

San José Charter Review Commission

Recommendation Memo Template

Drafted April 19th, 2021; Revised July 2nd, 2021

1) Proposal Name

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| Proposal Name: | SJ CRC Recommendations Memo – Language in City Charter for The Board for Fair Campaign and Political Practices |
| Submitted by: | Commissioners Thi Tran, Elizabeth Monley, and George Sanchez |
| Date submitted: | October 29, 2021 |

2) Proposal Details

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| <p>1) What problem(s) are you trying to address?</p> <p><i>Before suggesting a solution, it is important to be clear about the problem you aim to solve.</i></p> | <p>1. Strengthening the authority and significance of the San José Board of Fair Campaign and Political Practices.</p> <p>The San José Board of Fair Campaign and Political Practices (formerly called Ethics Commission) is currently charged with monitoring compliance, investigating violation allegations, and making recommendations on ethics policies.¹ Prior to October 2021, the City Charter highlighted in detail three commissions: Planning Commission, Civil Service Commission, and Salary Setting Commission.² Election integrity is crucial towards ensuring a fair election cycle for candidates, volunteers, and voters. This responsibility is one which should not be taken lightly. Conceptually, the Charter Review Commission has voted to include the San José Board of Fair Campaign and Political Practices and its current language from the Municipal Code into the City Charter.</p> <p>While San Jose has one of the most aggressive voter participation programs in the state, there are still those who feel disenfranchised for many reasons. The proposals contained in this memorandum aim to suggest further research of potential solutions for the San José Board of Fair Campaign</p> |
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¹ City of San José, *Board of Fair Campaign and Political Practices*, <https://www.sanjoseca.gov/your-government/departments/city-clerk/boards-commissions/boards-commissions-a-c/board-of-fair-campaign-political-practices>

² City of San José, *City of San José: City Charter (Updated February 2021)*, <https://www.sanjoseca.gov/home/showpublisheddocument/13907/637532449706900000>

and Political Practices. These recommendations will directly benefit members of the community who have, by design or by neglect, been historically marginalized by the political and electoral process.

2. Accessible disclosure of major independent expenditures to specific City Council/Mayoral candidates.

Follow the money. While a campaign can be won based on values and proposals, it also can unfortunately be clinched with effectively used monetary resources. In recent years, Mayoral and City Council elections in San José have witnessed a gradual rise in total campaign spending through political organizations. Over \$1.8 million was spent on the District 4 and District 6 San José City Council races in 2020.³ While political organizations are currently required to disclose their independent expenditures on their 496 Forms, the Fair Campaign and Political Practices Board is encouraged to study and develop a transparent interface design that ensures everyday San Joséans can quickly gain accessible and easily transparent campaign expenditure information. The interface design should be fit for a city located in Silicon Valley.

3. Decrease monetary influence from local political organizations/action committees, and increase participation from San Joséans in campaign contributions.

In San José, there is currently a \$600.00 contribution limit per person for a City Council candidate, and a \$1,200.00 for Mayoral candidates.⁴ These rules are intended to level the playing field, but they have lagged as a result of political organizations turning to independent expenditures. This has contributed to an increasing tug-of-war between business and labor groups in the city.⁵ The Board should be granted authority to study ways to even the playing field by having contributions from individuals within the City matter more than they currently do. Nearly two-thirds of the American public believes “there should be limits on the amount of money individuals and organizations” can spend on political campaigns.⁶ Much of the debate on increased disclosure centers on the Political Reform Act, which allows for payments expressly advocating support of or opposition to a candidate

³ Carly Wipf, *Spending in Contested San José Council Races Hits \$1.8 Million*, S.J. Spotlight (Oct. 27, 2020), <https://sanjosespotlight.com/spending-in-contested-san-jose-city-council-races-surpasses-1-million/>

⁴ A Resolution of the Council Approving the Adjusted Contribution Limits in Accordance with San José Municipal Code Section 12.06.210C, Res. No. 77583, 2015 Sess. (2009), <https://www.sanjoseca.gov/home/showpublisheddocument/16717/636682265552070000>

⁵ Carly Wipf, *supra* note 1.

⁶ Bradley Jones, *Most Americans Want to Limit Campaign Spending, says Big Donors Having Greater Political Influence*, Pew Research Center (May 8, 2018), <https://www.pewresearch.org/fact-tank/2018/05/08/most-americans-want-to-limit-campaign-spending-say-big-donors-have-greater-political-influence/>

or ballot measure, known as “independent expenditures.”⁷ Recent Supreme Court rulings have squashed methods in limiting independent expenditures.⁸

A handful of attempts have been made to lessen the impact made on monetary influence from special interests. Three examples are listed below.

