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City of San Leandro City Council Discussion of Campaign Finance and Contribution Limits

SUMMARY & RECOMMENDATION

The City Council Rules Committee has been discussing whether or not the City of San Leandro should enact an ordinance limiting campaign contributions for elections to the City Council. Staff has provided information to the Rules Committee about various issues related to a potential ordinance. Before proceeding further, the Rules Committee recommends that the City Council provide direction regarding a potential ordinance regulating Campaign Finance and Contribution Limits. Specifically, the Rules Committee recommends the City Council provide direction on the following items:

1. Should the Rules Committee continue to consider an ordinance establishing contribution limits for City Council elections?
2. If yes, should the contribution limit be voluntary or mandatory?
3. What should be the amount of the contribution limit?
4. When should a potential ordinance become effective?

BACKGROUND

At the February 19, 2019 City Council Meeting, the City Council provided direction to staff to bring forth a discussion on Campaign Finance and Contribution limits at the City Council Rules Committee to consider whether the City should adopt an ordinance limiting campaign contributions for elections to the City Council.

At the April 11, 2019 City Council Rules Committee meeting, the Rules Committee discussed whether the City should implement an ordinance that would set campaign contribution limits for City elected offices. The discussion was continued to a later meeting with direction to staff to provide additional information regarding certain issues. The Rules Committee further discussed the item at the July 11 and October 10 meetings. When the Committee was unable to reach a consensus, the discussion lead to a recommendation for this item to be returned to Council for further direction.

Analysis

State law and the Fair Political Practices Committee (“FPPC”) currently establish certain general rules regarding fundraising, donations and other aspects of running for state or local office in California. Additional FPPC rules establish contribution limits for state offices, such as Governor or Assembly. Currently, California law does not limit campaign contributions for local election. However, local jurisdiction have the authority to enact campaign contribution limits, and some cities have adopted such limits. While the FPPC administers and enforces state rules and regulations, local campaign contribution limits are administered by the local jurisdiction.

During the Rules Committee meetings of April 11, 2019, July 11, 2019, and October 10, 2019, an overview was provided to the Committee, outlining campaign finance ordinances of other cities within Alameda County. The Rules Committee discussed whether the City of San Leandro should contemplate adopting a campaign finance ordinance to implement some form of contribution limits for City elected office.

The Committee discussed numerous issues related to a potential ordinance, and requested information from staff on a number of topics. Those questions and answers are summarized below. Generally, the City Council would have the authority to determine the scope of a potential ordinance, and information was provided to the Rules Committee regarding FPPC regulations for State officeholders as an example of how a potential ordinance could handle certain issues.

It should be noted that in October 2019, the Legislature passed, and the Governor signed, Assembly Bill 517, which will establish limits on campaign contributions for elected city and county officials statewide. Specifically, the new law will limit contributions to local campaigns to \$3,000 per election. This limit will be enforced by the FPPC and will go into effect on January 1, 2021, in time for the 2022 election cycle. The law does not prohibit cities from enacting campaign contribution limits of less than \$3,000, but any such limits will not be enforced by the FPPC.

Rules Committee Discussion

As a result of the above discussion topics, the Rules Committee directed the following questions be brought back for further discussion, with additional information from staff where appropriate:

- Should contribution limits be mandatory or voluntary?
 - Subject to Committee/Council discretion
- Would self-funding count toward the limit?
 - The Supreme Court has held that the First Amendment prohibits any limit on the amount of money a candidate can donate to his or her own campaign
- How would previous campaign contributions be treated?
 - Campaign contributions received before the campaign finance ordinance became effective would not count toward the contribution limit.
- How are loans a candidate provides to his or her own campaign treated?
 - The City Council can decide how the proposed ordinance will treat personal loans by candidates. For state office holders, FPPC regulations prohibit a candidate from loaning his or her campaign more than \$100,000. There is no limit on the amount of money a candidate may give his or her campaign. Loans from other individuals to a campaign

count against the contribution limit.

