



DATE: April 3, 2018

CATEGORY: New Business

DEPT.: City Attorney's Office

TITLE: **Ordinance Amendments Related to Campaign Disclosure Requirements and Voluntary Expenditure Limits**

RECOMMENDATION

Introduce an Ordinance Amending Chapter 2, Article XII of the Mountain View City Code, Related to Campaign Disclosure Requirements and the Voluntary Expenditure Limits, to be read in title only, further reading waived, and set second reading for April 24, 2018 (Attachment 1 to the Council report).

BACKGROUND

On June 14, 2016, the City Council adopted the Campaign Finance Disclosure in Advertisements Ordinance, which requires print advertisements (such as flyers, mailers, and newspaper ads) distributed in support of or in opposition to a local measure or candidate contain specified disclosures about the sources of money used to fund the organization responsible for the advertisement. The ordinance requires the top five contributors of \$2,500 or more to a committee be disclosed on the advertisement. The committee responsible for the advertisement must provide a copy of the advertisement to the City Clerk.

The City implemented the new ordinance during the November 2016 election cycle. The City's ordinance was drafted to align with previously proposed provisions of state law at the time that ultimately failed to pass the legislature. However, following the adoption of the City's ordinance, the state legislature enacted AB249, known as the California Disclose Act, which took effect on January 1, 2018. The bill amends the Political Reform Act and revises the disclosure in advertisement requirements under state law.

This report summarizes the implementation of the ordinance to date and recommended minor revisions to both the Campaign Finance Disclosure in Advertisements Ordinance ("CFDA") and the Voluntary Expenditure Limit Ordinance ("VEL") for the upcoming

election cycle based on the new state law and staff's experience in implementing the City's CFDA during the most recent election cycle.

ANALYSIS

Campaign Finance Disclosure in Advertisements Ordinance ("CFDA")

Implementation

During the 2016 election cycle, the City received one complaint alleging the mailers did not disclose top contributors as required under the ordinance. The City Clerk and City Attorney's Office investigated the complaint and found the mailers to be in compliance. In addition to the complaint received, the City Attorney's Office responded to numerous questions regarding compliance with the ordinance and provided assistance interpreting the provisions.

A review of the FPPC forms filed with the City¹ revealed the highest independent expenditures per candidate in the 2014 election were approximately \$35,000 with the highest cumulative contribution to an independent committee of approximately \$25,000. In the 2016 election, independent expenditures in the City election were approximately \$409,000, most likely due to the rent control measures on the ballot. Cumulative contributions made to committees were as high as approximately \$156,000, again due to the ballot measure although contributions made were not necessarily limited to the election in Mountain View, as a statewide committee having broader interests was involved in the local election.

As noted, a copy of all print advertisements in support of or opposition to a local candidate or measure must be provided to the City Clerk pursuant to the ordinance. City staff reviewed all advertisements provided pursuant to this requirement for compliance and found all to comply.

Recommended Revisions

Drawing on experience from the November 2016 election cycle, and in consideration of the recent state law changes under the California Disclose Act, staff has identified some areas of the ordinance that could be clarified to improve future implementation. Review of all submitted advertisements and investigation of the complaint involved significant staff time due to the need to review the FPPC forms submitted to the City as well as corresponding with the committee responsible for ads and, in some cases, reviewing FPPC forms filed with the state and/or other local agencies. Staff

¹ Additional information regarding contributions to committees may be contained in FPPC forms filed with other jurisdictions.

recommends the Council amend the ordinance in the following ways to assist with implementation during future election cycles:

MVCC §2.105 - Definitions

Modify certain definitions to correspond to state law or provide clarity. These definitions include:

1. Advertisement. The CFDA applies to certain advertisements. For purposes of the ordinance, advertisement is defined as a communication which is authorized by a committee for the purpose of supporting or opposing a council candidate or a ballot measure. An amendment is proposed to further clarify what it means to support or oppose a candidate or measure (e.g. communications that expressly advocate for or against a clearly identified candidate or measure as set forth in Government Code 82025).
2. Candidate. Define “candidate” to mean candidates for City Council. The ordinance exempts from the disclosure requirement advertisements paid for by a candidate or candidate-controlled committee but does not define the term candidate. This revision would clarify the exemption only applies to City of Mountain View candidates and not candidates in other jurisdictions.
3. Contribution. Amend the definition of “contribution” to reference Title 2 of the California Code of Regulations, Section 18215. Staff recommends contributors under the City Code be defined the same as under the Government Code and FPPC regulations, which govern reporting requirements, as the City relies on the FPPC reports submitted to determine compliance with the ordinance and for consistency.
4. Top Contributors. Amend the definition of “top contributors” to include the term “contribution” to make it clear a contributor is one who makes a contribution.
5. Cumulative Contributions. The ordinance does not currently define cumulative contributions and indicates a top contributor is one who cumulatively contributes \$2,500 or more to a committee paying for an advertisement when the contribution is made within six months of the expenditure. Staff recommends defining “cumulative contributions” as those contributions made within six months of the expenditure and seven days before the advertisement is sent to the printer to clearly establish the time period for assessing cumulative contributions. State law defines “cumulative contributions” to mean the amount of contributions received during the 12 months prior to the advertisement and seven days before the advertisement is

sent to the printer or broadcaster. From review of the 2016 FPPC forms filed with the City, the great majority of contribution transactions to and expenditure transactions by non-candidate controlled committees were made in the three months prior to the election. A six-month period to capture cumulative contributions from the time of the expenditure would therefore capture the majority of those contributing in a local election.