City of Seattle: Mails residents four \$25.00 “Democracy vouchers” to Seattle residents, who then can assign it to any candidate participating in the program.⁹ The program is funded through a property tax costing Seattle voters \$3 million per year, roughly \$8.00 per year for the average homeowner.¹⁰ Charged with administering the vouchers is the Seattle Ethics & Elections Commission, who ultimately have three Full-Time employees managing the election infrastructure.¹¹

New York City: Currently has a 6:1 match program for mayoral and city council races (i.e. for every dollar a candidate receives, New York matches it with six public dollars).¹²

City of Los Angeles: Currently has a dual-tiered match rate dependent on qualifications met by candidates. 1:1 for general and primary for candidates that met the minimum criteria, and 2:1 for the primary. There is a 4:1 match for candidates in the general who meet additional criteria.¹³

⁷ See Federal Political Practices Commission, *Chapter 11: Independent Expenditure Reporting* (June 2020), https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Manuals/Manual_4/Manual_4_Ch_11_IE_Reporting.pdf

⁸ *Citizens United vs. Federal Election Commission*, 558 U.S. 310 (2010); see also Erwin Chemerinsky, *Symposium: The Distinction between Contribution Limits and Expenditure Limits*, SCOTUS Blog (Aug. 12, 2013), <https://www.scotusblog.com/2013/08/symposium-the-distinction-between-contribution-limits-and-expenditure-limits/>

⁹ Seattle Ethics & Elections Commission, *Democracy Voucher Program: Biennial Report 2019*, SEEC (2019), [https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/2019_Biennial_Report\(0\).pdf](https://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/2019_Biennial_Report(0).pdf)

¹⁰ Bob Young, “Democracy Vouchers” Win in Seattle; First in Country, *The Seattle Times* (Nov. 3, 2015), <https://www.seattletimes.com/seattle-news/politics/democracy-vouchers/>

¹¹ Seattle Ethics & Elections Commission, *supra* note 9.

¹² New York City Campaign Finance Board, *Campaign Finance Handbook: 2021 Election Cycle*, NYCCFB (Jan. 2021), <http://www.nyccfb.info/candidate-services/handbook/>

¹³ Los Angeles City Ethics Commission, *City of Los Angeles Matching Funds Program*, LA City Ethics (Jan. 31, 2013), http://clerk.seattle.gov/~public/meetingrecords/2013/gpnf20130131_1a.pdf

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| <p>2) How has this problem possibly benefited or burdened people, especially BIPOC, low-income, undocumented and immigrant, those experiencing houselessness, etc.?</p> <p><i>Is there data that speaks to the impact of this problem? What does the disaggregated data tell us?</i></p> | <p>This recommendation is intended to ensure that focus is placed on campaign finance and historical disenfranchisement. Elevating the San José Board of Fair Campaign and Political Practices from the Municipal Code to the City Charter --- with an expanded authority and scope of work --- is intended to signify the importance that the Board will have in ensuring mayoral and city councilmember candidates are following election rules (i.e. in future elections, there will be more responsibilities for the Board to be in charge of administering, which may have originally been tasked to the City Clerk’s Office).</p> <p>Regarding campaign finance, further solutions on accessible disclosure of major independent expenditures on the main City of San José website should --- once researched and ultimately implemented --- provide voters with additional information on which organizations align with respective candidates, and help create a more user-friendly site for folks to scour through material.</p> <p>Creating a system which elevates the weight and meaning of campaign contributions from San Joséans can help ensure that the voices of community members are elevated in as close to equal standing as efforts by political organizations. It can also contribute to more voter engagement and participation in Council and Mayoral elections due to increased awareness.¹⁴</p> <p>Regarding historical disenfranchisement, expanding the charge of the Board for Fair Campaign and Political Practices to examine this issue and provide recommendations such as outreach strategies and expenditures, studying racism and bias in campaign literature, promoting voting among younger residents, and more can help to better understand the issue and address it.</p> |
| <p>3) What change are you proposing?</p> <p><i>Describe the revision to San José’s Charter that you are proposing. Include relevant Charter section numbers.</i></p> | <p>Proposal #1: Create new targeted responsibilities for the San José Board of Fair Campaign and Political Practices to oversee in administering elections.</p> <p>a. Where would this amendment occur: Article X of the City Charter.¹⁵</p> <p><u>Re: Campaign Finance, Elections, Historical Disenfranchisement</u></p> <p>Proposal #2, Part A: Direct City Clerk’s Office (or appropriate entity once finalized) to evaluate areas revamp the City webpage pertaining to Council and Mayoral elections, including a spreadsheet or document highlighting independent expenditures supporting respective candidates, of</p> |

¹⁴ Jennifer A. Heerwig & Brian J. McCabe, *Building a More Diverse Donor Coalition: An Analysis of the Seattle Democracy Voucher Program in the 2019 Election Cycle*, Georgetown University (Dec. 16, 2020), <https://georgetown.app.box.com/s/r2skgxfnc230ukkb3dfqgm4576phzabd>

¹⁵ City of San José, *supra* note 3.

