 or more. If adopted, contributors of \$50,000 or more would be required to comply with both the City's ordinance and State law.

As proposed, the ordinance addresses print and written advertisements, which include mass mailings, newspaper ads, and flyers. A mass mailing is more than 200 "substantially similar pieces of mail" and includes e-mail. Video and audio advertisements, such as telephone or television advertisements, are excluded because these advertisements were not specifically discussed at the prior meeting. If the Council desires to include them, the definition of "advertisements" can be expanded (Attachment 3).

Earmarking and Layering

Council asked staff to address earmarked contributions in the disclosure provisions. Funds are considered earmarked when they are solicited, promised pursuant to an enforceable promise, or given for the purpose of making a contribution to the committee paying for the advertisement. Existing funds are also earmarked when a subsequent agreement or understanding is reached with the donor that all or a portion of the funds would be used to contribute to the committee paying for the advertisement. Earmarked contributions must already be disclosed on campaign statements filed under State law (they are considered contributions through an

intermediary and are prohibited under State law unless both the intermediary and true donor are disclosed on the recipient's campaign statement for cumulative contributions of \$100 or more. Candidates and committees are required to check the true source of a contribution if a reasonably prudent person would do so based upon the surrounding circumstances concerning the contribution (for example, asking questions about the true source, including the size of the contribution, the reported source, and the likelihood of that source making a contribution of the size reported).

In the proposed ordinance, if one of the five top contributors received earmarked funds to make the expenditure in support of or opposition to the local candidate or for a local ballot measure, the person or committee that earmarked the funds must also be disclosed as the top contributor on the communication.

Currently, the Political Reform Act prohibits a committee placing the advisement from creating or using a noncandidate-controlled committee or a nonsponsored committee to avoid, or that results in the avoidance of, the disclosure of any individual, industry, business entity, controlled committee, or sponsored committee as a top contributor. The proposed ordinance would further require that if a top contributor is a committee, the committee paying for the advertisement must also disclose the top three contributors to that contributing committee.

Updates to the Top Contributor List

As proposed, the list of the top contributors on the advertisements must be updated within five (5) business days of the contribution or, when involving an advertisement that must be ordered reprinted or reproduced, prior to the advertisement being reprinted or reproduced.

Enforcement

The proposed ordinance does not include any specific enforcement options. Without enforcement provisions, the ordinance, if adopted, could be enforced under the City Code's existing enforcement remedies which include both administrative and criminal penalties. Staff is requesting direction from the Council regarding enforcement of the proposed ordinance. Enforcement options for Council's consideration can be found in Attachments 4 through 6 and include: (1) authorizing the City Attorney to bring an action for either civil fines or injunctive relief; (2) authorizing members of the public to bring civil actions; (3) criminal penalties; or (4) an express statement that a violation of the ordinance is not subject to a criminal penalty. These enforcement remedies are based largely upon Assembly Bill (AB) 700, discussed below, and a survey of California

cities that have adopted disclosure in advertisement requirements. For reference, penalties for violation of the current Voluntary Expenditure Limit (VEL) include notification of the violation to the newspaper and posting at City Hall and repayment to the City of funds the City paid toward the candidates' statement fee. Enforcement of the ordinance will require staff resources to investigate any complaints and bring the enforcement action authorized by Council (e.g., an administrative citation, criminal action, or civil action).

Submittal to the Fair Political Practices Commission (FPPC)

If the proposed ordinance is adopted, the City must submit a copy of the ordinance to the FPPC as required.

Revisions to Existing Ordinance

In addition, language is proposed to clarify the existing ordinance regarding who must file a third pre-election campaign statement. Under State law, the City can only impose filing requirements on City candidates, their controlled committees, and committees primarily formed to support or oppose a municipal candidate or ballot measure. The proposed ordinance clarifies the City's filing requirements only pertain to these individuals/groups. In addition, proposed language specifies the third pre-election campaign statement includes disclosure of all contributions for the period ending the Tuesday before the election. Currently, this provision does not specify the reporting period.

