



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Councilmember Jimenez

**SUBJECT: REPLACEMENT CAMPAIGN FINANCE REGULATIONS**      **DATE:** April 19, 2021

Approved

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## **REPLACEMENT MEMORANDUM**

### **RECOMMENDATIONS**

1. Direct staff to return to Council with ordinances that strengthen our local campaign finance regulations and policies, including:
  - a. Disclosure of top donors contributing to campaign committees making independent expenditures in municipal elections directly on all electioneering communications.
  - b. Requirements for campaign committees making independent expenditures to file any mailing or distributed flyers (over 200) with the City Clerk, who will serve as a repository for campaign literature without commentary.
  - c. Update the City of San Jose's campaign finance disclosure web portal to allow the public to more easily access information about campaign donations, including aggregating donation and expenditure data, using the City & County of San Francisco Ethics Commission website as a model: <https://sfethics.org/>
2. Direct staff to return to Council with options for new regulations, taking action as allowed under current state and federal law, to bring greater equity to campaign financing, make campaign financing more representative of the voters of the City of San Jose, and limit corruption, or the appearance of corruption, from corporate and special interest spending on municipal elections, including:
  - a. Develop a pilot program for public financing of elections, including analysis of recent laws and proposals in Seattle, San Francisco, and Oakland.
  - b. Implement prohibitions on foreign-influenced committees or donors from making independent expenditures or contributing to campaigns or independent expenditure committees. This would bar committees and donors which meet a

threshold of foreign ownership or contributions from being able to influence local elections, modeled after legislation recently passed in Seattle.

- c. Limit corporations with conflicts of interest from donating to candidates, specifically exploring contribution limits:
  - i. Proposed in the Fair Elections Initiative of 2020 to prohibit donations from donors, including their lobbyists, seeking large City contracts or discretionary approval of planning and land use decisions on large developments, as well as donors who are regulated under the City's tenant protection ordinances; and
  - ii. A policy based on California Government Code Section 84308 that governs members to the VTA and other regional boards, requiring recusal where a matter involves a person or entity that has made a contribution in the prior 12 months, and prohibiting such contributions for three months following a decision on that matter.
3. Direct staff to prepare budget estimates, as needed, for the work necessary to implement the recommendations in this memo. The information shall be conveyed through City Manager's Budget Addenda for the FY2021-2022 budget.

## **BACKGROUND**

As indicated in my previous memorandum, we have seen an astonishing amount of money spent on negative, divisive, and often misleading or outright false advertisements and other campaign materials this past election cycle. Toxic campaign practices diminish public trust and harm the integrity of elections. Additionally, as more and more dollars from special interests flood our elections, the political voice of ordinary San Jose voters is drowned out. To advance the public interest in fair campaign practices and restore public trust in local government, and to ensure our campaign finance laws represent the interests of San Jose voters, I recommend that we review and strengthen local campaign finance disclosure regulations.

The City has already enacted strong regulations capping contributions to candidates for office and to candidate-controlled committees. However, there are currently few regulations for independent expenditures made by political committees not controlled by a candidate. While Federal court decisions like *Citizens United* and *SpeechNow.org vs FEC* may limit what is possible in terms of regulation, the City of San Jose should pursue common sense policies to improve transparency and limit special interest donations to candidates and independent expenditure committees as allowed under current law and increase the equity and clarity of our campaign finance system.

While my earlier November 12, 2020 memo called for exploring contribution limits to independent expenditure committees, upon further review of the issue, I would encourage my Council colleagues to no longer explore this issue. On March 26, 2010, DC Appeals Court ruled in *SpeechNow.org vs FEC* that such limits on independent expenditure committees violated the First Amendment. Given the unconstitutional nature of such a policy, it seems like an

unnecessary risk to spend valuable staff time and resources that may be required to defend against an inevitable legal challenge if we were to pursue such policy. Additionally, such caps could disproportionately impact political committees that rely on small donations, which includes a vast number of political action committees representing labor, community groups, and realtors, by treating them the same as billionaires and multi-national corporations. These committees, because they aggregate the small donations of hundreds of individuals, on average today tend to make larger donations to independent expenditure committees than large corporations or even wealthy individuals. Treating small donor committees the same as every other type of special interest could inadvertently exacerbate the inequality in our current campaign finance system.

Nothing in *Citizens United* or *SpeechNow.org vs FEC* would limit the ability of the City to pursue more robust transparency requirements. We should explore the best options to do so.

Additionally, I believe the City should consider following recent legislation by the City of Seattle, building on existing law prohibiting foreign donations, to explore prohibiting independent expenditures and donations to candidates and political committees from entities with significant foreign ownership. It addresses a gap in the City's election regulations that can undermine the integrity of the City's elections by allowing foreign influence in campaigns and increase the risk of corruption or the appearance of corruption, including quid pro quo corruption through campaign contributions and independent expenditures by foreign-influenced donors.

Just as the City of San Jose currently prohibits card rooms from making donations to candidates, the City should consider similar prohibitions on donations to candidates on highly regulated industries where corruption or the appearance of corruption is most likely. Specifically, the Fair Elections Initiative of 2020 proposed prohibitions on those seeking large City contracts or discretionary approval of planning and land use decisions on large developments, as well as entities regulated under the City's tenant protection ordinances and their lobbyists from making donations to candidates for City office. The Mayor, Vice-Mayor, and I recommended exploring a policy based on California Government Code Section 84308 that governs members to the VTA and other regional boards. Such prohibitions could help to prevent or eliminate the appearance of "pay to play" culture in City Hall.

In the aftermath of *Citizens United*, many cities have taken steps to create or strengthen their public campaign finance systems to give greater power to small donors and local voters in the face of growing power of wealthy outside special interests. San Jose remains one of the only large cities in California without any form of public campaign finance policy. In Los Angeles, San Francisco, and Oakland, progressive matching programs help to give candidates who commit to certain campaign finance limits public dollars matching qualifying small donations from local voters. Other jurisdictions have adopted "Democracy Dollars" programs, giving every voter a limited number of vouchers which can be distributed to candidates who commit to certain campaign limits for public financing. Analysis by [Maplight](#) donations in San Jose's 2018 elections found 40% of campaign donations came from outside the City, and that donors who gave less than \$200 provided candidates just 12% of all donations. Public financing policies have

been found to widen the pool of how many local voters participate in funding campaigns, making the pool of donors more representative of City voters. According to Maplight, in 2018, donors from affluent, majority white, and minority Hispanic neighborhoods tended to give more money to candidates. Public financing could help level this playing field.