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| | <p>which is to be maintained frequently. The finished product is intended to resemble sites currently maintained by the City of San Francisco¹⁶ and City of San Diego.¹⁷</p> <p>a. Where would this amendment occur: 12.06.210 of SJMC.¹⁸</p> <p>Proposal #2, Part B: Recommend that the Board of Fair Campaign and Political Practices study and assess the feasibility of implementing a Small-Donor Matching Funds system, where the City of San José will match individual contributions for both Mayoral and City Council elections, at a ratio to be determined by the Council and approved by the voters in San José.¹⁹</p> <p>a. Where would this amendment occur: 12.06.1010 of SJMC, if recommended by the Board of Fair Campaign and Political Practices after conducting its research.²⁰</p> <p>Proposal #2, Part C: Recommend that the Board of Fair Campaign and Political Practices study and assess recommendations that address historical disenfranchisement, including, but not limited to: (1.) creating a budget for and support outreach organizations like Somos Mayfair or Latinas United in all districts throughout the City; (2.) setting policy for voting centers and drop-off boxes in equal proportions and distances in each district and throughout the City; (3.) set policy for reaching out to incarcerated teens in an effort to educate and guide them in the personal power of their voice.</p> <p>a. Where would this amendment occur: Article X of the City Charter.²¹</p> |
| <p>4) Is this change feasible? <i>Think through the revision you are proposing. Is it legally possible? Is it practical? If there are questions you cannot answer, list them here.</i></p> | <p>Yes. The Charter Review Commission, at its October 18, 2021 meeting, voted conceptually to elevate the Board for Fair Campaign and Political Practices from the Municipal Code to the City Charter. This updated proposal would provide the Board with the authority and scope of work to research and propose recommendations addressing campaign finance and historical disenfranchisement.</p> |

¹⁶ City & County of San Francisco Ethics Commission, *Disclosures*, <https://sfethics.org/disclosures>

¹⁷ City of San Diego, *Ethics Commission: Campaigns*, <https://www.sandiego.gov/ethics/documents/candidate>

¹⁸ Municode, *San José Municipal Code*, SanJoseCA.gov (Jul. 12, 2021), https://library.municode.com/ca/san_jose/codes/code_of_ordinances?nodeId=TTT12ETOPGOPR

¹⁹ Timothy Dong & Helen Grieco, *Public Financing of Campaigns: People-Powered Elections*, Common Cause (2018), <https://www.commoncause.org/california/wp-content/uploads/sites/29/2018/08/Public-Financing-of-Campaigns.pdf>

²⁰ Municode, *supra* note 18.

²¹ City of San José, *supra* note 3.

5) Who might benefit from or be burdened by this change?

Is there data that speaks to the potential impact of this change? What are the potential unintended consequences of this change?

Overall

The benefit of strengthening and expanding the scope of the Board of Fair Campaigns and Political Practices reaches all people and businesses in San José by creating a resident agency that can focus on campaign finance and historical disenfranchisement, two issues that directly impact the quality of representation that residents have in our city. It expands the Board of Fair Campaign and Political Practices towards being a commission more focused at providing recommendations to the City Council on election revolving issues.

Relating to Campaign Finance

Immediate benefactors to these proposed changes --- upon research conducted by the Board of Fair Campaign and Political Practices --- would be San Joséans, for more information on who is contributing to a campaign/initiative would strengthen the overall knowledge and familiarity of which direction said campaign/initiative intends to proceed with governing the City. The implementation of a limit on individual campaign spending could incentivize more individuals from non-Caucasian backgrounds to participate in running for office, as a significant factor in running for office that weighs heavily on minority candidates is the lack of capital/ability to raise funds.²²

Unintended consequences of these changes (chiefly, the limit to individual spending) could be even fewer candidates from minority backgrounds, and candidates who decline a spending limit overwhelmingly winning their elections. Implementing such an amendment may backfire, for it could actually do little in promoting overall engagement. City Staff will initially bear the weight in ensuring proposals are implemented accordingly.

