

MEMORANDUM

TO: City Council

FROM: Councilmember Paparian

RE: Proposed Charter Amendment or Ordinance on Campaign Reform

RECOMMENDATION:

It is recommended that the City Council take the following actions:

1. Approve in concept the campaign reform provisions described in the Background.
2. Determine whether such campaign reform should be implemented by ordinance, voter adopted ordinance or Charter amendment.
3. Direct the City Attorney to prepare the appropriate documents.

BACKGROUND:

GENERAL

On June 16, 1992, Councilmember Paparian recommended that the Council should re-look at the issue of campaign reform. After discussion, Mayor Cole appointed Councilmembers Holden and Paparian as an ad hoc Council Committee on Campaign Reform to frame the issues for the Council.

On September 1, 1992, the ad hoc Committee met and discussed the model ordinance of the California Commission on Campaign Financing and an ordinance proposed but not adopted in Tustin. The Committee also discussed ethics in government and the need to consider a change in the compensation of Councilmembers. At this meeting, the model ordinance, the concept of having two-tiered contribution limits, was agreed upon. The concept is that contribution limits are established for all candidate elections and that such contribution limits are raised if the candidate voluntarily agrees to an expenditure limit. Other issues were deferred pending the obtaining of additional data.

On November 3, 1992, a second meeting of the Committee was scheduled but only Councilmember Paparian was able to attend. At said meeting, Councilmember Paparian and City Attorney Kaleta went over the Tustin ordinance provision-by-provision and

developed a campaign proposal concept for the Council's review and approval.

PROPOSED CONCEPT

The Proposed concept consists of the following elements:

1. Two-tiered contribution limits would be established as follows:

Tiers	Persons	Per Person Limit	Aggregate Limit
No Agreed to Ceiling on Expenditures	Individuals	\$100	None
	Non-Individuals	\$500	\$5000
Agreed to Expenditure Ceiling of \$30,000	Individuals	\$250	None
	Non-Individuals	\$1000	None

2. Off-year fund raising would be limited to \$5000 per year. Election year fund raising would begin six months prior to the opening of filing for the election. Only \$5000 of off-year fund raising could be carried over into election year fund raising.

3. Transfers from one candidates's campaign funds to another candidate would be limited to \$250.

4. Officeholders, candidates or funds controlled by such persons would be prohibited from receiving gifts and honoraria in excess of \$500 from any person other than a member of their family.

5. Repayment of loans by a candidate to the candidate's committee would be limited to \$10,000 on the aggregate of such loans.

6. Contributions from persons doing business with the City, where the value of the business was in excess of \$1,000, would be prohibited.

7. Contributions 60 days after the election would be prohibited.

8. Additional disclosure requirements would be added.

A copy of the Tustin proposed ordinance is attached. The concept proposed includes all the elements of the Tustin ordinance and not just the highlights described above.

IMPLEMENTATION ALTERNATIVES

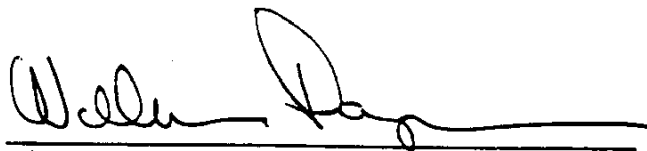
There are three basic implementation alternatives to consider as follows:

1. Council adopted ordinance. This is the quickest and easiest concept to implement. The ordinance could be readily amended to meet changed circumstances. It could also be repealed by a future Council without a vote of the people.

2. Council proposed initiative ordinance. The preparation time is about the same as alternative 1 but a vote of the people would be required to implement. To get such an ordinance on the March 6, 1993, ballot would require final Council action on the proposed initiative at its December 8, 1992, meeting. It could not be repealed or amended without a vote of the people except as provided for in the ordinance.

3. Charter amendment. Again, the preparation time is about the same as alternative 1 and a vote of the people would again be required. Again, final Council action at its December 8, 1992, meeting would be required to get the Charter amendment on the March 6, 1993, ballot. Another vote of the people would be required to amend or repeal. Such a new Charter Article would be much more detailed than most of the current Charter.

Respectfully submitted,



William Paparian
Councilmember

Attachments

OPTION A (Attachment 1)

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUSTIN, CALIFORNIA, ESTABLISHING LIMITATIONS ON CAMPAIGN CONTRIBUTIONS IN TUSTIN MUNICIPAL ELECTIONS.

