



CITY COUNCIL STAFF REPORT

Current Business Item No. 27

December 18, 2019

File No. 0650-40

SUBJECT: Review and Reconsideration of Campaign Contribution Limits

DEPARTMENT: City Attorney

RECOMMENDATION:

It is requested that the City Council adopt Ordinance No. 2019-22 and approve an amendment to the Escondido Municipal Election Campaign Control Ordinance to lower the maximum personal contributions from \$4,300 to \$250 for city council candidates and from \$4,300 to \$800 for mayoral candidates. It is further requested that the City Council discuss, consider and give staff direction on additional campaign control amendments, if any.

FISCAL ANALYSIS:

Any changes to campaign contribution limits for local Escondido mayoral and council district seats currently in the Campaign Control Ordinance will have no fiscal impact on the City of Escondido.

PREVIOUS ACTION:

The Campaign Control Ordinance was last amended in April 2018.

BACKGROUND:

On October 9, 2019, Mayor Paul McNamara asked that the issue of local campaign contribution limits be placed on the future agenda for review and discussion and has further recommended proposed limits for consideration. Subsequently, Councilmember Olga Diaz asked to supplement the agenda item to further consider a limitation when councilmembers accept campaign contributions from persons having business before the City Council and for a period of time after a vote.

State Law Campaign Contribution Limits.

The Political Reform Act (PRA) regulates campaign finance and disclosure requirements for state and local candidates and committees. A city may also impose its own limits on campaign contributions in municipal elections and impose additional requirements separate from the PRA provided those requirements do not prevent compliance with the PRA. (Government Code § 81013; Elections Code § 10202) The PRA, first enacted in 1974, is intended to ensure that disclosure of political contributions is accurate, timely, and truthful; to keep voters informed; to make elections fair by abolishing laws and practices that favor incumbents; and, to provide adequate enforcement

mechanisms of its provisions. (Government Code § 81002.) The California Fair Political Practices Commission (FPPC) has primary responsibility for the administration and implementation of the PRA.

On October 8, 2019, California enacted AB 571, which amended various sections of California's Elections and Government Codes. Generally, the new enactment establishes limitations on contributions to a candidate for local office in the case where the local governing body has not adopted its own limits. Starting on January 1, 2021, the "default" limit on campaign contributions shall be the amount provided for in the Government Code for contributions to candidates running in state legislative races. Today, the limit for a "person" (as defined by the FPPC) to contribute to a candidate is \$4,700 per election for state senate and assembly races. However, the law specifically allows a city by ordinance or resolution to impose limits on contributions to candidates for elective city offices that are different from the state limit. (Government Code § 85702.5(a)). That is, a local jurisdiction may enact campaign contribution limits for persons and committees for elective offices in the jurisdiction that are stricter or more liberal than the default limit statute. The law further provides that the FPPC is not responsible for the administration or enforcement of the local campaign limitations ordinances and the local agency may establish its own administrative, civil or criminal penalties.

The Escondido Campaign Control Ordinance.

In 1983, the City of Escondido adopted Ordinance No. 83-46, which provided for Controls on Campaign Contributions. The ordinance was adopted to supplement the PRA.

The Ordinance is commonly referred to as the Campaign Control Ordinance and it has undergone multiple amendments since it was first adopted. For example, in 1997, the Campaign Control Ordinance was amended to conform to Proposition 208, which contained newly adopted statewide campaign laws. However, in 1998, a federal court issued a preliminary injunction prohibiting enforcement of the new state law finding that the limitations on the amounts of contributions was not narrowly drawn to achieve a legitimate purpose in violation of the First Amendment. *California Prolife Council v. Scully* (E.D. Cal. 1998) 989 F. Supp. 1282. The Ninth Circuit Court of Appeals later affirmed the injunction in 1999.

In 2007, the campaign contribution limit was increased to \$500 and a Consumer Price Index (CPI) formula was added to allow for future increases over time. In 2013, the Campaign Control Ordinance was amended again to increase campaign contributions to \$4,100 and to remove the CPI adjustment. The 2013 amendment also removed the prohibitions on cash contributions by allowing such contributions up to \$25.

In April 2018, the Campaign Control Ordinance was last amended in an effort to update the provisions to be largely consistent with the PRA. In addition to increasing the personal contribution limit to \$4,300, the Ordinance made changes to the definitions of "Committee" and "Contribution" to conform to the PRA, changed the amount of allowable cash contributions up to \$100, and repealed

certain provisions relating to credit and checking accounts. No anonymous contributions are now allowable under Escondido's Campaign Control Ordinance.

Escondido Municipal Code Section 2-103(a), which limits campaign contributions by persons, provides:

No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing such candidate, to exceed four thousand three hundred dollars (\$4,300.00).

Escondido Municipal Code Section 2-100 identifies the purpose and intent of the City's efforts to enact regulations and limitations in local campaigns. As stated, the purpose of the Code is to "preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this article."

The City's existing Campaign Control Ordinance governs the campaign contribution limits for local City Council seat races and allows for campaign contributions below the state-mandated limit. It is enforceable today and would continue to be valid and enforceable after AB 571 becomes effective on January 1, 2021. The City Council has the authority to make changes to its local campaign contribution limits provided they are generally compliant with the PRA and AB 571.