An additional option for Council consideration is whether the Council would like to count in-kind contributions towards the VEL. Candidates raise this issue each election cycle. The City's Code is silent as to whether in-kind contributions count toward the VEL and in-kind contributions have not been counted. Staff would like clarification on this issue. If Council would like to count in-kind contributions toward the VEL, the proposed language in Attachment 7, attached to this report, modifies the existing language to accomplish this.

Campaign Finance Legislation Updates

The California DISCLOSE Act

As discussed at the March 22, 2016 meeting, AB 700 is pending before the State Legislature. The current draft of this legislation, which remains unchanged and has not moved since Council's meeting in March, amends disclosure requirements on certain

campaign advertisements in a way that generally requires them to be more prominent. The proposed legislation also requires many advertisements to include an identification of the top three contributors of \$50,000 or more to the committee funding the advertisement. Currently, the top two contributors must be identified. Ads paid for by candidate committee and political parties would not be required to comply with these rules.

Staff has largely modeled the proposed ordinance on AB 700. If AB 700 is adopted as currently drafted, it would go into effect January 1, 2017.

Electronic Filing of Campaign Statements

Pursuant to Council's direction, on May 5, 2016, staff issued a Request for Proposals for electronic filing systems for both Campaign Finance Disclosure Statements and Statement of Economic Interests—700 Forms from the following vendors approved by the Secretary of State:

1. Capitol WebWorks, Sacramento, California
2. ISPOLITICAL, San Diego, California
3. NetFile, Mariposa, California
4. SouthTech Systems, Riverside, California
5. Statecraft, La Jolla, California

The City received two proposals for a subscription service:

| Service | SouthTech Systems | NetFile, Inc. |
|------------------------|--------------------------|----------------------|
| Campaign Filing System | \$3,223.68/year | \$10,000/year |
| Form 700 System | \$3,070.32/year | \$4,000/year |
| Both Systems | \$5,664.60/year | \$9,600/year |

Although one of the proposals also included an option to purchase the system, staff prefers a subscription option to retain flexibility as technology is evolving. If Council wishes to implement an e-filing system, staff recommends the Council direct the City Clerk to select a vendor to implement the system as soon as practical in order to have it

available for the upcoming election. At a later date, staff will return with a proposed ordinance requiring campaign statements and Form 700s be filed electronically.

FISCAL IMPACT

Additional staff resources may be required if the adopted ordinance includes enforcement. At this time, it is unknown how much enforcement may be necessary. Furthermore, depending upon the enforcement remedies Council elects to utilize, more or less resources may be required. The budget for this fiscal year has sufficient resources to cover the implementation of the electronic filing system. Future funding for the electronic filing system could be incorporated into the budget annually thereafter.

CONCLUSION

As directed by Council, staff has prepared an ordinance to increase transparency in the disclosure requirements in advertisements paid for by independent expenditures. Staff also seeks Council direction whether to proceed with implementation of an electronic filing system for filing of campaign statements and/or Form 700s.

ALTERNATIVES

1. Modify the proposed ordinance to expand the definition of advertisements to include video and audio. (Attachment 3)
2. Introduce the proposed ordinance and any of the enforcement remedy options included in Attachments 4 through 6.
3. Modify the existing ordinance to count in-kind contributions toward the City's VEL program. (Attachment 7)
4. Do not introduce an ordinance amending Chapter 2 of the City Code relating to Campaign Finance and VEL program.
5. Provide other direction to staff.
6. Do not authorize the City Clerk to implement the electronic filing system.

PUBLIC NOTICING

Agenda posting and copy of the report to the League of Women Voters.

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- Attachments:
1. Proposed Ordinance
 2. [March 22, 2016 Council Report](#)
 3. Audio and Video Advertisements
 4. Criminal Enforcement Remedies
 5. Civil Enforcement and Injunctive Relief Brought by the City Attorney
 6. Civil Enforcement Remedies Brought by Members of the Public
 7. In-Kind Contributions Count Toward the VEL