

meaningful response. He stated that, if the Task Force's direction is whether to consider establishing a time limitation on campaigns in Milpitas, staff can look into that and report back. Councilmember Gomez noted that San Jose has a six-month time limit for campaign fundraising despite the risk associated with it. Mr. Ogaz stated that different attorneys can come to different conclusions. Councilmember Polanski asked if that is something that can be looked into. Mr. Ogaz confirmed that staff can look further into these issues.

**5. Specific
Item:
Aggregation
Issues Report
by City
Attorney and
Discussion**

City Attorney Ogaz noted that state law has aggregation provisions and several cities also have aggregation provisions, while the City of Milpitas does not have an aggregation provision.

Assistant City Attorney Bryan Otake gave a brief overview of three basic approaches used by cities concerning aggregation of campaign contributions, as follows: (1) no aggregation of contributions; (2) contributions of children under age of 18 aggregated with their parent/guardian's contributions, and; (3) aggregation of contributions by an individual with contributions of any company, partnership, or group of people which is controlled by that individual. Mr. Otake described how the campaign contribution ordinances of Milpitas and three other example cities fall within these three categories. Mr. Otake explained that Milpitas uses approach no. 1, Rohnert Park uses approach no. 2, and Fremont and Glendale use approach no. 3, and referenced print-outs of these ordinances.

Councilmember Polanski inquired as to whether the Task Force was provided with the FPPC rules concerning aggregation. Mr. Otake responded that they were not provided for this meeting, although the ordinances of Glendale and Fremont are close to the FPPC rules for state officials. Mr. Otake pointed out that cities are free to set up their own standards.

Mr. Ogaz asked Mr. Otake whether he had determined whose burden it is to ensure the aggregation provisions are adhered to, citing the provisions of approach no. 3 as an example. Mr. Otake said the candidate has the burden to ensure the provisions are followed and that fines or civil penalties can be imposed. He explained that a negligence standard is used for this, which means a candidate is required to take at least reasonable measures to determine if there is an aggregation problem.

**6. Campaign
Contribution
Limits**

Councilmember Polanski explained documents containing campaign contribution information which she had compiled. She stated that the first page listed information for the top three candidates in the Mayoral race for 2010 and may include some of the funding that Pete McHugh raised in 2009. She explained that for each candidate, she listed the amount of expenditures that was reported as of the last filing date of January 31st, the amount of contributions received, and the number of votes, and then divided the number of votes by those figures to see how much each vote cost the candidates in the election. She stated that she prepared this information for the Task Force to see how campaign contributions affect an electoral race.

She explained that on the next page she compiled information on the City Council race. On that page she listed all or most of the candidates, and for

each she listed how much was raised and expended, the number of votes received, and the cost per vote to each candidate based on the number of people who voted. She mentioned that if a candidate has a campaign consultant, the consultant would typically prepare this type of data compilation.

She then explained the spreadsheet entitled Contribution Breakdown on the last five pages in which she included information about contributors to various campaigns to see aggregate amounts from different companies whose names were close to the same or whose addresses were the same. She cited the Pham group as an example, where the contributions were separately \$250, however, the combined total on the first page for candidate Giordano from such contributors was \$1,500. She noted that Mayor Esteves had only individual contributors and no company contributors and therefore his information was not included in that particular spreadsheet. She noted that there have been a lot of people who have mentioned that a candidate is bought and paid for by the unions, but that you can see on the spreadsheet the person who received almost \$6100 from unions also lost the mayoral election. She explained that her thought in compiling this information was to give the Task Force an idea of what the contributions and aggregation issues are for discussion on limits and possibly setting up some rules.

Councilmember Gomez inquired as to the basis for the \$350 contribution limit figure. He also requested staff to determine what that figure would be had consumer price index adjustments been applied to it from when it was adopted until the present time. Councilmember Gomez also requested information on what the contribution limits are for surrounding cities in the County. Councilmember Polanski stated that the Task Force would not need that information for very small cities like Monte Sereno. Mr. Ogaz responded that he will research and provide the requested information.

Councilmember Polanski stated that she would also like information on whether Planning Commission members are restricted to a contribution limit different from City Council members when Planning Commission members are running for City Council. She requested staff to report back with information on the basis for this restriction. Councilmember Gomez stated that he believes it relates to a state provision for policy bodies that has to do with anyone that has come before a candidate within a year, and also applies if someone has received a contribution in excess of a certain amount, then that candidate is required to abstain from anything dealing with that company that provided the contribution. After further discussion it was determined that the City Attorney will provide information on the laws governing these issues and the different limitations for campaign contributions that would apply to the Planning Commission or other commissions for the City of Milpitas.

