

Agenda Report

TO: CITY COUNCIL

DATE: AUGUST 17, 1998

FROM: LEGISLATIVE POLICY COMMITTEE

SUBJECT: PROPOSED CAMPAIGN FINANCE ORDINANCE

RECOMMENDATION: The Legislative Policy Committee recommends that the City Council introduce and read by title only an ordinance of the City of Pasadena entitled: "AN ORDINANCE OF THE CITY OF PASADENA IMPOSING CAMPAIGN CONTRIBUTION LIMITS AND CERTAIN ADDITIONAL REPORTING AND DISCLOSURE REQUIREMENTS FOR CITY ELECTION CAMPAIGNS."

BACKGROUND: At its meeting of August 4, 1998, the Legislative Policy Committee unanimously requested that the attached campaign finance ordinance be forwarded to the City Council for consideration. This memorandum will first discuss the current state of the law in this area and then provide an overview of the proposed ordinance.

Status Of State Law

As you may be aware, the voters adopted Proposition 208 in November of 1996, and it took effect January 1, 1997. Proposition 208 included a sweeping system of mandatory campaign contribution limits and voluntary expenditure limits, among other provisions. The measure was challenged in federal court almost immediately after its adoption and, in January of 1998, United States District Court Judge Lawrence Karlton issued an injunction prohibiting the FPPC from enforcing any part of the measure. Judge Karlton's injunction was based on his finding that the dollar amounts of the contribution limits imposed by Proposition 208 were both too low to allow candidates for some state office the ability to campaign meaningfully, and not "narrowly tailored" to be the least restrictive regulations necessary. I provided a more comprehensive discussion of the case in my letter to the City Clerk dated March 20, 1998, a copy of which is attached.

The future of Proposition 208 is far from clear. The case is currently on appeal, and no decision is expected from the Ninth Circuit before late Fall. Both sides have indicated that the case will likely be litigated before the United States Supreme Court. Although only a limited portion of the measure was found to be unconstitutional, the California Supreme Court will ultimately be asked to determine what parts of Proposition 208 are constitutional and "severable". It could be two or three years before the litigation is finally concluded. Thus, at the moment, there are no

current contribution limits in effect for Pasadena elections. The Political Reform Act, as it existed prior to January 1, 1997, governs political campaigns in local elections. The Political Reform Act is primarily a system that implements a "disclosure theory" of campaign finance regulation, without actual limits on contributions or expenditures.

The City's Authority

Cities and other local jurisdictions have the statutory authority to adopt local campaign finance regulations. Election Code Section 10202 permits cities to adopt limits on contributions in local elections. Government Code Section 8103 permits local jurisdictions to adopt "additional" requirements in the campaign-finance area, as long as local requirements do not prevent compliance with State law. In addition, Government Code Section 85705, a part of Proposition 208, permits local jurisdictions to adopt and maintain in effect local requirements that are "as or more stringent" than those set forth in State law.

The decision in the Proposition 208 case did not limit the authority of local jurisdictions to adopt local campaign finance restrictions that comply with strict constitutional requirements. However, political contributions and expenditures are viewed as "political speech" and protected by the First Amendment. Thus, the City must show that any restrictions it adopts are narrowly tailored to advance a compelling governmental interest. The United States Supreme Court has held that eliminating corruption or the appearance of impropriety in elections is a compelling government interest for limiting contributions. Merely "leveling the playing field," or attempting to favor one candidate or group over another is not a permissible purpose for restricting political speech. The Supreme Court has never approved mandatory limits on political expenditures.

It is important to note that there are several areas of political speech that cannot be limited constitutionally. Those elements are a candidate's contribution of his or her personal funds to the candidate's own campaign; independent expenditures; and contributions to ballot measure campaigns. In addition, the City may not impose a mandatory limit on campaign expenditures.

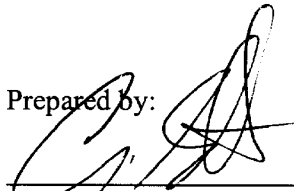
The basic elements of the proposed ordinance are as follows:

1. Contribution limits for campaigns for City Council and elected Mayor, if that office is created, and for committees that support or oppose such candidates. The proposed contribution limits are \$250.00 per single election to each City Council campaign; \$250.00 annually to non-controlled committees that support or oppose candidates; and \$1,000 per single election to candidates for elected Mayor. Primary and general elections are treated as separate "single elections." Our analysis of campaign reports from 1994 to the present indicates that the majority of reported contributions to all candidates in those years were made at or below the \$250.00 level. Thus, the proposed limit is intended to eliminate from the process only those contributions that are significantly above what could be characterized as a common contribution in Pasadena.

2. Restrictions on the time contribution can be received in candidate campaigns. The "window period" would begin six months prior to the election and end 90 days after the election, withdrawal, or defeat of the candidate, or the date the campaign's debts are paid, whichever is earlier. Surplus funds could not be used for future campaigns.
3. An officeholder account system, similar to that permitted by Proposition 208, with a \$10,000 per calendar year aggregate limit and a \$250 per year individual limit on contributions for Council Members' officeholder accounts. The Legislative Policy Committee recommended caps of \$40,000 and \$1,000, respectively, for the elected Mayor's officeholder account, if that office is created. Please note that the proposed amounts for elected Mayor's officeholder account would exceed the amounts permitted by Proposition 208, if that measure is ever enforced. The proposed ordinance would lower the limits to comply with Proposition 208 if that measure is enforced.
4. A requirement for an additional pre-election campaign statement, over and above the two currently required by State law. Increased reporting of "late" contributions and independent expenditures. "Major donor" committees must register and report earlier than under State law.
5. Disclosure requirements for the major supporters of ballots measure campaigns and independent expenditures.
6. Record keeping and enforcement provisions.

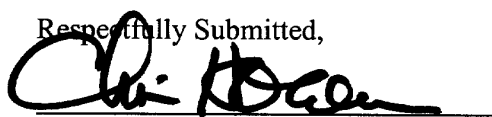
The other sections of the proposed ordinance are provisions intended to help avoid "loopholes," aid compliance, and improve enforcement.

Prepared by:



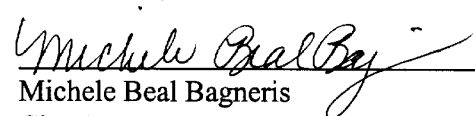
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Respectfully Submitted,



CHRIS HOLDEN
MAYOR

Reviewed by:



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