



CITY OF HAYWARD

Hayward City Hall
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Cover Memo

File #: LB 15-031, **Version:** 1

DATE: November 3, 2015

TO: Mayor and City Council

FROM: City Attorney and City Clerk

SUBJECT: Regulations Requiring Greater Disclosure of Contributors to City Measures and Recalls, and Clarification of Loans Candidates Make to Their Own Campaigns

RECOMMENDATION

That the City Council introduces an ordinance repealing Sections 2-13.00 to 2-13.07 of the Hayward Municipal Code; and adding a new Chapter 2, Article 13, to the Hayward Municipal Code regarding greater disclosure of major contributors to City measures and recall campaigns, and clarifying loans candidates make to their campaigns.

SUMMARY

The proposed ordinance, if enacted, would require campaigns in support of or opposition to City measures and recalls of the Mayor or members of the City Council to prominently display the names of contributors on campaign communications, as defined in the ordinance. The proposed ordinance, if enacted, would also clarify that candidates for mayor or City Council are permitted to loan funds to their own campaigns without such loans being defined as contributions.

BACKGROUND

On June 16, 2015, the City Council conducted a work session to consider possible regulations requiring greater disclosure of contributors to candidates for mayor and City Council, as well as contributors to campaigns in support of or in opposition to measures. The Council also discussed the regulations which define loans candidates make to their own campaigns as contributions. As a result of the work session, direction was given to prepare updated regulations which would accomplish the following:

1. Require campaigns by independent political action committees in support of or in opposition to candidates, measures, and recalls to disclose the four top contributors on campaign communications such as mailers, television commercials, e-mails, flyers, door hangers, and Internet advertising;
2. Require that independent committees disclose all sponsoring entities or parent corporations; and
3. Clarify that candidates for Mayor and City Council could loan funds to their campaigns or controlled committees without such loans constituting contributions.

With respect to disclosure of top contributors to candidates for mayor and City Council, the Council acknowledged the transparency of existing regulations which already disclose the identities of major

contributors.

DISCUSSION

The City enacted Section 2 - 13.00, et seq., of the Hayward Municipal Code Article 13 regarding campaign contribution limits and expenditure limitations in 2002. This ordinance established a voluntary expenditure limit of \$50,000 with annual CPI adjustments for local municipal elections and varying contribution limits for candidates. A contribution cap of \$250 was set for those candidates who do not accept the voluntary expenditure limit and a cap of \$1,000 was set for candidates who voluntarily agree to the expenditure limit.

The City amended Article 13 in 2005. This amendment provided a definition for the term “contribution” and the term “in-kind” donations. No amendments have been made since.

Over time, the regulations have proved beneficial to voters and the community in general by persuading, but not mandating, voluntary controls on the amount of money candidates could raise in an election cycle and the amount of money candidates could spend in an election cycle. Since 2002, all candidates for the office of Mayor and all candidates for the Council have voluntarily agreed to limit contributions to their campaigns, and all have agreed to limit expenditures for such campaigns.

Nevertheless, the work session identified some weaknesses that could be exploited, if not addressed. For example, the current regulations do not require the prominent disclosure of top contributors to campaign communications; nor do the current regulations reach independent expenditure committees, which have become enormously influential in political campaigns at all levels of government. In addition, the current regulations do not provide clear rules on the propriety of allowing candidates to loan their own funds to their controlled committees. These weaknesses are addressed in the proposed ordinance with updated definitions. These definitions are consistent with state and federal case law and in accordance with the California Political Reform Act (Government Code §81000, et al.).

Expenditure Limits

Sections 2-13.02 and 2-13.04 regulate voluntary expenditure limitations for elective office campaigns. The primary change to these sections are that the proposed ordinance sets an expenditure limit of \$66,009, and limits contributions to candidates at \$1,295, both of which reflect the present day CPI adjusted caps.

Section 2-13.03 sets the contribution limits for candidates who do not accept the voluntary contribution limits. Contributions to these candidates are currently capped at \$315.

