



# Memorandum

**TO:** RULES AND OPEN GOVERNMENT      **FROM:** Councilmember Esparza  
GOVERNMENT COMMITTEE

**SUBJECT:** See Below

**DATE:** 11/21/2022

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Approved *Maya Esparza*

Date 11/21/2022

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**SUBJECT: SAN JOSE ELECTED OFFICIAL POLITICAL FUNDRAISING AND  
INDEPENDENT EXPENDITURE INVOLVEMENT ORDINANCE**

**RECOMMENDATION:**

Direct the City Attorney to return to Council with an ordinance addressing the following issues:

- Aligning the Municipal Code's definition of a "candidate" and "candidate controlled committee" with the California Political Reform Act Sections 82007 and 84214 as well as California Code of Regulations § 18404.1 and 18404;
- Clarify that the Municipal Code's established campaign contribution limits and the campaign fundraising period also apply to all "candidate controlled committees", including those that elect to make independent expenditures, in accordance with recent California Fair Political Campaigns Commission findings;<sup>1</sup> and
  - Clarify "candidate controlled committee" to include both direct and indirect control by a "candidate", such as an independent expenditure committee run by a staff member who reports to a current City Official now defined as a "candidate".
- Amend the Municipal Code's Revolving Door policy to prohibit former City officers and staff from serving as officers within an independent expenditure committee for one year following termination of office or employment.

**BACKGROUND**

Throughout San Jose's history, we have looked to our mayors not only as political and civic leaders, but as protectors and guides of our collective moral compass. In tributes to our recently departed Mayor Norm Mineta, a common theme revolved around his unshakeable integrity and

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<sup>1</sup> California Fair Political Campaigns Commission, Letter to Matthew Alvarez, January 4th 2022  
<https://www.fppc.ca.gov/content/dam/fppc/documents/advice-letters/2021-/2021/21163.pdf>

California Fair Political Campaigns Commission, Letter to Betty Ann Downing, August 11, 2014  
<https://www.fppc.ca.gov/content/dam/fppc/documents/advice-letters/1995-2015/2014/14-148.pdf>

the trust that everyone-his constituents, his friends, and his colleagues-placed in him. After a period of San Jose's history that was characterized by the backroom deals and bureaucratic dominance of City Manager A.P. "Dutch" Hamann, Mineta ushered in a new era of public trust in our local government.

Future mayors built upon that legacy and strove to strengthen our residents' trust in their government. Mayor Susan Hammer did so through fostering diversity and equity, creating model programs like the Mayor's Gang Prevention Task Force, and striving to expand local democracy by championing those whose voices were often unheard and offering them a seat at the table. Former Mayor Chuck Reed built his successful 2006 campaign upon bringing sunshine reforms to our local government, cautioning that "We need full disclosure of all fund-raising by the Mayor and Councilmembers. We need to know if Councilmembers are constantly calling developers, land owners, and other people doing business with the city and asking for big bucks for their favorite causes. That feeds a Pay-to-Play culture, and we need full disclosure so we can stop it...All of these things require leadership by example. The Mayor has to lead from the front. That is the only way we can succeed."<sup>2</sup>

Unfortunately, in the aftermath of the U.S. Supreme Court's disastrous Citizens United decision in 2010, the proliferation of "dark money" from unaccountable corporate interests flooded into political races all over the country, and San Jose has been no exception. At the time, then-Councilmember Liccardo introduced a resolution in opposition to the ruling, citing the corrosive effects of the ruling on our democracy, both local and national.<sup>3</sup>

However, Mayor Liccardo's recent actions do not seem to reflect the same values that he espoused in the aftermath of that ruling. In October of last year, the Mayor took the troubling step of creating his own PAC, Common Good Silicon Valley, supported by Mayor Sam Liccardo, fundraising for other candidates outside of the fundraising period, and apparently without regard for local contribution limits that apply to candidates. The fruits of that fundraising were hundreds of thousands of dollars in funds largely raised in large contributions from corporate interests that continue to have items come before the Council for votes. There is a brazen and astounding conflict of interest in a sitting elected official-the most powerful elected official in the City-personally lobbying special interests for large contributions from unknown donors, both outside of established campaign fundraising periods, and without respect to contribution limits. Also troubling is the fact that much of this fundraising was not publicly disclosed in a timely manner.<sup>4</sup>

Recent findings by California's Fair Political Campaigns Commission, including in response to a request from the former Treasurer of Mayor Liccardo's Common Good Silicon Valley, raised important legal questions around the actions taken subsequent by that committee.<sup>5</sup> The City's

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<sup>2</sup>[https://www.sanjoseinside.com/news/honest\\_fiscal\\_responsibility\\_and\\_open\\_government/](https://www.sanjoseinside.com/news/honest_fiscal_responsibility_and_open_government/)

<sup>3</sup> <https://records.sanjoseca.gov/Resolutions/RES76627.PDF>

<sup>4</sup> <https://sanjosespotlight.com/legal-questions-raised-about-san-jose-mayor-sam-liccardo-role-in-political-action-committee-pac-fundraising-campaign-contributions-donations-fppc-election-2022/>

<sup>5</sup> FPPC, Letter to Matthew Alvarez, 2022; FPPC, Letter to Betty Ann Dowling, 2014;

Board of Fair Campaign and Political Practices contracted independent law firm Hanson Bridgett these actions after a complaint was filed in May 2022, and dismissed them on the basis that the Mayor's actions did not violate the ethics provisions of our Municipal Code.<sup>6</sup>

While the Mayor's actions over the past ten months with respect to the PAC now known as Common Good Silicon Valley, sponsored by Solutions Silicon Valley, may well be legal and consistent with our existing Municipal Code, at the very least they raise serious ethical considerations with respect to how our existing law applies when it comes to how our elected officials are raising money, and for whom. The residents of San Jose expect that our elected officials will be held to a high ethical standard. We justifiably expect that when our elected officials find potential legal loopholes in the spaces between our Municipal Code and state law, that we will work to close those loopholes, rather than to exploit them for our own ends. This is the only way we can hope to restore our residents faith that their local government is working for them, and is beholden to them, not to corporations and other interests with deep pockets. This is not only an issue for the Mayor-every Councilmember and members of their staff should be held to the same standard.

That is why we propose that we resolve this controversy not with blame and finger pointing, but by simply closing these apparent loopholes that have raised so much ire and controversy, and adopt an ordinance that brings our City definition of "candidate" and "candidate controlled committee" into conformance with state law. This ordinance should clarify that any City elected official currently in office is beholden to the existing city and state contribution limits and timelines for fundraising for candidates, as well as the restrictions on use of those funds that would apply to any other candidate. Care should be given to ensure that this ordinance is consistent with all applicable state and federal laws. The provisions of this ordinance should also be consistent, to the extent possible, with the City's existing revolving door policy. We must recognize that working for a PAC or independent expenditure committee directly involved in campaign spending presents the same conflicts of interest as activities like lobbying, and regulate accordingly.

Restoring our residents' faith in government begins with their faith in us. We hope that all of our colleagues on the Council will support these common sense steps to restore the public's trust that their elected officials are not abusing our positions to solicit huge donations well beyond the scope of our intended local limits.

*The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action*

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<sup>6</sup> <https://sanjosespotlight.com/san-jose-mayor-sam-liccardo-cleared-of-campaign-fundraising-complaint-political-action-committee-pac-election-2022/>

*discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.*