



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Board of Fair Campaign and
Political Practices

**SUBJECT: DISCUSSION AND POSSIBLE
CAMPAIGN FINANCE REGULATION
PROPOSALS**

DATE: April 19, 2021

On November 12, 2020, the San Jose City Council Rules and Open Government Committee (Committee) heard a proposal from Councilmember Jimenez to study and identify opportunities to strengthen various aspects of the city's campaign finance laws. The Committee decided to refer this proposal to the full City Council as well as the Board of Fair Campaign and Political Practices (Board) for further consideration.

As of this memo, the City Council has tentatively scheduled to hear the Councilmember's proposal on April 20, 2021. At this time, city administration has not compiled any extensive written research on the Councilmember's proposal and anticipates receiving more specific direction from the City Council at the April 20 meeting.

Due to limited resources and timing, the Board has not performed detailed research without more specific direction from the City Council. Instead, the Board has conducted a preliminary review of the Councilmember's November 2020 memo to express whether we support city administration investing further resources to study each policy proposal. The Board's initial observations are summarized as follows:

Summary of Observations and Recommendations:

- 1.A: Disclosure of Top Donors for Independent Expenditures
Board Action: Support further research
- 1.B: Enhancing Enforcement of Electioneering Communications
Board Action: Support further research
- 2: Council Study Session
Board Action: Support further research
- 3 & 4: Charter Amendments
Board Action: Support further research

Additional thoughts for each policy proposal are summarized in the following sections, labeled in accordance with the Councilmember's memo.

1.A Disclosure of Top Donors for Independent Expenditures

We understand that city elections have become increasingly competitive and complex as the community grows and technological forms of communication evolve. At the November 2020

Committee meeting, Councilmembers expressed frustration and concern over the influx of independent expenditures used in campaign advertisements.

Ever since the U.S. Supreme Court's 2010 *Citizens United v. Federal Election Commission* ruling, all levels of government are hindered in their ability to place contribution or expenditure caps on independent political spending not coordinated with a candidate's campaign. However, governments may impose disclosure requirements for independent expenditures. The California Fair Political Practice Commission (FPPC) adopted top donor disclosure requirements for independent expenditures in 2014, and several local jurisdictions had adopted their own similar top donor disclosure requirements, such as Mountain View and Cotati, as referenced in Councilmember Jimenez' proposal.

The City of San Jose requires independent committees to file regular campaign disclosure statements, but there are no city level disclosure requirements targeting top donors, other than those required under California law. The City also requires certain disclosures on electioneering communications from independent committees, but these requirements need to be updated to conform with updated state law.

Neither the City Clerk nor the Board have the mandate or resources to actively monitor and analyze independent committee expenditures. The city's online portal for campaign disclosure is also manual without any aggregated or automated analytics of campaign spending to promote public knowledge.

Recommendation: Due to the increasing prevalence of independent expenditure committees in local elections, and the limited mandate and resources of the City Clerk and Board, we support the City Council and administration further studying how best to regulate independent expenditure committees.

1.B Enhancing Enforcement of Electioneering Communications

This section of the Councilmember's memo outlines several proposals to enhance and centralize all campaign finance reporting including:

- I. Requiring independent expenditure committees to file all mail or flyers when distributed over 200 times with the City Clerk.
- II. Creating a central online location for campaign finance disclosure information similar to the San Francisco Ethics Commission, and require a link or address be included with all electioneering communications.
- III. Creating an online portal similar to the FPPC's AdWATCH page that allows the public to submit potential violations of campaign advertisement disclosure requirements.
- IV. Determine whether disclosure requirements can be imposed on "push polling."
- V. Evaluate modifications to the Board of Fair Campaign and Political Practices necessary to implement these regulations.

I. Mail and Flyer Filings with the City Clerk

For item I, the Board does not have any information regarding the value or volume of campaign mailings or distributed flyers from independent expenditures, but we support the City Council and administration in further studying the prevalence of these communications and whether disclosure requirements would be helpful in promoting public knowledge.

II. Enhancing the City Website for Campaign Finance Information

Item II proposes that the city enhance its website for public disclosure of campaign finance statements. Currently, the City Clerk's website has a subpage dedicated to Election Information, which includes links to file or view campaign finance reports. These links then lead to a separate portal where campaign statements must be manually queried and analyzed. Since these must be manually queried, users must have a basic understanding of how campaign committees submit disclosure statements, have access to Microsoft Excel or similar software, and the knowledge and skills to know how to analyze these spreadsheets in order to calculate useful summary election data.

Compared to San Francisco's website, their website is robust, inclusive of an automated dashboard detailing recent election data, and is more intuitive and easier to navigate with links to view other campaign finance statements.

The Board supports the City Council and administration in dedicating adequate resources to make our campaign finance statements easier to understand and accessible to the public. We also support including the website link on electioneering communications as much of the public is still unfamiliar with the role and authority of the Board.