Personal Loans

A major upgrade from the current ordinance is that the proposed ordinance clearly codifies that candidates may take out personal loans to fund their respective campaigns. The current ordinance is ambiguous as to this issue, and candidates have had to navigate this issue without any clear regulatory direction.

The proposed ordinance provides an abundance of information on this issue. In short, for candidates who accept the voluntary expenditure limits, personal loans are capped at the CPI adjusted voluntary expenditure limit (which is currently \$66,009). These loans would not technically be considered “contributions,” but would still be calculated as part of the candidate’s voluntary expenditure limit. For candidates who do not accept the

voluntary expenditure limits, personal loans are capped at \$100,000. Any personal loans taken out by candidates must be disclosed to the City Clerk.

Recall Elections

Section 2-13.09 allows candidates to use and raise funds to oppose a recall petition. There are no restrictions regarding the financing of an opposition to a recall petition. However, if the recall petition qualifies, the candidates of the recall election will be required to choose either to be bound to the expenditure limitations of either Section 2-13.02 (voluntary expenditure limits), or be bound to the expenditure regulations of Section 2-13.03 for candidates who do not accept the voluntary expenditure limits.

Prohibition of Anonymous Contributions

The proposed ordinance does not allow any anonymous donations, of any amount, to a candidate. This is in keeping with the over-arching concept of transparency.

Campaign Disclosures

Citizens desire to know who fund their local campaigns and legislative reforms. In this spirit, the proposed ordinance would allow citizens to know upfront who funds the campaign materials sent by independent committees they receive in the mail, that they see on television commercials or web advertisements, or in campaign promotions citizens hear on the radio.

In fashioning the campaign disclosure portion of the proposed ordinance, staff has largely modeled the proposed disclosure provision on the City of Berkeley's Fair Campaign Practices Ordinance, though staff has also reviewed similar ordinance provisions in the San Francisco and San Jose municipal codes. The proposed Section 2-13.11 seeks to accomplish the following:

Subsection a -- This subsection requires that an independent committee disclose the top four contributors who give over \$1000 to an independent committee. This section also provides the format by which the disclosure should be presented in campaign materials, which includes the phrase "Major Funding Provided By" immediately followed by the name of the contributor, the contributor's city of domicile, and the total cumulative sum of contributions by each of the top four contributors.

The following is an example of a compliant disclosure:

Paid for by Citizens for Ferrets, Yes on Measure C Committee.

Major Funding Provided by: Ferret Lovers of America Committee, funded by FURRY, Inc., San Francisco, \$5000; Ferrets for All, funded by John Doe and The Ferret Club, Piedmont, \$3000; Jon Doe, Berkeley, \$1800; Jane Smith, Oakland, \$1001.

Subsection b -- This subsection discusses the format and chronology of how contributors should be listed in a campaign communication. Furthermore, this subsection defines "campaign communication."

Additionally, this subsection requires independent committees to disclose the root source of the funding, such as parent corporations or individual financiers. Committees may not simply hide major funders by creating a shell corporation or claim that a committee's funding is provided by a different, separate committee. The primary source of funding behind a campaign communication, piercing through all veils, corporation or

individual, must be disclosed to the public.

Subsection c -- This subsection provides the definition of “campaign communication” and lists what is not considered a campaign communication. Generally, items that are too small to fit the disclosure are not defined as a “campaign communication” such as campaign pens, mugs, and yard signs.

Subsection d -- This subsection focuses on changes to an independent committee’s contribution list, and requires that a committee update campaign communications within a specified time period. The goal of this provision is to ensure campaign disclosures accurately reflect who consist of the committee’s current top four contributors over \$1000, as a committee’s top four contributors may change over the course of a campaign.

Subsection e -- This subsection allows a campaign disclosure to be encompassed in rollover content along with an ad link for website advertisements under a certain size. This provision is included because some web banners are too small to include the entire disclosure within the actual visible advertisement.

Subsection f -- This subsection requires only the top contributor to an independent committee be disclosed in a television advertisement that is one minute or under in duration. Television advertisements over this duration are required to disclose the top four contributors to the candidate.