First Amendment Issues.

In addition to state and local laws, campaign finance laws can also touch on federal constitutional issues. Most notably, *Citizens United v. Federal Election Comm'n*, 572 U.S. 185 (2014) addressed the issue of whether the government may restrict independent expenditures for political communications by entities other than individuals (i.e. corporations, unions, non-profits, etc.). The case arose out of a private organization's efforts to air a film critical of Hillary Clinton who was a presidential candidate. At the time, federal law prevented corporations and unions from making campaign expenditures for broadcasts, also known as "electioneering communications," which mention a candidate a candidate for office within 60 days of a general election or 30 days before a primary. The United States Supreme Court struck down the law finding that the First Amendment protects associations of people in addition to individual speakers and that the identity of the speaker is not the proper province of the government to regulate. As a result, a federal law that prohibited all expenditures by corporations or associations would violate the free speech rights guaranteed by the First Amendment.

The decision has been the subject of debate since its inception. Its relevance to this discussion is that the Supreme Court has demonstrated an interest in examining the principles of potential First Amendment violations when the government attempts to limit campaign expenditures that may help or, in the case of *United Citizens* be arguably detrimental to, a candidate for office.

Very recently, the United States Supreme Court took up the issue of campaign contribution limits in *Thompson v. Hebdon*, 589 U.S. ___ (2019) (*per curiam*). In *Hebdon*, the State of Alaska limited the amount an individual can contribute to a candidate for political office, or to an election-oriented group other than a political party, to \$500 per year. A contributor who wished to contribute more than the limit to a candidate for office sued the State of Alaska claiming that the low maximum contribution amount constituted a violation of the First Amendment. The District Court and Ninth Circuit Court of Appeal rejected the claim and upheld the restriction. The United States Supreme Court vacated the Ninth Circuit's decision and remanded the case to determine whether "Alaska's contribution limits are consistent with our First Amendment precedents." While not providing clear direction on the Court's opinion on the merits of the question, the Court's decision discussed certain "danger signs" regarding a government limitation on campaign contributions. The Court looked at (1) whether the limit was "substantially lower than previously [judicially] upheld limits;" (2) whether the limit is substantially lower than comparable limits in other states; and (3) whether the amount is adjusted for inflation. While not exhaustive of potential problems with a potentially violative campaign finance law, these are helpful touchpoints for First Amendment judicial review of any City legislation.

Comparative Local Ordinance Limits.

A survey was conducted of the campaign contribution limits enacted by all municipalities in San Diego County. Attachment 1 provides a spreadsheet of the results of that survey.

To be clear, the campaign contribution limits in other San Diego cities are not controlling of the discretion this City Council has on establishing limits for races in this jurisdiction. However, they may serve as a helpful guide in examining the reasonableness and appropriateness of the City contribution limitations, particularly in jurisdictions with comparable geographic, population, and council district characteristics. Currently, several cities in the county have no campaign contribution limits (Carlsbad, El Cajon, Imperial Beach, National City, and Oceanside). Assembly Bill 571 will apply to those jurisdictions and they will need to either establish their own limits or allow for the limits that exist for state elective offices.

Other cities in the County have individual contribution limits that range from \$100 (Poway and Solana Beach) to \$1,000 (Lemon Grove) for City Council races. Some limits are indexed for inflation, others are not. The City of San Diego's individual limit for council district elections is \$600 and \$1,150 for the citywide races for Mayor and City Attorney.

As can be seen from Attachment 1, the City of Escondido's campaign contribution limit is the highest for cities *who have adopted some limitation*. After the implementation of AB 571, for those cities who have no limits and choose not to amend their laws, the limitation will default to the limits for state legislative races under state law (\$4,700).

In light of this background, including potential First Amendment issues, and in furtherance of the desire to eliminate the potential of "improper influence, real or potential," Escondido should consider reducing the personal campaign contribution limits from \$4,300 to \$250 for councilmember races and from \$4,300 to \$800 for citywide mayoral races, or such other amounts which address the realities of campaigning in this City. These proposed amounts are in the approximate mid-range of other county cities who have adopted local controls and they attempt to strike a balance relative to the size and population of the City, the presence of district elections, and the likely increased campaign expense involved in running a citywide mayoral race as opposed to a more limited council district race.

To be clear, the contribution amounts are entirely a function of City Council discretion and should reflect the real conditions of campaigning in this City. The Councilmembers are in a unique position to understand the dynamics and economics of raising and spending money for elective office in this City.

Voting and Limitations Related to Persons with City Business.

Councilmember Diaz has inquired about consideration and discussion of an additional limitation to local campaign contributions.

The question was posed whether the City could impose a further restriction on councilmember voting and/or acceptance of contributions when a person has a matter pending before the council or for a period of time after a council vote (*e.g.* 12 months). As an example, the City of San Marcos enacted Municipal Code Section 2.16.070 in 2003.