III. AdWATCH Enforcement Model

Item III proposes that the city adopt an enforcement model similar to the FPPC's AdWATCH that allows the public to report suspected violations of advertisement disclaimer requirements. Under our current procedures, any complaint must be formally filed with the City Clerk's Office to be processed and investigated by the Board and its Independent Evaluator/Investigator.

Complaints can be filed in-person, or via fax, mail, or e-mail. While e-mail does make filing a complaint more accessible, creating an online form to submit a complaint directly through the website, like AdWATCH, would continue to make the complaint filing process easier and more accessible.

The City Council would also need to work with the Board to identify whether based on all the pending campaign finance proposals, if enforcement should be conducted by the current Independent Evaluator-Investigator, through newly appointed commission staff, or through alternative means.

IV. Push Polling Disclosures

Item IV proposes disclosure requirements for "push polls" as political entities may use polling solely to communicate biased political messages and for no other purpose. Since the City Clerk

and Board do not currently have the mandate or resources to actively monitor political polling, we do not have data currently to appropriately study this issue. We support the City Council and administration further studying this issue to understand how push polling may have influenced recent elections, and to what extent regulations may be appropriate.

V. Modifications to the Board of Fair Campaign and Political Practices

The Board is continually dedicated to serving as a neutral arbiter of our city's campaign finance and ethics laws, as well as providing policy advice to the City Council and administration. With our current enforcement model, any of these additional regulations adopted into Title 12 of the Ordinance Code can be overseen by the Board with our current enforcement procedures.

Our enforcement procedures, outlined in Resolution 78390, currently only allow for formal investigations and public hearings of all complaints that identify potential violations of Title 12. If the City Council wishes to allow for a settlement process to handle technical reporting noncompliance through remedial action, like adjusting an advertising disclaimer, the City Council may wish to modify Resolution 78390 to allow the Independent Evaluator/Investigator to facilitate this process, or to consider appropriating resources for full or part-time staff to manage this process.

Ultimately, the Board supports this proposal for the City to continually consider the resources and capacity of the Board as its role and authority are changed.

Recommendation: The Board supports the City further studying the appropriateness of adopting disclosure requirements for independent expenditure political mailings and push polls. We also support enhancing the city's website so there is a robust central repository for all campaign finance data and information, as well as making it easier to submit complaints through the city website. Finally, the Board supports the City considering what resources will be necessary as our role and authority is evaluated and potentially expanded.

2. City Council Study Session

Councilmember Jimenez' memo proposes holding a study session in the Spring of 2021 that invites campaign finance experts to collaborate with the City on identifying additional ways to mitigate corruption, or the appearance thereof.

Community engagement is a vital aspect to crafting policy that leads to good governance. We encourage the City to reach out and invite local and regional advocacy groups and political stakeholders, as well as individual thought leaders, to offer ideas for updating and improving our campaign finance and ethics laws. The Board can also assist with community outreach and engagement and contribute to this study session as appropriate.

In this segment, Councilmember Jimenez also suggests researching public financing of campaigns, including peer benchmarking of similar programs in Seattle, San Francisco, and Oakland. The Board has established communication with each of these commissions, which are responsible for

overseeing their public financing programs, and can assist with research if specific direction is provided by the City Council and/or city administration.

Recommendation: The Board supports the City Council and administration hosting a study session focused on engaging with subject matter experts and other community stakeholders.

3 & 4: Charter Amendments

Recommendations 3 and 4 in the Councilmember's memo propose that the Charter Review Commission evaluate Section 607 of the City Charter, the Code of Ethics, and consider incorporating recognition of the Board of Fair Campaign and Political Practices in the City Charter.

We support recognizing the Board in the City Charter to protect its status, title, authority, and potentially some guarantee of adequate resources to accomplish its program objectives.

There are now six other municipal ethics commissions in California. Aside from Sacramento, San Jose is the only other city where the ethics commission is not protected in the City Charter.

Comparison of California Local Ethics Commissions & Jurisdictions

City	Agency Title	Originating Authority	Campaign Finance	Conflicts of Interest/Gifts	Lobbying	Sunshine Ordinance	Public Financing	Other Codes of Conducts
Long Beach	Ethics Commission	Charter	X	X	X			
Los Angeles	Ethics Commission	Charter	X	X	X		X	
Oakland	Public Ethics Commission	Charter	X	X	X	X	X	
Sacramento	Ethics Commission	Ordinance Code	X	X	X	X	X	X
San Diego	Ethics Commission	Charter	X	X	X			X
San Francisco	Ethics Commission	Charter	X	X	X		X	
San Jose	BFCPP	Ordinance Code	X	X	X	X		

Recognizing the Board within the City Charter would conform to industry best practices by guaranteeing a minimum level of protection and independence.

Recommendation: The Board supports the Charter Review Commission incorporating a review of the Charter Code of Ethics, including recognition of the Board and its role in the City Charter.

/s/

ADRIAN GONZALES

Chair, Board of Fair Campaign and Political Practices