Subsection g -- This subsection requires all candidates and committees to abide by the campaign communication rules, for all elections and ballot measures, or be subject to enforcement and possible penalties.

Subsection h -- This subsection requires all independent committees to file with the City Clerk a “Committee Disclosure Statement” consisting of Forms 410 and 460 of the California Fair Political Practices Commission (“FPPC”), as well as all other relevant and appropriate FPPC forms. The identity of the sponsoring entity or parent company funding the committee must be disclosed via declaration.

Subsection i -- This subsection requires independent committees to amend a Committee Disclosure Statement if any information concerning the committee changes.

Subsection j -- This subsection prohibits committees from engaging in any campaign communications until a Committee Disclosure Statement is filed.

Enforcement of Violations

Sections 2-13.12 through 2-13.14 discuss the various penalties and procedures for violations of the proposed ordinance. These penalties and processes in the proposed ordinance are identical to the current ordinance in effect presently.

ANALYSIS

A work session on the issue of campaign contribution practices was held at the June 16, 2015 City Council meeting.

Members of the Council noted that the issue, at its heart, is one of transparency. Council members suggested that major donors are currently able to operate under the guise of ambiguous independent political action committees. These committees provide no information as to the political interests or identities of the major donors supporting those committees. The proposed ordinance addresses this issue. All political committees, whether for ballot measures or candidate elections, must file a Committee Disclosure Statement with the City Clerk. Additionally, declarations will be required that disclose the identity of the sponsoring entity and parent corporations funding an independent committee. Committee Disclosure Statement forms and declaration forms will be available to the public via the City Clerk's Office and/or FPPC website. Though the proposed ordinance, anyone who desires to know the persons or entities behind independent committees can readily access that information.

Additionally, subsection 2-13.11(k) provides a catch-all provision, allowing the City to institute penalties against any candidate or committee engaging in conduct detrimental to the purposes of the proposed ordinance, or trying to somehow circumvent the purposes of the proposed ordinance.

Members of the Council also indicated that the \$500 threshold proposed for the disclosure of top contributors is too low. Members stated that the ordinance should reveal larger contributors hoping to influence elections or measures, not smaller donations which have little impact on the political process. Based on this recommendation, the proposed ordinance raises the top contributor disclosure threshold to \$1000. It was noted that it may be laborious for committees to continually update their top contributor lists. The proposed ordinance makes this task simple: the top four contributors who contribute over \$1000 to a campaign or ballot measure are to be disclosed in specific campaign communications. If donors have identical contribution amounts, the most recent contributor takes priority on the list. Certain campaign materials where disclosure is impracticable, like pens or pins, are exempt from the disclosure requirements.

Concerning the issue of personal bank loans or self-funded campaigns, members of the Council were split. Some stated that it would be better for candidates to have bank loan limits, while others argued that bank loans should be unrestricted. The proposed ordinance presents a cap on bank loans self-funding to candidates, though a very high cap. Candidates who ascribe to the voluntary expenditure limits will be able to take out an amount equal to the voluntary expenditure limit in bank loans, while candidates who do not accept the expenditure limits will have a bank loan maximum of \$100,000. The \$100,000 figure governing candidates who do not accept the expenditure limits is modeled after the California state limits, which are codified in the California Code of Regulations § 18530.8.

FISCAL IMPACT

The proposed regulation will increase staff time. These costs will be potentially balanced by the potential for the collection of penalties payable to the general fund for violations.

Staff proposes that it report back to Council in twelve months concerning its analysis of the proposed ordinance's financial impacts on the City.

Prepared by: Justin Nishioka, Deputy City Attorney II

Recommended by: Michael Lawson, City Attorney

Miriam Lens, City Clerk

Approved by:

A handwritten signature in black ink, appearing to read 'Fran David', is positioned above the name of the City Manager.

Fran David, City Manager

Attachments:

Attachment I

Proposed Ordinance Campaign Contribution
Limits and Expenditure Limitations Ordinance
June 16, 2015 Work Session PowerPoint

Attachment II