MVCC §2.106 – Disclosure on Advertisements Generally

Amend the disclosure requirements to require multi-level disclosure for contributing committees. Currently, the ordinance only requires one level of “drill down” on a committee that contributes to an organization as a top contributor. The top three contributors to that committee must also be disclosed. The amendment is proposed to address the scenario where one of those top three contributors is also a committee, by requiring disclosure of the top three contributors to the committee.

In addition to a copy of the advertisement required under the CFDA, the proposed amendment would require the organization responsible for the advertisement to submit support for the disclosures made if not addressed by the FPPC forms required to be filed with the City Clerk. Through review of the submitted advertisements and complaint, staff learned the information required under the current ordinance may not include all the relevant information necessary to determine compliance with our disclosure ordinance because contributions made to support or oppose other election candidates and measures may actually be shown on FPPC forms filed with other jurisdictions. Staff recommends the organization responsible for the advertisement submit a list of FPPC forms filed in support of the disclosures and where they were filed if the disclosure support is beyond the FPPC forms filed with the City.

The proposed ordinance creates an exception to the disclosure requirement for an organization that can show with reasonable probability that disclosure of names of the top contributors would subject the individuals to threats, harassment and reprisals. Such an exception avoids a potential challenge on free speech grounds. Case law recognizes a possible limit to disclosures if a group could show a reasonable probability that disclosure of contributors would lead to threats or harassment under First Amendment Protections.

Both the state law and City Code require disclosure of top contributors who pay for an advertisement. State law defines top contributor as a person who contributes \$50,000 or more. Under the City’s ordinance, a top contributor contributes \$2,500 or more. The City Code can be more restrictive than state law, but cannot conflict with state law. The City’s disclosure requirements are more restrictive than state law requirements. For

example, the City requires top contributor disclosures on ads paid for by political parties whereas state law does not. The City requires different disclosure language than state law. Under the City Code, the disclosure shall read “Major funding by” with the name and occupation or business interest of the contributor listed; state law requires the disclosure read “Committee major funding from” followed by the top contributor names. State law also has different requirements for e-media ads than the City’s requirements, which treat e-media ads the same as other printed ads.

In order to comply with state law, clarifying language has also been added to specify state law, rather than the City ordinance, applies when state law requires the disclosure of top contributors in advertisements.

MVCC§2.107- Disclosure on Print Advertisements

Reduce the font height size requirements on large signs (such as yard signs and billboards) to 5% of the total advertisement, consistent with state law. Currently, the height size requirement is 10% and each contributor must be listed on a separate line, meaning that if five contributors must be disclosed, 50% of the advertisement height could be dedicated to disclosures (and more if any of the contributors are a committee in which the top three contributors to that committee must also be disclosed). This provision raises concern regarding the burden of the disclosure requirement on free speech. Consistent with state law, the proposed ordinance would require the name of each contributor to be separated by a comma, rather than on a separate line, to achieve the same goal.

Voluntary Expenditure Limit (VEL) and Reporting

In addition to the CFDA, City staff proposes some clarifying amendments and the inclusion of counting in-kind contributions toward the VEL.

MVCC §2.150 - Voluntary Expenditure Limit

The current VEL expressly exempts the cost of the candidate statement and contributions returned by the candidate within 30 days of receipt. Each cycle, a number of questions arise whether certain items count towards the VEL. Specifically, questions have arisen whether candidate filing fees and the annual fee paid to the Secretary of State for maintaining committees are exempt from VEL. The prior City Clerk recommended both of these fees be exempt from the VEL and the proposed amendments include this revision.

Expenditures paid from a campaign account after an election (e.g. the maintenance of a P.O. Box after the election has occurred or for an after-election party) are not specifically addressed by the City Code. Historically, unless or until the campaign account is

redesignated for future candidacy, expenditures paid from a campaign account have not been considered to be in support of a candidacy and have not been counted toward the VEL. The proposed ordinance provides clarity on this item by expressly stating these expenses are not applied toward the VEL.

Finally, Staff recommends the short form for the third pre-election statement be eliminated and instead require the use of the FPPC form.

FISCAL IMPACT

The proposed revisions should not have a fiscal effect, though implementation of both ordinances does require staff time.

ALTERNATIVES

1. Do not introduce an ordinance amending Chapter 2 of the City Code relating to Campaign Finance and VEL program.
2. Introduce the ordinance with changes specified.
3. Provide other direction to staff.

PUBLIC NOTICING

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

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NCW/4/CAM
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Attachments: 1. Proposed Ordinance