The City Council of the City of Tustin hereby ordains as follows:

SECTION 1. ESTABLISHMENT OF LIMITATIONS ON CAMPAIGN CONTRIBUTIONS.

Part 3 entitled "Limitations on Campaign Contributions" is hereby added to Chapter 2 of Article 1, "Administration," to read as follows:

"Part 3. Limitations on Campaign Contributions.

1230 Findings and Purpose.

The City Council hereby finds and declares the following policy statements:

(a) Monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of more affluent individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

(b) The increasing costs of political campaigns could motivate candidates to seek campaign funding from contributors with financial interests in matters involving the City. This could lead to the public perception of decisions being improperly influenced by monetary contributions and this perception would undermine the credibility and integrity of the governmental process.

(c) It is desirable:

(i) To ensure that individuals and interest groups in our society have a fair and equal opportunity to participate in the elective and governmental process;

(ii) To limit the potential influence of larger contributors with specific financial stakes in matters

Option A
(Attachment 1)

involving the City, in order to counter the possible perception of potential conflicts of interest;

(iii) To encourage limitation of overall expenditures in campaigns, thereby reducing the pressure on candidates to raise larger amounts, beyond the amounts necessary to communicate reasonably with voters;

(iv) To eliminate off-year fund raising;

(v) To achieve greater equality of fund raising and more equal competition for elective office;

(vi) To allow candidates and officeholders to spend less time on fund raising and thereby leave greater time for matters of importance to their constituents;

(vii) To improve the disclosure of contribution sources in reasonable and effective ways; and

(viii) To increase public trust in governmental and electoral institutions.

1231 Definitions.

(a) Interpretation of This Ordinance. Unless the term is specifically defined in this Ordinance or the contrary is stated or clearly appears from the context, the definitions set forth in Government Code Sections 82000 et seq. shall govern the interpretation of this Ordinance.

(b) Candidate. "Candidate" means any person running for any elective office in Tustin.

(c) Qualified Campaign Expenditure.

(1) "Qualified campaign expenditure" for candidates includes all of the following:

(i) Any expenditure made by a candidate for city office, or by a committee controlled by such a candidate, for the purpose of influencing or attempting to influence the actions of the voters for or against the election of any city candidate.

(ii) A non-monetary contribution provided at the request of or with the approval of the candidate, officeholder or committee controlled by the candidate or officeholder.

(iii) That portion of the total cost of a slate mailing or mailing of other campaign literature produced or authorized by more than one candidate which is the greater of the cost actually paid or incurred by the committee or controlled committee of the candidate or the proportionate share of the total cost attributable to each such candidate. The number of candidates sharing costs and the emphasis on or space devoted to each such candidate shall be considered in determining the cost attributable to each such candidate.

(2) "Qualified campaign expenditure" does not include any payment if it is clear from the surrounding circumstances that it was not made in any part for political purposes.

1232. Contribution Limitations.

(a) Limitations on Contributions From Persons.

(1) Except as provided in Section 1233(c), no person shall make to any candidate for office and the controlled committee of such a candidate and no such candidate and the candidate's controlled committee shall accept from any such person a contribution or contributions totaling more than \$100.00 for each election in which the candidate is on the ballot or is a write-in candidate.

(2) No person shall make to any committee which supports or opposes any candidate and no such committee shall accept from each such person a contribution or contributions totaling more than \$100.00 per election.

(b) Limitations on Contributions from Non-Individuals. No candidate and the controlled committee of such a candidate shall accept a total of more than \$10,000 in contributions from non-individuals in any election.

(c) Prohibition on Non-Election Year Contributions. No candidate or officeholder or the controlled committee of such a person shall accept any contribution more than six months before the date on which the candidate or officeholder is listed on the ballot or is a write-in candidate.

(d) Transfers. No candidate and no committee controlled by a candidate or officeholder shall make any contribution to any other candidate running for office or to any committee supporting or opposing a candidate for office. This section shall not prohibit a city candidate from making a contribution from his or her own personal funds to his or her own candidacy or to the candidacy of any other candidate for city elective office.

(e) Limitations on Payments of Gifts and Honoraria. No officeholder or candidate and any fund controlled by such a person shall receive more than \$500.00 in honoraria and gifts in a two-year period from any person other than a member of the candidate's family as specified in Government Code Section 82030(b)(9).

(f) Return of Contributions. A contribution shall not be considered to be received if it is not negotiated, deposited, or utilized, and in addition it is returned to the donor within fourteen (14) days of receipt.

