



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Councilmember Jimenez
Councilmember Cohen
Councilmember Davis
Councilmember Candelas
Councilmember Foley

SUBJECT: See Below

DATE: May 19, 2023

Approved

Date 05.19.2023

3.5 Proposed Ordinance to Amend Title 12 of the San José Municipal Code.

RECOMMENDATION

1. Approve an ordinance amending Section 12.06.030 of Title 12 of the San Jose Municipal Code entitled Municipal Campaign and Officeholder Account to amend the definition of a candidate to conform with State Law.
2. Clarify the definition of agent at the end of section 12.06.060 and add a clause to the ordinance to specifically include office holders' staff members as agents. For purposes of this section, "agent" includes members of a candidate's city and political campaign staff.
3. Direct the City Attorney to return to the Council with recommendations for enforceable regulations that address perceived or real conflicts of interest created by City employees who solicit campaign contributions for candidate-controlled campaign committees and campaign committees making independent expenditures in local City Council and Mayoral campaigns, with the following suggestions:
 - a. Analyze whether Levine Act/Government Code Section 84308 restrictions can apply to City employees who solicit contributions for both candidate-controlled committees and committees making independent expenditures in local candidate elections.
 - b. Return with reasonable disclosure requirements to alert the public when City employees solicit campaign contributions for each of these kinds of campaign committees.

- c. Explicitly exclude from these regulations solicitations for campaign contributions to committees expending funds on local ballot measures.
4. Direct staff to finalize recommendations to guarantee the applicability of these changes no later than August 1, 2023.

ANALYSIS

Transparency and trust in local government and in local elected officials are essential to preserving our democracy. In recent years, the active participation of City Council and Mayoral staff in independent expenditure committees that raise funds to support or oppose local campaigns has seriously eroded trust and confidence in our government. In particularly egregious instances, City staff soliciting campaign contributions for these independent expenditure committees may do so to support their own boss or secure employment at City Hall.

Case law limits or prohibits strict campaign finance regulations imposed on independent expenditure committees. However, the Supreme Court has upheld and endorsed disclosure of campaign contributors as an appropriate remedy to concerns related to the appearance of corruption. In 2021, the City Council adopted enhanced disclosure requirements that ensure voters can make informed decisions when evaluating campaign advertisements funded by independent expenditures. The “top contributors” are now required to be prominently disclosed on campaign advertisements funded by independent expenditure committees.

We propose establishing new disclosure requirements to ensure that the public is aware of any campaign contributions solicited by City employees for independent expenditure committees expending funds in local elections. This will be akin to existing laws requiring the disclosure of behested payments solicited by elected officials. If the City employee has solicited campaign contributions from entities who have pending business before the City, the City employee should be recused from participation in any legislative or administrative matters in which that campaign contributor has a financial interest. This is akin to Cal. Gov. Code § 84308 (the “Levine Act”).

Finally, when an elected official has a conflict of interest in a given legislative matter, that elected official is required to publicly disclose the nature of the conflict and to be recused and refrain from participation in that matter. Staff employed by elected officials also are required to recuse themselves in matters where they have a financial conflict of interest. We believe it is in the public’s interest to require that Councilmembers and the Mayor disclose campaign contributions solicited by their staff for independent expenditure committees when a contributor has a financial interest in a legislative matter upon which that elected official will vote.

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 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.