



DATE: April 12, 2022

CATEGORY: New Business

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

TITLE: **Introduction of an Ordinance to Enact Campaign Contribution Limits, Amend Campaign Finance Reporting and Disclosure Requirements, and Repeal Political Sign Regulations**

RECOMMENDATION

1. Introduce an Ordinance of the City of Mountain View Amending Chapter 2, Article XII, of the Mountain View City Code Relating to Campaign Finance and Repealing Article III of Chapter 3 of the Mountain View City Code Relating to Political Signs, to be read in title only, further reading waived, and set a second reading for April 26, 2022 (Attachment 1 to the Council report).
2. Adopt a Resolution of the City Council of the City of Mountain View Rescinding Resolution No. 17876 Designating Public Properties Upon Which Political Signs May Be Posted, to be read in title only, further reading waived (Attachment 2 to the Council report).

BACKGROUND

On [March 8, 2022](#), the City Council considered imposing a limit on contributions to Council candidates and their controlled committees, in consideration of recently enacted Assembly Bill (AB) 571. In addition, the Council considered amendments to the Disclosure in Advertisements Ordinance to clarify and assist with implementation, and additional disclosure and reporting requirements to further enhance transparency in local elections. Finally, the Council also directed staff to repeal the City Code provisions relating to political signs.

The proposed ordinance incorporates the Council's direction as further discussed below.

ANALYSIS

Contribution Limits

The Council directed staff to return with an ordinance that establishes candidate campaign contribution limits of \$1,000 for candidates that accept and adhere to the voluntary expenditure limit and \$500 for candidates that do not accept the voluntary expenditure limit or do not adhere to the limit.

As directed by the Council, the proposed ordinance amends Chapter 2, Article XII, of the Mountain View City Code to add Division 5 to include candidate campaign contribution limits of \$1,000 per donor aggregate per election for those candidates who file a statement of acceptance of the voluntary expenditure limit and adhere to the limit and \$500 per donor aggregate per election for those candidates who file a statement of rejection of the voluntary expenditure limit or do not adhere to limit. Candidates who receive contributions over their applicable contribution limit must return the excess within 30 days of receipt. Penalties are consistent with those penalties for violations of the voluntary expenditure limit.

Disclosure in Advertisements Ordinance Amendments

The City Council directed staff to return with an ordinance that includes all of staff's recommended amendments to the Disclosure in Advertisements Ordinance. These have been included in the proposed ordinance and are as follows:

1. Clarification that a copy of the advertisement disclosing top contributors of \$2,500 or more must be filed with the City Clerk the same day the required Fair Political Practices Commission (FPPC) forms are filed reporting the expenditures for the advertisement.
2. Clarification that the requirements for print advertisements of 20" or less do not apply to electronic media.
3. Inclusion of a presumption that for purposes of calculating cumulative contributions for disclosure of top contributors on the advertisement, an advertisement is sent to the printer on the same date the expenditure for the advertisement is made. This is a rebuttable presumption that a committee may overcome with documentation showing an alternative date.
4. A recordkeeping requirement to demonstrate compliance with the Disclosure in Advertisements Ordinance and authorization for the City to require and inspect such records for compliance purposes.

In preparing the draft ordinance, staff reviewed the Disclosure in Advertisements Ordinance enforcement provisions and has one additional recommended amendment. Staff recommends removal of the two-year time period in which the City may bring criminal charges for a violation of the Ordinance. Upon further review by staff, prosecution for a violation would be subject to a one-year time period to commence a criminal charge.

Enhanced Reporting and Disclosure Requirements

The Council directed staff to return with an ordinance that requires reporting and disclosure requirements for local committees that receive contributions or make expenditures in excess of \$500. The Council also directed staff to return with a process for reporting to the Fair Political Practices Commission regarding noncandidate-controlled committees that do not file campaign statements.

The City Council requested additional reporting and disclosures in campaign communications for local committees to further enhance transparency in local elections. These provisions would supplement State law requirements and the City's Disclosure in Advertisements Ordinance.