(g) Aggregation of Payments. For purposes of the contribution limitations in Sections 1232(a), (b) and (e), the following shall apply:

(1) All payments made by a person or organization whose contributions or expenditure activity is financed, maintained or controlled by any corporation, labor organization, association, political party or any other person or committee, including any parent, subsidiary, branch, division, department or local unit of the corporation, labor organization, association, political party or any other person, or by any group of such persons shall be considered to be made by a single person or committee.

(2) Two or more entities shall be treated as one person when any of the following circumstances apply:

(i) The entities share the majority of members of their boards of directors.

(ii) The entities share two or more officers.

(iii) The entities are owned or controlled by the same majority shareholder or shareholders.

(iv) The entities are in a parent-subsidary relationship.

(3) An individual and any general partnership in which the individual is a partner, or an individual and any corporation in which the individual owns a controlling interest, shall be treated as one person.

(4) No committee which supports or opposes a candidate for office shall have as officers individuals who serve as officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of, any other committee.

This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on whether the candidate or candidates receive contributions.

(h) Loans.

(1) A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this Ordinance.

(2) Every loan to a candidate or the candidate's controlled committee shall be by a written agreement and shall be filed with the candidate's or committee's campaign statement on which the loan is first reported.

(3) The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed shall not be subject to the contribution limitations of this Ordinance.

(4) Extensions of credit [other than loans pursuant to subdivision (3)] for a period of more than thirty (30) days are subject to the contribution limitations of this Ordinance.

(5) No candidate who has made a loan to the candidate's committee shall be repaid more than \$10,000 on the aggregate for such loans.

(i) Family Contributions.

(1) Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated.

(2) Contributions by children under eighteen years of age shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).

(j) Money Received by Officials Treated as Contributions, Income or Gifts. Any Funds (other than government funds received by an elected city official which is used for expenses, including legal expenses, related to holding public office) received by any elected official or candidate running in the jurisdiction or any committee controlled by such an official or candidate shall be considered either a campaign contribution, income or a gift. All campaign contributions received by such persons shall be subject to the provisions of this Ordinance unless such campaign contributions are used exclusively for elections held outside the jurisdiction. All income and gifts shall be subject to

the disqualification provisions of the Political Reform Act, Government Code Sections 87100 et seq.

(k) One Campaign Committee and One Checking Account Per Candidate. A candidate shall have no more than one campaign committee and one account out of which all expenditures shall be made. This Section shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

(l) Prohibition on Contributions From Contractors Doing Business With the Jurisdiction. No person who contracts with the jurisdiction, for the rendition of personal services, for the furnishing of any material, supplies or equipment to the jurisdiction, or for selling or leasing any land or building to the jurisdiction, whenever the value of such transaction exceeds \$1,000, shall make any contribution to an elected official, candidate, or committee controlled by such official or candidate at any time between the commencement of negotiations and either the completion of the performance under, or the termination of negotiations for, such contract, whichever occurs later.

(m) Solicitation of Contributions from Persons Who Have City Business Dealings. No non-elected public official shall solicit, direct or receive a contribution from any person, or his or her agent, who has a proceeding involving legislative or administrative action pending before the public official or has had such a matter pending during the preceding 12 months and for 3 months following the date a final decision is rendered by the agency of the official.

(n) Contributions From the Candidate and the Candidate's Spouse. The provisions of this Ordinance, other than Section 1232(h)(5), shall not apply to a candidate's contribution of his or her personal funds to his or her own campaign committee, but shall apply to contributions from a spouse.

(o) Cut-off Date for Receipt of Campaign Contributions. A candidate or controlled committee shall not accept any campaign contribution for that election after sixty (60) days from the date of the election.

1233 Expenditure Ceilings.

(a) Expenditure Ceilings. No candidate for office who accepts expenditure ceilings and any controlled committee for such a candidate shall make qualified campaign expenditures above the following amount: \$30,000 per election.

(b) Time Period for Expenditures. For purposes of the expenditure ceilings, qualified campaign expenditures made at

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any time up to the date of the election and 60 days thereafter shall be considered expenditures for that election.

(c) Candidate Acceptance or Rejection of Expenditure Ceilings.

(1) Each candidate for office, at the time of filing his or her nomination papers, shall file a statement of acceptance or rejection of the expenditure ceilings in accordance with Section 1233(a).

(2) If a candidate declines to accept the expenditure ceilings in Section 1233(a), the candidate shall be subject to the contribution limitations in Section 1232.

