



CITY OF MOUNTAIN VIEW

MEMORANDUM

City Attorney's Office

DATE: February 11, 2016

TO: City Council

FROM: Jannie L. Quinn, City Attorney
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SUBJECT: Campaign Disclosures and Contributions

BACKGROUND

In the 2014 election, an independent expenditure committee supporting Council candidates throughout the state sent a mailer in support of Council candidates in Mountain View. In response, Council requested an overview of campaign finance, disclosure and reporting requirements and options to address concerns related to these requirements in a local campaign.

ANALYSIS**Commonly Used Terms**

For ease of reference, it might be helpful to define frequently used terms.

“Contribution” means a payment to a candidate or committee to be spent by the recipient to influence a campaign or ballot measure. “Expenditure” means a payment on a campaign or ballot measure by either a candidate or committee. A “committee” is a group or person that receives contributions and/or makes expenditures, and includes independent expenditures. An “independent expenditure” is a payment for a communication expressly advocating 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.

Campaign Reporting and Disclosure Requirements**Reporting Obligations**

Reporting obligations are determined by the nature of the election (i.e. whether the candidate or committee supports or opposes a candidate or measure on a city, county, or state election ballot). For example, the Political Reform Act (“PRA”) requires candidates for city office, their controlled committees, and committees formed or existing primarily to support or oppose candidates for city office or local measures, and city general purpose committees to file campaign statements with the City Clerk. Likewise, 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 must file campaign statements with the Secretary of State.

In Mountain View, campaign statements filed with the City Clerk are available on the City's website. State committees are required to file their statements with the Secretary of State. These statements are available online at <http://cal-access.sos.ca.gov/>.

The Fair Political Practices Commission (FPPC) regulates campaign reporting and disclosure requirements pursuant to the PRA for city/local elections. Candidates and committees are required to file campaign statements on a periodic basis identifying each person who cumulatively contributes more than \$100 and expenditures of \$100 or more during the reporting period.

In addition, the PRA designates independent expenditures made within 90 days of an election as "late" and imposes a separate reporting requirement for late independent expenditures. A committee must file a report with the City Clerk within 24 hours when it makes late expenditures supporting or opposing a local candidate or measure aggregating \$1,000 or more.

Disclosure requirements

The PRA also requires independent expenditure committees include a disclaimer within advertising material stating the message is not authorized by the candidate or a committee controlled by the candidate. The advertisement must disclose the name of the independent expenditure committee and must generally disclose the top two contributors of \$50,000 or more on the face of the advertisement.

Pending Legislation

The California DISCLOSE Act

We also reviewed recent legislative proposals concerning campaign disclosure requirements. Assembly Bill 700 passed the Assembly, has moved on to the Senate and was referred to the Standing Committee on Elections and Constitutional Amendments. The current draft of this legislation 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 have to comply with these rules.

City Authority to Enact Requirements

State law authorizes cities to enact additional requirements so long as they do not conflict with or prevent compliance with the PRA. These requirements can take two forms: disclosure/disclaimer obligations and reporting requirements. Cities are

permitted to enact enhanced disclaimer requirements within campaign communications in addition to those required by the PRA. However, cities can only impose these additional or different reporting requirements if they apply to candidates seeking election in that jurisdiction, their controlled committees, or committees formed or existing primarily to support or oppose local candidacies or ballot measures or local issues. They could not be imposed on state committees. In addition, committees that make more than 70% of their contributions or expenditures on City candidates or measures would also be subject to additional filing requirements enacted by the City.

The City currently has a voluntary expenditure limit for candidates. It is important to note that while such limits can apply to spending by the candidate and committees controlled by the candidate, spending by independent expenditure committees cannot be restricted through voluntary expenditure limits.

Potential Local Regulations

Based on a review of applicable case law, state law, and legislation in other cities, Mountain View could consider the following enhanced regulations:

1. Increased Disclosure Requirements in Advertisements:

The City can increase disclosure requirements within advertising materials. This could increase transparency and improve voter access to information about independent expenditures. The Supreme Court expressly upheld disclosure requirements in the case of *Citizen's United v. FEC*. The Court reasoned such disclosures provide voters with more complete information when evaluating campaign messages and promote a healthy democracy.

For example, the following regulations could be considered and would apply to city and state committees:

(a) Requiring a committee to send the information it reports to the City to a local newspaper.

(b) Requiring the committee to notify other candidates of independent expenditures and send a proof of service to the City Clerk.