San Marcos Municipal Code Section 2.16.070 provides in relevant part as follows:

- (a) Within twelve (12) months after receiving a campaign contribution or other income totaling one hundred dollars (\$100) or more from any source ... no City Councilmember shall make, participate in making or attempt to influence any government decision or action that will have a reasonably foreseeable material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974.

(b) No City Councilmember shall accept any campaign contribution or other income from any source totaling one hundred dollars (\$100) or more within twelve (12) months after he or she has made, participated in making, attempted to influence or influenced any government decision or action that had a material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974.

State law provides a similar statute touching on the subject of accepting contributions from persons having business before state agencies, boards and commissions.

Government Code § 84308(b) provides in relevant part that no agency officer may “accept, solicit or direct a contribution of more than \$250 from any party ... while a proceeding involving a license, permit or other entitlement for use is pending before the agency and for three months following the date of a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest.”

Subsection (c) of Section 84308 further provides that “prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party ... shall disclose that fact on the record of the proceeding.”

Government Code § 84308 does *not* apply to City councilmembers in their role as representatives of their districts or as the mayor because they are directly elected by the voters from this jurisdiction. Government Code §84308(a)(3). However, these rules do apply to a councilmember who is acting as a voting member of another agency.

This office has no recommendation on the implementation of a law similar to the City of San Marcos or Section 84308, or some version of it. This office seeks direction on what type of amendments the City Council is looking for, if any, in the City’s Campaign Control ordinance to address this subject.

CONCLUSION:

The City Council has authority, and has exercised its authority in the past, to set campaign contribution limits consistent with the PRA. However, upon examining the current landscape of contribution limits in the County of San Diego, there are no unique factors that appear to support the significant departure in limitations from other cities of similar size and population. Use of a proportional difference for district seat vs. citywide races is supportable from the perspective of the costs associated with running a citywide race for elective office such as the mayor compared to a district race. Ordinance No. 2019-22 was designed to address the issues of campaign contribution

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limits to be consistent with the stated purpose and intent of the City's Campaign Control Ordinance as well as state and federal law.

This office and staff are prepared to assist the City Council with making any further amendments to the Escondido Municipal Code on this matter and related matters.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Michael R. McGuinness, City Attorney
12/11/19 3:31 p.m.

ATTACHMENTS:

1. Attachment 1 (Survey of Local Agency Campaign Contribution Limits)
2. Ordinance No. 2019-22

Attachment 1

Survey of Local Agency Campaign Contribution Limits

City	Contribution Limit	
CARLSBAD		N/A
CHULA VISTA	Individual Committee	\$350* \$1,190*
CORONADO	Individual City Contractors	\$200 \$0
DEL MAR	Individual Committee	\$200 \$2,000
EL CAJON		N/A
ENCINITAS		\$250
ESCONDIDO		\$4,300
IMPERIAL BEACH		N/A
LA MESA		Voluntary Expenditure Limits
LEMON GROVE		\$1,000*
NATIONAL CITY		N/A
OCEANSIDE		N/A
POWAY		\$100
SAN DIEGO	City Council Mayor/City Attorney Committee	\$600* \$1,150* \$11,400/ \$22,750**
SAN MARCOS	Individual Committee	\$250 \$500
SANTEE		\$700*
SOLANA BEACH	Individual Aggregate	\$100* \$5,000*
VISTA		\$300

* indexed for inflation, may be higher

** \$11,400 for City Council and \$22,750 for Mayor/City Attorney

ORDINANCE NO. 2019-22

AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF ESCONDIDO, CALIFORNIA,
AMENDING THE ESCONDIDO MUNICIPAL
ELECTION CAMPAIGN CONTROL ORDINANCE,
CHAPTER 2, ARTICLE 7

WHEREAS, pursuant to the authority granted by Government Code Section 81013, the Escondido City Council enacted Article 7 of Chapter 2 of the Escondido Municipal Code in 1983 to supplement the Political Reform Act of 1974 as amended; and

WHEREAS, further amendments were made to Article 7 of Chapter 2 of the Escondido Municipal Code in 1986, 1997, 2002, 2007, 2013, and 2018; and

WHEREAS, the Escondido City Council now desires to reconsider and reduce the campaign contribution limits which may be made, solicited or accepted by a Candidate or campaign treasurer to be consistent with the stated purpose and intent of the City's Campaign Control Ordinance.

The City Council of the City of Escondido, California, DOES HEREBY ORDAIN as follows:

SECTION 1. That the above recitations are true.

SECTION 2. That Section 2-103 of the Escondido Municipal Code is hereby amended to read as follows:

Section 2-103. Campaign contributions; limitations.

(a) No Person other than a Candidate shall make, and no campaign treasurer shall solicit or accept, any Contribution which will cause the total amount contributed by such Person with respect to a single Election in support or opposition to such Candidate, including Contributions to all Committees supporting or opposing such Candidate, as follows:

(1) For a council district election, two hundred fifty dollars (\$250.00).

(2) For a mayoral or other citywide election, eight hundred dollars (\$800.00).

SECTION 3. SEPARABILITY. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 4. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 5. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published, in accordance with Government Code section 36933, to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the City of Escondido.