(3) A candidate who agrees to accept the expenditure ceilings in Section 1233(a) may not change that decision, except that if an opposing candidate files a statement of rejection, then the candidate may rescind his or her acceptance within ten (10) calendar days of the last date for filing nomination papers provided that the candidate has not accepted any contributions in amounts greater than the limitations set forth in Section 1232.

(d) Contribution Limitations for Candidate Accepting Expenditure Ceilings. A candidate who accepts the expenditure ceilings in Section 1233(a) shall be subject to the limitations set forth in Sections 1232(b)-(o). In addition, no person shall make to any candidate for office and the candidate's controlled committee and no such candidate and the candidate's controlled committee shall accept from any person a contribution or contributions totaling more than \$500 for each election in which the candidate is on the ballot or is a write-in candidate if such a candidate has accepted the expenditure ceilings.

1244 Independent Expenditures.

(a) Contribution Limitations. Any person who makes independent expenditures supporting or opposing a candidate shall not accept any contribution in excess of the amounts set forth in Section 1232.

(b) Reproduction of Materials. Any person who reproduces, broadcasts or distributes any material which is drafted, printed, prepared or previously broadcast by a candidate or a committee controlled by such a candidate shall report such an expenditure as a non-monetary contribution to such candidate or committee.

(c) Notice of Independent Expenditures. A person who makes independent expenditures of more than \$250 ...

support of or in opposition to any candidate shall notify the local filing officer and all candidates running for the same seat by telegram each time the threshold is met.

1245 Additional Disclosure Requirements.

(a) Disclosure Thresholds. In addition to the disclosure requirements of the Political Reform Act, commencing with Government Code Section 81000, candidates, their controlled committees and other committees primarily formed to support or oppose candidates in Tustin, shall disclose all contributions cumulating \$50 or more, by providing the amount of the contribution as well as the name, address, occupation and employer of each such contributor; and shall disclose all expenditures of \$50 or more, by providing the amount of the expenditure as well as the name and address of the vendor and a description of the consideration for the payment.

(b) Additional Pre-Election Campaign Statement. In addition to the campaign statements required to be filed pursuant to the Political Reform Act, commencing with Government Code Section 81000, candidates, their controlled committees and committees primarily formed to support or oppose candidates in Tustin shall file a pre-election statement on the Friday before the election. This statement shall have a closing date of the Wednesday before the election.

(c) Disclosure of Occupation and Employer. No contribution of \$25.00 or more shall be deposited into a campaign checking account unless the name, address, occupation and employer of the contributor is on file in the records of the recipient of the contribution.

1246 Enforcement.

(a) Criminal Misdemeanor Actions. Any person who violates any provision of this Ordinance is guilty of a misdemeanor. Any person who causes any other person to violate any provision of this Ordinance, or who aids and abets any other person in the violation of any provision of this Ordinance is guilty of a misdemeanor.

(b) Civil Actions.

(1) Any person who intentionally or negligently violates any provision of this Ordinance shall be liable in a civil action brought by the city attorney for an amount of up to not more than three times the amount of the unlawful contribution or expenditure, or \$1,000 per violation whichever is greater.

(2) If two or more persons are responsible for any violation, they shall be jointly and severally liable."

(3) Any person residing within the City may also bring a civil enforcement action under this Ordinance (including injunctive relief), subject to the fine amounts listed in subsections 1246(b)(1).

(i) Any person, before filing a civil action shall first file with the city attorney a written request for the city attorney to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. The city attorney shall respond within forty (40) days after a receipt of the request indicating whether he or she intends to file a civil action. If the city attorney indicates in the affirmative and files a suit within forty (40) days thereafter, no other action may be brought unless the action brought by the city attorney is dismissed without prejudice.

(ii) No civil action alleging a violation of any provision of this Ordinance shall be filed more than four (4) years after the date the violation occurred.

(c) Litigation Costs. The court, at its discretion, may award to a citizen plaintiff or defendant who prevails in the civil action authorized by this Ordinance, his or her costs of litigation including reasonable attorneys' fees.

SECTION 2. SEVERABILITY.

If any provision of this Ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this Ordinance to the extent it can be given effect, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this extent the provisions of this Ordinance are severable.

PASSED AND ADOPTED, at a regular meeting of the City Council for the City of Tustin on this _____ day of _____, 1992.

DRAFT

LESLIE ANNE PONTIOUS, Mayor

MARY E. WYNN, City Clerk