CAMPAIGN FINANCE REFORM
CITY OF PALM SPRINGS, CALIFORNIA

CITY COUNCIL DISCUSSION
February 4, 2009

City Council Subcommittee Members

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Item 5.C.

RECOMMENDATIONS

The City Council Subcommittee recommends that the City Council direct staff to prepare a local campaign finance ordinance with the following provisions:

Voluntary Expenditure Limits of $150,000 per election cycle;

Requires Electronic Filing of Campaign Disclosure Statements;

Reporting of individual contributions (or accumulated contributions) of $50 or more;

24-hour reporting/disclosing contributions at 30-35 days prior to the election;

Public Incentives for candidates that accept Voluntary Expenditure Limits to include a video candidate statement aired on public access, biographical candidate statement posted on the City's website, designation on the sample ballot, public facilities made available at no cost for at least two-candidate debates;

Requires a candidate to obtain 150 to 200 signatures for nomination, and for the City to charge a fee to file nomination documents.

INTRODUCTION

Concerned with the escalating fundraising and expensive costs of running for elective office in the City of Palm Springs, the Palm Springs City Council appointed a City Council Subcommittee, of Councilmember Hutcheson and Councilmember Weigel, to study and make recommendations to the City Council with respect to Campaign Finance Reform, for Palm Springs local elections for the directly elected Mayor and Members of the City Council.

Campaign funds enable candidates to disseminate their messages and communicate with voters. While technology and internet usage have reduced costs of running a campaign, the overall price of running for office has increased significantly over the past few decades. Campaign finance laws are typically advanced to promote more open, honest, and accountable government. In addition, certain techniques are emphasized as a means to achieving the constitutional ideal of political equality. These techniques include: 1) disclosure requirements that inform voters about potential influences on elected officials; 2) contribution limits that help to mitigate the potential real and perceived influence of donors on those public officials; and 3) expenditure limits and perhaps public incentives and/or enhancements that preserve the significance of voters' voices in the political process and may assist in leveling the playing field among serious candidates.

On November 6, 1996, California voters approved Proposition 208, an initiative statute amending provisions of the Political Reform Act pertaining to campaign contributions, campaign spending limitations, and lobbyist activities. Proposition 208, among other things, attempted to impose contribution limits and expenditure limits for local elections and cities. The Palm Springs City Council adopted Ordinance No. 1544[1], regarding election campaigns, and subsequently adopted Ordinance No. 1562, suspending the previous provisions of Ordinance No. 1544, pending judicial review of Proposition 208. Most of the provisions of Proposition 208 were essentially invalidated by the Courts.

[1] Palm Springs Municipal Code Section 2.04.100, while suspended by Ordinance No. 1562, remains codified in the Municipal Code. During this review, staff recommends that an Ordinance be drafted to remove these election campaign regulations from the Code.

At the statewide election in November, 2000, the California voters adopted Proposition 34, the State Legislature's proposal for campaign finance regulations. The proponents of Proposition 34 argued that it was intended to impose a reasonable system of campaign finance reform, addressing some of the constitutional problems of Proposition 208, Proposition 34 was aimed, for the most part, at elections for state offices, and the measure expressly repealed the majority of Proposition 208, including all limits on contributions applicable to local elections, and a mandate to adopt local voluntary expenditure limits.

Cities retain the statutory authority to adopt local ordinances regulating local campaign finance issues to the extent the local ordinance does not prevent compliance with the Political Reform Act.

In addressing the issues related to local campaign finance reform, the Subcommittee notes, the United States Supreme Court has held that political contributions are a form of political speech; therefore, are protected by the First Amendment provisions of the Constitution. Contribution limitations necessarily infringe on the contributor's ability to engage in free communication and association.

Restrictions on contributions may be sustained if the city demonstrates a sufficiently important governmental interest and employs means closely drawn to avoid unnecessary abridgment of associational freedoms. To date, the courts have recognized only: 1) corruption; 2) the appearance of corruption; and 3) circumvention of otherwise valid campaign finance regulations, as sufficiently important governmental interests to support restrictions on campaign contributions.

Unlike limits on contributions made directly to candidates or their committees, restrictions on contributions to committees that make independent expenditures in support of or opposition to a candidate would be reviewed under a "strict scrutiny" standard. The theory behind "independent expenditures," is that the people may enact laws limiting direct contributions to candidates in order to avoid the possibility or the appearance of undue influence over the candidate, but "independent expenditures" are not in furtherance of a governmental interest, because the money is not being given directly to the candidate [even thought the money may be being spent to benefit the candidate].[2]

In the context of ballot measures, the Supreme Court has invalidated municipal efforts to limit contributions supporting or opposing local initiatives and referenda, finding no sufficiently important governmental interest in regulating such contributions.

