



DATE: March 8, 2022

CATEGORY: New Business

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

TITLE: **Consideration of Assembly Bill 571
Contribution Limits for City Council
Candidates and Future Campaign Finance
Ordinance Amendments**

RECOMMENDATION

1. Determine whether to accept the default contribution limits imposed by Assembly Bill 571, set a different contribution limit, or declare no limit on contributions to candidates for the City Council from single contributors.
2. Direct staff to return with an ordinance that includes the recommended Disclosure in Advertisements Ordinance amendments.
3. Direct staff whether to require additional reporting and disclosure requirements for local committees that receive contributions or make expenditures in excess of \$500.

BACKGROUND

The Political Reform Act of 1974 (PRA) requires the disclosure of campaign contributions and expenditures in connection with State and local elections. The PRA authorizes local agencies to enact campaign finance regulations so long as they do not prevent compliance with the PRA. In response to a recent change in the law, the City's experience in implementing the Disclosure in Advertisements Ordinance, and the Council's direction to improve transparency in campaign communications, staff seeks the Council's input and direction regarding potential amendments to the campaign finance provisions of the City Code in order to prepare an ordinance.

This report outlines three recommendations for the Council's consideration. The first relates to a recent change in State law for contribution limits. Contribution limits only apply to contributions to candidates for the City Council. These limits do not apply to committees formed to support or oppose a City Council candidate or local measure.

The second two recommendations relate to campaign finance reporting and advertisement disclosure requirements. The City's campaign finance requirements apply more broadly than the contribution limits, as discussed further below.

ANALYSIS

Contribution Limits and Assembly Bill 571

Assembly Bill (AB) 571 took effect on January 1, 2021 and established that the State campaign contribution limit will apply to City and County elective office candidates by default unless the city or county enacts its own contribution limit on such candidates.

In passing AB 571, the California Legislature noted that the vast majority of counties and cities in the State have not independently imposed local campaign contribution limits, although they maintain the local authority to do so. AB 571 is meant to reduce the frequency by which local candidates raise substantial campaign funds from a single contributor. It also aims to stop systems that allow local candidates to exceed contribution limits in place for elective State officeholders who have more constituents.

AB 571 does not limit either contributions to committees established to oppose the qualification of a recall measure and/or a recall election or contributions of a candidate's personal funds to their own campaign. As stated above, it also does not apply to committees formed to support or oppose a City Council candidate or local measure.

The City does not have local campaign contribution limits and, pursuant to AB 571, candidates for the City Council will be subject to a \$4,900 contribution limit (amount set for 2021-22) from a single contributor per election, which will be biennially (every other year) adjusted by the Fair Political Practices Commission (FPPC) to account for inflation. A single contributor includes various entities such as an individual, company, or association, e.g., AB 571 does not preclude cities and counties from adopting an ordinance establishing its own contribution limits or declaring that there is no limit to campaign contributions.

If the Council wishes to default to the \$4,900 contribution limit and other provisions established by AB 571 as outlined in Attachment 1, the Council can make this determination and no further action is needed. If this option is selected, candidates for the City Council will be subject to the same provisions of related State law as candidates for State elective offices, which include the ability to make a series of personal loans to their campaign as long as the outstanding balance does not exceed \$100,000 at the time of making the loans, and candidates would be required to disclose cumulative totals of contributions received or made for each election on campaign statements. Additionally, the City would be relieved of any responsibility for administrative work associated with violations and enforcement. Violations of AB 571 are punishable as a misdemeanor and subject to specified penalties, which are enforced by the FPPC.

If the Council wishes to establish other contribution limits, the Council can direct staff to return with an ordinance establishing a different limit, either higher or lower than the limits established

by AB 571, and setting penalties for violations of the limit. The City would bear the time and cost of enforcing the ordinance. Alternatively, the Council could direct staff to return with an ordinance declaring no limits on contributions, in which case AB 571 would not apply as the default. As a reference point, the highest single source contribution received by any of the nine candidates that ran for the City Council in the November 3, 2020 election was \$2,499.99. No cumulative contributions exceeded that number.

At the time this Council report was drafted, most cities in the County of Santa Clara have defaulted to the limits set by AB 571, with the exception of Gilroy (\$750 limit), Milpitas (\$250 limit), San Jose (\$500 Council limit/\$1,000 Mayor limit), and Santa Clara (\$250 limit). Cities with local campaign contribution limits had them in place prior to AB 571. Some of the limits adopted by cities allow for a periodic adjustment for inflation.