Councilmember Polanski requested that the City Attorney also provide information on what the total expenditure limit amounts are for any cities that have such limits. Councilmember Gomez also requested information on the latest legal opinions on that topic and what the basis for those limits are. Mr. Ogaz confirmed that he will provide the requested information.

Councilmembers Gomez and Polanski clarified that they do not expect the City Attorney to provide all of the information that has been requested at the next scheduled meeting for this Task Force. City Attorney Ogaz responded that he will endeavor to provide all the information at the next meeting and will inform the Task Force if he is not able to do so. Councilmember Polanski stated that if all the information cannot be provided at the next meeting, the agenda can be adjusted accordingly.

7. Officeholder Accounts

City Attorney Ogaz referred the Task Force to his written opinion memorandum of October 29, 2011 on Officeholder Accounts. He stated that local city elected officials cannot have officeholder accounts, but they can maintain one campaign contribution account. Councilmember Gomez asked how the City could make this work if the Council were to make a policy allowing for officeholder accounts. He requested information on how other cities are making the officeholder accounts work, including whether there is a charter city versus general law city issue. He asked if there is any way for City Council to create policy to allow for some type of account for councilmembers to use for attending certain events while not using city funds or their personal funds for this. Mr. Ogaz responded that he will look into these matters and provide an answer.

Councilmember Polanski inquired as to how the issue also relates to a newly discovered rule requiring a more specific account name and year of election on the account. She inquired as to whether a candidate must change their account to a new year with each election. City Clerk Mary Lavelle confirmed that each candidate must more specifically title their campaign account so that once the year's campaign has ended and fundraising begins for a future campaign they must update the name of the committee on the account, but do not have to open a new account.

Councilmember Polanski said that she previously thought a councilmember who lost an election would have to close the account by the end of that election year and give any excess funds to a nonprofit or something else. She now understands that a councilmember can keep an account open indefinitely even after they lost an election. She inquired as to whether that change applies to the City of Milpitas or throughout the state and requested an overview on that rule. Ms. Lavelle commented that she is not certain that this is the current state of this rule. Mr. Ogaz responded that he will report back on the current status of that rule and a brief history of it.

8. Duration of Campaigns

Councilmember Polanski noted that this issue was briefly addressed in previous discussion. After some discussion, she clarified that she wants to determine the time limits and/or time restrictions for campaign contributions. Councilmember Gomez added that he also wants to determine the time limits and restrictions for campaign expenditures. Mr. Ogaz stated he would report back on both issues.

9. Scope of Proposed Changes: Idea

City Attorney Ogaz suggested that this item may be prematurely agendaized and that he anticipated that the Task Force in the future would recommend a set of changes and potentially bring an ordinance amendment or possibly first

Session bring a set of conceptual issues to Council. Councilmembers Polanski and Gomez agreed that this item should be carried over.

10. Future Items for Consideration Councilmember Gomez raised discussing independent expenditure committees, the regulation of them, and the challenges and potential for such regulation. City Attorney Ogaz suggested staff research it and report back, to which the Task Force agreed.

Councilmember Polanski suggested also discussing the potential to prohibit contributions from companies that have contracts with the City. She cited a Allied Waste as an example. Mr. Ogaz stated he will report back on this and conflict issues regarding receiving contributions from City contractors.

Councilmember Polanski requested information on the regulations and prohibitions for requiring disclosure at Council meetings of who the candidates received contributions from. Councilmember Polanski stated that one reason for establishing this is to keep the City government more transparent in accord with the Open Government Act. City Attorney Ogaz suggested this may be accomplished by augmenting the conflict of interest disclosure procedure and Councilmember Polanski requested information on what would be involved to accomplish that. City Attorney Ogaz confirmed he will report back on this item.

Councilmember Gomez stated that he is interested in a policy decision from City Council on public financing of campaigns. He requested a report from City Attorney Ogaz on which cities have a public financing campaign budget which is set and paid from city funds with no or limited contributions from contributors. City Attorney Ogaz confirmed that he will provide such a report.

Councilmember Polanski stated her goal for the Task Force is to have a proposal for City Council by August or September of this year and Councilmember Gomez agreed with that timeframe.

Adjournment Councilmember Polanski adjourned the meeting at 6:15 p.m.

The next meeting is scheduled for April 27, 2011.

Respectfully submitted,

Susan Barrett, Recording Secretary