Finally, expenditure limits require a more compelling justification than restrictions on contributions. Expenditure limits are a much more direct form of restraint on expression and association. In general, the city's interest in ridding the electoral process of the corruption and appearance of impropriety is insufficient to justify the restrictions on campaign-related expenditures. Moreover, the city has no legitimate ancillary interest in equalizing the amount of funds spent by the candidates and their committees. The United States Supreme Court has held that it is unconstitutional to limit a candidate's personal expenditures, [unless conditioned on the acceptance of public funds].

[2] For a detailed discussion on "independent expenditures" see *Independent Expenditures – The Giant Gorilla in Campaign Finance*, California Fair Political Practices Commission, June 2008.

DISCUSSION POINTS

In general, the City Council Subcommittee was supportive of implementing campaign finance regulations and program(s) that: 1) enact voluntary expenditure limits; 2) further regulate campaign finance reporting requirements; 3) provide limited public incentives that enhance voter education to further assist in the transformation of city elections into contests of ideas and merit, rather than fundraising prowess.

The City Council Subcommittee did not reach a consensus with respect to individual contribution limits.

Voluntary Expenditure Limits

Should the City of Palm Springs enact Voluntary Expenditure Limits?

As discussed above, the Courts have determined that limits on contributions and expenditures differ significantly in their impact on speech and association. Mandatory expenditure limits may represent substantial restraints on the quantity and diversity of political speech. As such, the Subcommittee recommends *Voluntary* Expenditure Limits, as opposed to mandatory expenditure limits. The Subcommittee recommends a voluntary spending limit of $150,000 per election cycle (indexed for inflation), surmising that such a limit would continue with the current spending status in a fully funded campaign, and would not have a severe impact on political dialogue for candidates that would agree to and accept voluntary expenditure limits. A candidate accepting voluntary spending limits would be permitted certain identified public incentives as discussed below in the Public Education/Public Incentives Section.

Campaign Finance Reporting Requirements

Should the City enact enhanced reporting and disclosure requirements, including a requirement for electronic filing of campaign statements that could be posted on the City's website, and mandatory reporting of all campaign contributions?

Should the City enact more frequent and timely campaign reporting requirements than provided in the Political Reform Act?

One of the most important tools for public participation and education in the election process is campaign finance reporting and disclosure. Reporting requirements provide the electorate with information about where money comes from and how it is spent, to assist voters place candidates on the political spectrum and identify the interest to which candidates are likely to be responsive.

Currently, campaign finance reports are available for public inspection and copying at City Hall, during business hours. The City does not currently post campaign finance reports on the City website, due in part to regulations that may prohibit a government agency from posting some personal information contained in the report on the website. The Subcommittee recommends that the City require candidates to file campaign finance reports electronically and in paper version (such as the State requires and a recent provision for electronic filing in Riverside County). Electronic filing would redact personal information and provide for immediate access to campaign reports on the City's website.

Electronic filing does have a cost to the City. City staff does not have the expertise to perform or create a program and/or database for such (and the constant

updates for each law, limit or form change). Most jurisdictions contract out this task, and the estimated cost to City would be $10,000 on an annual basis.

Contributors express their political opinions and affiliate with like-minded persons by giving money in connection with electoral campaigns. Under current law, only contributions (or accumulated contributions) of $100 or over are required to be reported individually. If the act of a campaign contribution is political speech, the Subcommittee recommended the threshold be reduced to $50 or over, hence reducing the number "anonymous contributions." Further disclosure would also indicate the number and breadth of small contributors, as an indicator of broad based local community support for a candidate.

Currently, the Political Reform Act requires campaign disclosure reports be filed twice annually, with a stepped-up reporting period during an election cycle. During an election cycle the first pre-election campaign statement is due 40 days prior to the election, a second pre-election statement is due 12 days prior to the election, and 24-hour reporting of contributions of $1,000 or more (or aggregate thereof) 15-days prior to the election. The Subcommittee recommends the 24-hour reporting of contributions at 30 to 35 days out.

Public Education/Public Incentives

Should the City provide public education and/or limited public incentives to candidates that accept voluntary spending limits?

In order for candidates to accept voluntary expenditure limits, it is common practice to provide public incentives to ensure that candidates accepting expenditure

limits, be provided limited benefits necessary to run a campaign and be afforded a low or no cost vehicle to disseminate their message.

The Subcommittee recommends that certain public incentives be provided to candidates that accept voluntary expenditure limits.