The mandatory contribution limits established by AB 571 are separate and different than the Voluntary Expenditure Limit set forth in Mountain View City Code, Section 2.150, which will be \$27,907 for 2022. AB 571 applies to how much a single contributor can give to a campaign, whereas the Voluntary Expenditure Limit applies to how much a candidate can spend on their election campaign.

Staff requests the Council provide direction to staff by determining whether to accept the default contribution limits imposed by AB 571 of \$4,900, set a different contribution limit, or declare “no limit” on contributions to candidates for the City Council.

Campaign Disclosure and Reporting Requirements

In addition, staff seeks the Council’s direction on amendments to the City’s Disclosure in Advertisements Ordinance and whether to require additional reporting and disclosure obligations for local committees to enhance transparency, as discussed further below.

State Law Campaign Finance Regulations

State law regulates campaign finance by requiring the filing of campaign statements and disclosures to be made on campaign communications. The FPPC regulates these requirements pursuant to the PRA for City/local elections. These regulations apply to candidates and political committees.

State law defines “committee” as a person or group of persons who receives contributions in excess of \$2,000, makes independent expenditures in excess of \$1,000, or makes contributions in excess of \$10,000 to or at the behest of candidates or committees. To form a committee, FPPC campaign statements must be filed, and committees are subject to additional reporting

obligations. Noncandidates who do not meet the threshold criteria of a committee are not subject to the reporting or disclosure requirements under State law.

Reporting obligations depend upon the nature of the committee. Candidates for city office, their controlled committees, committees formed or existing primarily to support or oppose candidate(s) for city office or local measure(s) in a single election, and city general-purpose committees (which support or oppose candidates or measures voted on in only one city), are required to file campaign statements with the City Clerk. Candidates for State office, their controlled committees, committees formed or existing primarily to support or oppose candidates for State office or State measures, and State general purpose committees file with the Secretary of State.

Reporting obligations also depend upon the timing of the expenditure. For example, independent expenditures aggregating \$1,000 or more and made within 90 days of an election must be reported within 24 hours of the expenditure. An “independent expenditure” is a payment for a communication expressly advocating for the election or defeat of a candidate or ballot measure and the communication is not coordinated with or made at the behest of the affected candidate or ballot measure.

In addition to reporting obligations, the PRA requires disclosures on campaign communications. In 2017, the State amended the PRA and entitled the provisions related to disclosure in advertisements as the California Disclose Act. The Disclose Act requires the disclosure of the top three cumulative contributors of \$50,000 or more over a 12-month period preceding the expenditure on the advertisement. For example, print advertisements that are individually distributed, including flyers, mailers, or door hangers, paid for by a committee other than a political party or candidate-controlled committee, must include required disclosures, including identification of the committee responsible for the advertisement. In addition, the top three contributors to that committee, contributing \$50,000 or more, must also be disclosed.

City’s Disclosure in Advertisement Ordinance

To supplement and enhance State law requirements, in 2016, the City adopted a Disclosure in Advertisements Ordinance (“Disclosure Ordinance”) to apply to campaign advertisements paid for by committees, and requires the disclosure of the top five cumulative contributors over a six-month period of \$2,500 or more to that committee on any such campaign advertisement. An advertisement includes mailers or flyers, for example, in support of or opposition to a candidate or local ballot measure. Advertisements paid for by a candidate or candidate-controlled committee are *not* subject to the Disclosure Ordinance. The Disclosure Ordinance was enacted to help provide greater transparency in campaign materials supporting or opposing a candidate

or local ballot measure. In 2018, the City amended the Disclosure Ordinance to further clarify and assist with implementation.

Recommended Amendments to the City's Disclosure in Advertisements Ordinance

During the 2020 election cycle, staff identified the following recommended amendments to further clarify and assist with implementation, and recommends the Council direct staff to return with an ordinance to include the following:

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 FPPC forms are filed, reporting the expenditures for the advertisement. The Disclosure Ordinance does not currently specify a time frame for submittal of the copy of the advertisement to the City Clerk.
2. Clarification that the print advertisement requirements for advertisements of 20" or less do not apply to electronic media. While the print advertisement requirements also apply to electronic media, it is impractical for the 20" or less requirements to apply to electronic media since electronic media is not a set size but instead varies based upon the viewing device. The 20" or less print advertisement requirements are intended for other forms of printed advertisements, such as those listed in the Disclosure Ordinance: newspapers, magazines, or similar publications.
3. Include 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. In the Disclosure Ordinance, cumulative contributions are those received between six months prior to the advertisement expenditure and seven days before the advertisement is sent to the printer. The date an expenditure is made is information already available to the City through the required FPPC forms. Should a committee wish to rebut this presumption, staff is proposing the committee may do so with documentation showing an alternative date.
4. A recordkeeping requirement to demonstrate compliance with the Ordinance and authorization for the City to request and inspect such records for compliance purposes.