The proposed ordinance requires reporting by a person or group of persons that make independent expenditures of \$500 or more within 90 days of a local election. A person is subject to the proposed ordinance if they are only active in the local election or primarily supports or opposes a local candidate or measure. This approach improves transparency in local elections while striking a balance with the practical needs of staff resources for enforcement of the local ordinance and allows campaign communications below the threshold amount without reporting or disclosures. The March 8, 2022 agenda item contemplated formation and inclusion of both recipient and independent expenditure committees for regulation under the enhanced reporting and disclosure requirements. However, because the Council desires enhanced reporting and disclosure in campaign communications, and upon further review by staff, staff is recommending a streamlined approach requiring persons making independent expenditures at or above the threshold amount to report such expenditures and include identifying disclosures on advertisements without forming a committee.

The proposed ordinance is streamlined to capture independent expenditures at or above this threshold amount when made within 90 days of an election. For example, the ordinance would not apply to a person receiving contributions of \$500 or more (and below the State thresholds to qualify as a committee under State law) that does not make expenditures of \$500 or more. Nor would expenditures made more than 90 days before the election count toward the \$500 threshold.

Under the proposed ordinance, a person making qualifying independent expenditures must report those expenditures to the City Clerk within 24 hours of the expenditures and on the FPPC's Form 496, which is used to report independent expenditures. Staff is recommending use of an existing FPPC form because the form already exists, is tailored to reporting independent expenditures, and includes instructions for completing it. In addition, this is a form familiar to the City Clerk and will help facilitate receipt. The form would be submitted in a manner described

on the Form 496, which includes submittal by email, overnight delivery, fax, or personal delivery. Electronic filing would not be required for submittal to help facilitate ease of transmission.

In addition, any advertisements issued by a person required to report expenditures to the City Clerk, as discussed above, must also include disclosures on the advertisement consistent with the disclosure requirements under State law. For example, a sign or flyer would need to include the “Ad paid for by” language and be in the format set forth under State law.

The penalty provisions included in the proposed ordinance are the same penalties under the City’s Disclosure in Advertisements Ordinance (as modified and discussed above) and include both criminal and civil enforcement. In addition, and consistent with all other City Code violations, the ordinance could be enforced administratively, such as through an administrative citation. Like the City’s Disclosure in Advertisements Ordinance, compliance would be on a complaint basis, and staff would seek voluntary compliance where possible.

FPPC Complaints

The City Council directed staff to incorporate a provision in the ordinance to assist with compliance and enforcement of State law when a noncandidate committee appears to violate those requirements.

When the City receives a complaint for an alleged violation of State law, which is enforced by the FPPC, the City reviews the complaint. If it appears a violation has occurred, the City Clerk’s Office contacts the committee or person responsible for the campaign communication and requests voluntary compliance. If contact cannot be made or the alleged violation remains unaddressed, the City notifies the FPPC of the suspected violation.

Under the proposed ordinance, the City Clerk’s Office will develop regulations for the receipt and review of alleged violations of the Political Reform Act and coordinate reporting suspected violations to the FPPC where appropriate and when voluntary compliance is not obtained.

Repeal of Political Sign Ordinance

The City Council directed staff to prepare an ordinance repealing the Political Sign Ordinance. If adopted, the proposed ordinance and resolution would repeal the regulations established for posting political signs on both private and public property. The City has not historically enforced the ordinance with respect to private property. Enforcement of the ordinance with respect to public property has been limited to ensure appropriate placement of political signs when posted upon public property. In light of recent case law regarding signs and protection of free speech

under the First Amendment, staff recommends the Political Sign Ordinance be repealed. This means that political signs will no longer be allowed on public property.

FISCAL IMPACT

The proposed ordinance does not have a direct fiscal impact. However, additional staff resources are required to implement the enhanced reporting and disclosure requirements on campaign communications.

ALTERNATIVES

1. Do not introduce an ordinance and do not adopt a resolution related to contribution limits, campaign finance, and political signs.
2. Provide other direction.

PUBLIC NOTICING—Agenda posting.

Prepared by:

Diana Fazely
Assistant City Attorney

Nicole C. Wright
Senior Assistant City Attorney

Heather Glaser
City Clerk

Approved by:

Jannie L. Quinn
Interim City Attorney

Kimbra McCarthy
City Manager

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- Attachments:
1. Ordinance
 2. Resolution
 3. Existing Mountain View City Code Chapter 3, Article III