- Each candidate accepting voluntary expenditure limits would be provided access to record a "video candidate statement," and free media time on the City's public access Channel 17 to air such statement.
- Each candidate accepting expenditure limits would be afforded a "biographical candidate statement" (or similar qualification document at least as detailed as the City's Commissioner Application), that would be posted on the City's website.
- Each candidate accepting expenditure limits may be designated as such on the sample ballot.

Each of the public incentives indicated above also provides for additional public participation and more information on the candidates for a better educated voter.

The City Council Subcommittee did not recommend providing a candidate to print a candidate statement, in the official sample ballot at no cost, as an incentive to accept voluntary expenditure limits, due to the hard cost to the City.

Additionally, the Subcommittee wanted the City to provide at no-cost: facilities, access to public access television and staff, and any other support for at least two-candidate debates during the election cycle.

Clearly there is a need for some limited public incentives in the form of such educational resources. Candidates are eager to communicate with voters in a cost

effective manner, and voters want more objective information about candidates. However, each of the public incentives discussed may have a fiscal impact to the City and impact to staff resources and/or programs.

Other Reforms

Should the City enact regulations more restrictive than the California Election Code for the number of signatures required to be nominated for public office and should the City charge a filing fee?

Under current Election Code, to run for office of the directly elected Mayor or Member of the City Council, a candidate is nominated to run for office by obtaining not less than 20, nor more than 30 signatures of qualified electors.

The Subcommittee recommends the City enact requirements that provide a candidate is nominated to run for office by obtaining not less than 150, nor more than 200 signatures of qualified electors. Such a requirement would indicate a qualified base of support to signify a qualified candidate. Additionally, should the City start to provide public incentives, the City should ensure candidates are viable and have some level of community support.

Currently, the City does not charge a filing fee for nomination documents. Should the City enact regulations requiring additional signatures, the cost of verifying a nomination paper would increase dramatically. The Subcommittee recommends the City charge a fee to file a nomination paper, not to exceed the cost of providing the service.

Contribution Limits

Should the City of Palm Springs enact contribution limits?

The Subcommittee did not reach a consensus with respect to contribution limits of $2,500 to $3,600[3] for the office of Mayor and Member of the City Council.

On one hand, such limits may contribute to the overall goal of maintaining the current condition, and may mitigate the perceived influence of donors on the elected officials. Contribution limits within a higher range (indexed for inflation), would only affect a small percentage of current donors, may provide for smaller community based contributions and support, would not preclude candidates from soliciting sufficient funds for effective advocacy and education, and may open the process to more candidates, by curbing the costs of campaigns.

On the other hand, you may not be able to reduce special interest influence via restricting campaign money without restricting political free speech, and some would indicate the only real effect of such would be to drive influence peddling underground, thus making it ever more difficult to connect contributors and their interests with the recipients. Additionally, individual contribution limits may not contribute to the overall goal of retaining the status quo in obtaining amounts necessary for running for public office.

[3] $3,600 is the current State mandated limit for state office as in Government Code Section 85300 and the Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.

Conduct of Elections

The Subcommittee requested that staff provide brief comments on the conduct of City elections, as the conduct and type of election may have an impact on how a candidate would communicate with voters, and may impact campaign finance reform.

Currently, the City conducts its municipal election in November of odd numbered years, and consolidates with Riverside County on an established election day in the California Election Code. The election date is codified in the City's Charter and may only be changed by a vote of the people in Palm Springs. Counties, as a political subdivision of the State, are generally prohibited from conducting all mail ballot elections on state established consolidated election days.

If the City were to continue to conduct the municipal election in November of odd numbered years, and wanted to conduct an all mail ballot election, it would have to do so on its own accord and not consolidate or have the County conduct its election. This would mean a voter would receive a City ballot (by mail) and would also receive a sample ballot from the County (for all other election contests), and either vote by mail or in person at a designated polling location for the other election contests.

If the City were to change the election date to other than a consolidated election date, the City may have additional options to conduct its election, such as a City conducted election, or conduct an all mail ballot election.[4]

[4] The City of Rancho Mirage conducts its Municipal Election in April of even numbered years. In April 2008, the City of Rancho Mirage choose to conduct its successful Municipal Election in-house, vis-à-vis the City Clerk and an election consultant, rather than have County Registrar of Voters conduct the Rancho Mirage Municipal Election.

CONCLUSION

The proposals outlined in this Report are made sufficiently in advance of the 2009 City of Palm Springs election cycle that will ensure that any approaches the City Council may adopt can be fully implemented and any prospective candidate can be appropriately informed of any changes and requirements. The Subcommittee believes that the City Council has a unique opportunity to adopt meaningful campaign finance reform for City elections now, and encourages the Members of the City Council to direct the preparation of a local campaign finance ordinance consistent with the concepts and approaches provided in this Report and as may be augmented through collective deliberation.