Relating to Historical Disenfranchisement

The benefits of these proposed actions and policies --- upon research conducted by the Board of Fair Campaign and Political Practices --- will be found in the increased number of eligible voters who turn out. The number of candidates for office will likely increase because of access to and trust within the community.

Reaching out to neighborhoods and facilities that have traditionally low voter turnout, helping residents to register, to understand how each candidate and measure will affect them, offering rides to the polls, should instill a sense of pride and justification to vote over the long term.

The more voters who turn out across all San Jose communities will increase equity in the population.

²² Adam Lioz, *Stacked Deck: How the Racial Bias in Our Big Money Political System Undermines Our Democracy and Our Economy*, Dēmos Next 20 (July 23, 2015), <https://www.demos.org/research/stacked-deck-how-racial-bias-our-big-money-political-system-undermines-our-democracy-and>

6) What are the arguments against this proposal?

Summarize the arguments you expect or data you have found in opposition to this recommendation.

There are no identifiable arguments against studying ideas to address historical disenfranchisement.

Relating to Expansion of Responsibilities for the Board

A possible reason for opposing new duties to the Board of Fair Campaign and Political Practices is to maintain its status quo as an entity focused on reacting to complaints of regulatory violations. Another argument against such an expansion is the scope of impacted individuals, (i.e. this frame in argument suggests only candidates participating in said elections would be impacted).

Relating to Researching Campaign Finance

Some potential arguments against providing additional disclosure of independent expenditures include (1.) not having adequate resources currently to facilitate disclosure that is similar to those by San Francisco or San Diego; and (2.) the furtherance of bureaucratic oversight, and burden of increased reporting.

As for limiting individual expenditures on political organizations through the usage of Match Funds/Vouchers/Full Public Financing, arguments against such a proposal have included how implementation costs will outweigh what is ultimately distributed to participating candidates.²³ Furthermore, there are concerns that candidates of affluent backgrounds may “game the system.” By simply opting out of partaking in publicly financed campaigns and using their personal resources, individuals could gain an economic advantage over those who participate due to differing contribution caps.

7) Must this be a Charter revision?

Can this problem be addressed without changing the charter (e.g., Council action, cultural change)? If not, should this be a policy recommendation to be included in the Commission’s report?

Expanding the scope of the San José Board of Fair Campaign and Political Practices will require a revision to the Charter.

Guidance on disclosure of activities from political organizations along with donation limits are currently embedded in the Municipal Code, and may remain there after further research is conducted by the Board of Fair Campaign and Political Practices.

²³ Seattle Ethics & Elections Commission, *Democracy Voucher Program: Biennial Report 2017*, SEEC (2019), http://www.seattle.gov/Documents/Departments/EthicsElections/DemocracyVoucher/Final%20-%20Biennial%20report%20-%2003_15_2018.pdf

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| <p>8) Are there other examples of this change? <i>If you have found other examples of this change, please share them and any outcomes that have been observed.</i></p> | <p>With accessible disclosure, cities such as San Francisco and San Diego have made concerted efforts in providing its residents with as much information pertaining to major candidate donors on its election webpage.²⁴</p> <p>As for efforts in decreasing monetary influence in municipal elections, a handful of cities across the country have implemented some form of public election spending and/or cap on contributions (e.g. City of San Francisco and its initial spending cap for Board of Supervisor races).²⁵</p> <p>Cities such as Austin and LA have enacted reforms to address historical disenfranchisement as well.</p> |
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3) Proposal Research & Citations

List below the results of any research conducted to inform this memo.

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| <p>List of citations <i>All data must be cited so that Commissioners who are not part of the Subcommittee in question may locate the source of information as needed.</i></p> | <p><i>See footnotes.</i></p> |
| <p>Any speakers who presented to the subcommittee must be listed. <i>Include name, title, affiliations, etc., along with a brief summary of the information presented by them.</i></p> | <p>N/A</p> |
| <p>Relevant Links <i>Provide links or locations of the information in this</i></p> | <p><i>See footnotes.</i></p> |

²⁴ City of San Diego, *Ethics Commission: Major Funding of Campaign Committees*, <https://www.sandiego.gov/ethics/documents/donors>

²⁵ City & County of San Francisco Ethics Commission, *Expenditure Ceilings and Third=Party Spending*, <https://sfethics.org/disclosures/campaign-finance-disclosure/expenditure-ceilings-and-third-party-spending>

research as much as possible, otherwise provide attachments.