- How much staff time would be required to monitor and enforce contribution limits?
 - The City Clerk estimates that it will take about 1/2-1 hour of staff time per day per candidate during campaign periods. However, this is also dependent on the number of donations made per day per candidate and how an ordinance might be structured. With campaign contributions potentially coming in sporadically throughout a year, there would be additional time associated with contributions off and on during a one year period. The cost associated with this would be dependent on the level of staff assigned to the task and number of hours required to manage the program and ordinance.
- What are the are the potential costs to the City of a potential ordinance
 - New program implementation and necessary software (it may be possible to utilize current financial or spreadsheet software)
 - Additional staffing in the City Clerk's Office may be necessary, especially during election season. Staff functions would include:
 - Collection, tracking, and monitoring of contributions;
 - Communication with candidates about contributions, receipts and complaint processing; and
 - The City Attorney's Office may be impacted due to increased requests for advice and interpretation of the ordinance.
 - The District Attorney may not agree to enforce the City's ordinance, so enforcement actions may fall to the City Attorney's Office. As a result, the City Attorney's Office may be impacted with investigations and enforcement.
- How will a potential ordinance be implemented?
 - Will require additional election forms/ campaign disclosures
 - All contributions must meet standards (i.e. no anonymous contributions)
 - All contributions must be reported
- Who will enforce the Ordinance?
 - City Clerk's office receives complaints or City Clerk's staff notice and investigate discrepancies in contributions submitted by candidate
 - Candidate notification
 - Requests for further information/documentation
 - Work with City Attorney or District Attorney on probable cause determination leading to possible prosecution
 - Alternatively, the City can explore contracting with the Fair Political Practices Commission (FPPC) to process all enforcement.
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- What would the cost be for the Fair Political Practice Commission (FPPC) or another entity to do the enforcement?
 - The City of Sacramento and San Bernardino County currently contract with FPPC for Campaign Law Enforcement Services. Services provided include the following:
 - Auditing. The FPPC audits each candidate and his or her controlled committee for elective City office for whom it is determined that more than the allowed contributions was received.

- Enforcement. The FPPC serves as the civil and administrative prosecutor for violation and may investigate possible violations.
 - Advice, Education and Training. FPPC provides written and/or verbal assistance to the candidates for elected City offices and potential contributions in a City election regarding certain provisions.
 - Legal Review. The FPPC may conduct a legal review to determine its compliance with the Political Reform Act or to make recommendations for amendments.
 - The FPPC bills each city on an hourly basis for service performed, but requires a minimum payment of \$55,000 regardless of the number of hours actually worked. The contract provides that the annual cost shall not exceed \$100,000.
 - It is currently unknown whether the FPPC would be willing to contract with San Leandro for enforcement of a potential City campaign finance ordinance.
- If a person owns multiple businesses, can they make contributions from each business or would that be considered one person?
 - If the City Council proceeds with adopting an ordinance, the City Council can decide whether or not to treat these contributions as being received from a single contributor. For state officer holders, FPPC regulations provide that contributions from related businesses, or an individual and a related business, are treated as being received from a single contributor under specific circumstances. For example, contributions from any entity that is majority owned by an individual are treated as coming from that individual.
 - Are Political Action Committees (PACs) treated differently or are they considered one person? What are the rules about PACs campaigning for a candidate without their knowledge/consent? Would that count as campaign contributions?
 - The City Council can decide how to treat PACs for the purposes of a potential City Campaign Finance Ordinance. For state office holders, FPPC regulations treat PACs the same as an individual or business entity. However, FPPC regulations create a higher contribution limit for “small contributor committees”. A small contributor committee is a committee that receives donations from at least 100 people, none of whom donates more than \$200 per year, and which makes contributions to at least five candidates. FPPC regulations do not treat campaign related activities as an in-kind contribution to a candidate as long as such activities are undertaken entirely independent from the candidate’s campaign and not at his or her behest.
 - Should the limit be higher for someone campaigning as a candidate for Mayor, since they are at large and cover all six districts?
 - Subject to Committee/Council discretion
 - Should the contribution cap apply for the elected term of office (4 years) or should it be 2 years since some incumbents run for different positions (ex. a seated council member running for mayor)?
 - Generally speaking, both state and federal campaign contribution limits apply separately for each individual elective office. For example, an individual would be able to donate the maximum contribution to a councilmember once per four year term. If a candidate or councilmember later ran for the position of mayor, the previous contribution would not count toward the contribution limit because the donation was for