(c) Enhancing the disclaimer requirements in campaign communications by including more visible disclaimers and require the communication to identify contributors of an amount less than the \$50,000 currently required under the PRA.

2. Additional or Different Reporting Requirements:

City Candidates/Committees: These requirements would be limited to local candidates, committees controlled by local candidates, and committees created

or existing primarily to support or oppose a local ballot measure or issue, including city committees, and could include a longer independent expenditure reporting period to capture independent expenditures made more than 90 days prior to the election. However, the legislature recently eliminated a similar reporting requirement to streamline reporting and because it determined it was rare that expenditures were made outside the 90 day period. City records from the 2014 election are consistent with this finding. As indicated above, the City could not regulate reporting requirements for state committees.

3. Contribution Limits

The City may adopt a contribution limit to address a concern elections are being influenced by monetary contributions to candidates and their controlled committees if the limit is closely drawn to achieve such interests. A contribution limit would restrict the amount of money that a candidate or a committee controlled by the candidate can accept from any one person or organization. The limit cannot be too restrictive. A candidate must be able to mount an effective campaign. Consideration of such limits should also include a discussion whether these restrictions could deter or decrease the amount of the contributions. Any contribution limit should be adjusted periodically for inflation. An adopted contribution limit must be supported by legislative findings and a factual record.

Cities cannot limit contributions to independent expenditure committees because such a restriction would infringe on political speech rights protected by the First Amendment. The Supreme Court has held these limits do not address corruption concerns.

4. Electronic Filing of Campaign Statements

The City of Mountain View may require candidates and committees to electronically file statements, reports or other documents under the Public Records Act, so long as the filer receives contributions or makes expenditures totaling one thousand dollars (\$1,000) or more in a calendar year pursuant to legislation that took effect last year. The online system must be available free of charge to filers and the public for viewing filings and must include a procedure for filers to comply with the requirements to sign statements and reports under penalty of perjury.

A number of vendors have been certified by the Secretary of State to provide this service. It may be possible to contract with a single vendor to administer online filing of campaign reports, if the Council is interested. Electronic filings could allow greater visibility to the public and reduce the staff time required to process campaign forms. A portal allows members of the public to access the filed

campaign statements. Currently, NetFile provides paperless electronic filing for the cities of San Jose, Santa Clara, Palo Alto and Sunnyvale. The system costs approximately \$8,000-\$10,000 annually. A paperless Form 700 can also be added as a filing option.

5. Mass Mailings

The City could require a copy of mass mailings to be sent to the City. Such a requirement would provide a method to cross-check compliance with disclosure obligations.

Example

Utilizing the mailer from the last election as an example, this portion of the memo illustrates the effect any of the above-described regulations would have in a future City election. The independent expenditure committee was a state committee because it supported candidates in more than one city and therefore, was required to file campaign statements with the Secretary of State. Because expenditures were made by the committee in support of City candidates, the PRA also required the committee to file supplemental expenditure reports with the City Clerk for expenditures made of \$1,000 or more in support of a City candidate. Contributions of \$100 or more during the reporting period were also included in the report. These expenditure statements were filed with the City Clerk at the same time the campaign reports were required to be filed by the City candidates on whose behalf the expenditures were made, and were posted on the City's website. The supplemental expenditure report filed with the City Clerk would no longer be required as a result of the recent legislative changes. However, the expenditures and contributions would continue to be filed with the Secretary of State as part of the campaign statements.

Furthermore, the committee was required to report (and would still be required to report) expenditures of \$1,000 or more by the committee made within 90 days of the City election (late expenditures) to the City Clerk within 24 hours. Contributions received of \$100 or more were also required to be reported for the period from the day after the closing date of the last campaign statement filed to the date of the late independent expenditure. The vast majority of late expenditures during the 2014 City election occurred within this 90 day period. Because of the timing requirements for contribution reporting, however, some contributions received by the committee were not reported to the City Clerk, but instead were reported on the campaign statements filed with the Secretary of State.

CONCLUSION

An independent expenditure committee is required to report certain information to the City when made within 90 days of an election and this information is available on the City website. However, the City Council has the ability to adopt some local regulations which may enhance both the disclaimer requirements for both state and local

candidates and committees and expand the reporting requirements for City candidates, their controlled committees, committees formed or existing primarily to support or oppose City candidate(s), ballot measure(s), or a City general purpose committee.