Enhanced Disclosure and Reporting Requirements on Campaign Communications

During the prior election cycle, campaign advertisements were distributed that did not include any disclosures about the person or entity responsible for their distribution.

On October 27, 2020, the Council asked staff to consider ways to increase transparency for campaign literature, such as flyers and signs, distributed during a campaign. It was noted that

mass mailing rules under State law clearly require disclosures, whereas not all campaign advertisements include them. This item was included as part of the Council's Strategic Roadmap adopted on June 22, 2021.

The City may enact additional disclosure requirements so long as they do not conflict with or prevent compliance with the PRA. In addition, the City may enact additional reporting requirements. However, these regulations apply only to local candidates, their controlled committees, and other local committees, which include committees formed or existing primarily to support or oppose local candidates or ballot measures, or City general-purpose committees active only in Mountain View ("local committees").

Disclosure requirements for campaign communications depend on who issues the communication and the type of communication. State law defines mass mailings as over 200 substantially similar pieces of mail sent within a calendar month and require identification of the candidate or committee that issued the mass mailing. If the mass mailing is sent by a committee (excluding a candidate-controlled committee) and considered an advertisement, the advertisement disclosure requirements apply.

State law defines an advertisement as a communication authorized and paid for by a committee for the purpose of supporting or opposing a candidate(s) for elective office or ballot measure(s). Furthermore, only advertisements paid for by committees, as defined under State law, are subject to the State's disclosure and reporting requirements. The specific disclosure required depends on the type of committee issuing the advertisement and the type of communication.

If the Council is interested in reducing the threshold limit for "committee" disclosure requirements on advertisements to provide greater transparency and information in campaign advertisements, the City can enact such regulations to lower the threshold to an amount lower than State law. From review of other local ordinances with lower disclosure and reporting thresholds, staff recommends a reduced threshold of \$500.

If the Council directs staff to include lower threshold limits for committee disclosures on advertisements, staff would recommend the City also require campaign statement filing requirements consistent with the PRA reporting requirements for these committees. This will enable staff to verify appropriate disclosures on local campaign advertisements.

Finally, if the Council directs staff to include lower threshold limits for committees, staff recommends establishing lower limits as applied only to local committees and that the same requirements apply for both disclosure and reporting requirements. The City only has authority to require additional reporting requirements of City candidates, their controlled committees, and local committees. Although disclosure requirements at a lower threshold limit could be imposed more broadly on all campaign advertisements, including nonlocal committees, the City could not

verify disclosure compliance because it lacks the ability to require them to report campaign statements.

Furthermore, candidates and their controlled committees are currently excluded from the City's current Disclosure in Advertisements Ordinance. Excluding candidates and their controlled committees from new disclosure requirements would be consistent with this Disclosure Ordinance. For these reasons, staff recommends the lower threshold limits apply to local committees, should the Council decide to proceed with this option.

Electronic Reporting through NetFile

If the Council directs staff to return with an ordinance to require additional reporting for committees at the lower threshold limit, staff will also need to evaluate the electronic campaign statement filing system, NetFile, and whether any changes will be needed for implementation.

Next Steps

Based upon direction from the Council, staff will return with a draft ordinance to address contribution limits in accordance with AB 571, amendments to the City's Disclosure in Advertisements Ordinance to assist with implementation and provide clarification, and/or amendments to the City's campaign finance City Code provisions to enhance transparency of campaign communications through additional disclosure and reporting requirements.

CONCLUSION

Staff seeks the Council's direction on contribution limits to candidates for the City Council from single contributors in light of recent legislation imposing default limits in the absence of action by the Council. In addition, staff seeks the Council's direction on recommended Disclosure in Advertisements Ordinance amendments and inclusion of additional reporting and disclosure requirements for local committees to enhance campaign finance transparency. Staff will return to the Council with a draft ordinance based upon the Council's direction.

FISCAL IMPACT

There is no direct fiscal impact associated with this recommendation. However, should the Council direct staff to include the lower threshold limits for committee disclosures and reporting obligations, additional staff resources will be needed to implement the lower limits.

PUBLIC NOTICING—Agenda posting.

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Attachment: 1. Fair Political Practices Commission Fact Sheet for AB 571