a different elected office. Candidates may “roll over” funds from a previous campaign to a new campaign under certain circumstances.

- Should there be a study of the cost of managing a campaign finance ordinance for a mayoral race, councilmember, and a comparison of cost to surrounding cities.
 - There are many variables and unknowns that will potentially impact time and costs to the City, including ordinance structure and donation amount. At this time, without more information about the specifics of a potential ordinance, estimates would be very general and assumptive.
- For in-kind contributions, if a candidate forgets to self-report a contribution that goes over a contribution limit, would this be considered a violation?
 - The City Council has discretion to determine how a potential ordinance will treat this situation. FPPC Regulations and other local ordinances generally require in-kind contributions valued at over a certain amount to be reported. Failure to report a qualifying in-kind contribution is generally a violation. The Council can decide how to enforce this type of violation. For example, the ordinance may allow a candidate to correct the error, depending on the magnitude of the violation, within a certain amount of time without the City beginning any enforcement action.
- What will be the punishment for violations?
 - Misdemeanor criminal charge; or
 - Administrative Fines (other local jurisdictions range from \$500 up to \$5,000 or 3 time the unlawful contribution, whichever is greater)
 - Could also include disqualification from running for any City office for a period of time (e.g. 4 years). This generally only applies for criminal violations of the ordinance.
- If a candidate was charged with a violation of a campaign contribution, what if they were not proven guilty. Would this mean they would still get that same penalty and could they run for a different office?
 - Without a proposed ordinance structure, this currently is unknown. However, this question could be flushed out through the structure of a proposed ordinance.
- If a campaign finance ordinance was adopted should complaints be anonymous?
 - Subject to Committee/Council discretion. The FPPC allows complaints to be filed anonymously, as do some cities with local campaign finance ordinances.
- When a candidate runs for a term in office for city council and succeeds then decides to run for mayor, how are funds separated? If the candidate is not elected mayor, what happens to the balance of funds raised?
 - The City Council can decide how a potential ordinance would treat this issue. For state officeholders, FPPC regulations allow funds from a different campaign to be “rolled over” to a new campaign under certain circumstances. In general, under FPPC Regulations, an unsuccessful candidate may roll over funds to a new race by a certain date following the election, and successful candidates may roll over funds to a new race no later than 90 days after leaving office. An individual who gave funds to a candidate for a previous campaign may also give to the candidate’s current campaign, even if the

individual's first donation was technically "rolled over" to the new campaign.

Conclusions

After three meetings and much discussion, the Rules Committee recommended the City Council provide further direction regarding the topic before staff proceeded any further with investigating potential issues or drafting an ordinance. Specifically, the Rules Committee recommends the City Council provide direction on the following items:

1. Should the Rules Committee continue to consider an ordinance establishing contribution limits for City Council elections?
2. If yes, should the contribution limit be voluntary or mandatory?
3. What should be the amount of the contribution limit?
4. Should a potential ordinance apply to the next election cycle or a future election cycle? Should Council direct further direction to proceed, the Rules Committee will continue discussion of item accordingly based on the Council's direction.

ATTACHMENTS

Attachments to Staff Report

Campaign Finance Contribution Limits by Jurisdiction Chart

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