

City Of Milpitas
APPROVED MINUTES
Campaign Finance Reform Task Force
Rooms 140/141, Barbara Lee Senior Center
40 North Milpitas, Blvd.
Milpitas, CA 95035
Tuesday, June 14, 2011

1. Call to Order/Roll Call

Councilmember Polanski called the meeting to order at 6:00 p.m.

Present: Councilmember Althea Polanski
Councilmember Armando Gomez

City Staff: City Attorney Michael J. Ogaz
Assistant City Attorney Bryan Otake
City Manager Tom Williams
City Clerk Mary Lavelle

2. Approval of Agenda

Motion: to approve the agenda, as submitted

Motion/Second: Councilmember Polanski/Councilmember Gomez

Motion carried by a vote of: Ayes: 2
Noes: 0

3. Approval of Minutes

Motion: to approve the minutes, as submitted

Motion/Second: Councilmember Polanski/Councilmember Gomez

Motion carried by a vote of: Ayes: 2
Noes: 0

4. Public Forum

None

5. Unfinished Business: Staff Response on Campaign Finance Issues

Assistant City Attorney Bryan Otake provided the first portion of the City Attorney's Office's responses to several of the questions previously posed by the Task Force. Mr. Otake reviewed items A through G of the City Attorney's Office's memorandum dated June 9, 2011, listing the responses to the Task Force's questions. The issues and Mr. Otake's responses are summarized below:

- A. Use of Local Campaign Finance Disclosure Requirements in Addition to State Law Requirements: Milpitas may create additional or more restrictive campaign disclosure requirements than state law requirements as long as it does not violate state law or any federal or state constitutional restriction.
- B. Expansion of Land-Use Decision Participation Restriction to Council Members: The City cannot create a requirement like that which applies to planning commissioners, where council members must disclose contributions from parties involved in land-use decisions, and recuse themselves from land-use decisions involving the contributor parties. This is based on a California Supreme Court ruling that such a mandatory recusal provision for elected officials would illegally interfere

with free speech and election rights. Councilmember Gomez asked whether the City can create a requirement for verbal disclosure at City Council meetings by council members of contributions received within a specific period of time from parties involved in City land-use decisions. City Attorney Ogaz responded that it may be possible and that staff would look into that and report back. It was pointed out by City Clerk Lavelle that such contributions are disclosed in writing on the Form 460 when a donation is \$100 or more.

- C. Origin/History of State Law Creating Land-Use Decision Participation Restriction: Due to the previously mentioned Supreme Court decision, the State Legislature passed the law for appointed officials only.
- D. Public Financing of Campaigns by California Cities: Public financing is allowed only for charter cities in California and not for general law cities such as Milpitas.
- E. Milpitas Census/Voter Information: As of February 10, 2011, Milpitas had 24,064 registered voters and, as of the most recent census report, Milpitas has a population of 66,790 persons.

City Attorney Ogaz provided the remaining portion of the City Attorney's Office's responses to previous Task Force questions. Mr. Ogaz reviewed items F through K of the City Attorney's Office's June 9, 2011 memorandum. The issues and Mr. Ogaz's responses are summarized below:

- F. Funds for Conferences and Travel: Campaign funds may be used for travel which is reasonably related to a legislative or governmental purpose. If the travel also confers a substantial private benefit to the candidate, then the travel must be directly related to a legislative or governmental purpose. Example scenarios were provided by Mr. Ogaz.
- G. Officeholder Accounts: Mr. Ogaz referenced a City Attorney memorandum on the subject dated October 29, 2007. Officeholder accounts are not allowed for general law cities. Charter cities purport to be permitted to have such accounts and this has not been challenged by the FPPC. The FPPC is quite clear on its opinion on officeholder accounts for general law cities.

Mr. Ogaz discussed the differences in the regulations and mentioned that San Jose used to have officeholder accounts, but abolished them and created stipends of \$20,000 for every councilmember for officeholder purposes. There was further discussion between Councilmember Gomez and Mr. Ogaz regarding San Jose's actions relating to officeholder accounts. Mr. Ogaz added that a campaign account can be used for many different things, including travel as previously discussed and professional services. It cannot be used for fines, penalties or regular clothing, but can be used for specialized clothing. There was discussion on what might constitute "specialized clothing." Mr. Ogaz stated that there are narrow group of tasks for which one can use campaign account funds, while officeholder accounts are much less restricted.

- H. Provision Requiring Specific Account Name and Update of Campaign Year: This requirement comes from the FPPC Form 410 which was amended in 2009, which basically requires the last name of the candidate, the office being sought and the year of the election to be included in the committee name. Councilmember Polanski and City Clerk Lavelle further discussed scenarios where updating the name of the committee would be required to reflect the new election term/office sought, or when one may close out an existing account, form a new committee and open a new account.

- I. Required Actions for Campaign Accounts Following Defeated Elections: Following a defeated election the funds left in the campaign account would become surplus on December 31st. The use of surplus funds is much restricted; they cannot be used for traveling and can only be used for certain specified purposes. The funds may be transferred to a political party, but not for the support of a particular candidate. They may be given to a bona fide charity, and they may be used to pay the candidate's debts. The funds must be either left in the account indefinitely, given back to the donors, or used as specifically required by law. City Clerk Lavelle stated that there is no deadline or due date for when a campaign account must be closed.
- J. Independent Expenditure Committees versus Individual Contributors: Independent Expenditure Committees ("IECs") are generally at the state level and can spend as much money as they choose to advocate for a candidate as long as they are not acting at the candidate's request. City Attorney Ogaz gave an example of this, and pointed out that the IECs do have disclosure requirements and must report their expenses and contributions they receive. They must spend a minimum of \$1,000 in a calendar year to become an IEC.

Another form of advocacy called "issue advocacy" is where the advocacy is for a particular issue or group of values, but not a particular candidate or measure. This type of advocacy is not regulated and has no disclosure requirements. The state has attempted to address this and requires that if \$50,000 or more is spent and a specific candidate is named in their communications, then the expenditure must be disclosed.

- K. May a candidate for Milpitas City Council or Mayor have more than one campaign account at a time? A candidate may have more than one campaign account open at a time, but only one for each elected office/term for which the candidate is running or has run.

6. Task Force Direction: Next Steps

City Attorney Ogaz requested direction from the Task Force. Councilmember Gomez requested information on what other jurisdictions do for disclosure relating to hired campaign consultants who have or have had business before the City. Mr. Ogaz stated that he would report back with this information.

Councilmember Polanski stated that, for her, the aggregation issue is important and that when she came into the Task Force she felt the campaign limit might be too high. She stated that considering what the limit would be now based on application of the CPI, she is open to adding an aggregation ordinance and an increase in the contribution limit based on the CPI. After some discussion, it was determined that the current contribution limit amount based on the CPI was calculated as \$498.49.

After further discussion it was determined that the proposed aggregation legislation should address the issue of contributor companies with similar names, same addresses, or are very close in location, such as in the same building. City Attorney Ogaz suggested providing simple criteria for a standard of inquiry for the Council to use for aggregation issues, for example, when there are multiple contributors using the same address. Councilmembers Polanski and Gomez indicated that this was not necessary. Councilmember Gomez stated that the main concern is determining when a person is a controlling entity for a business. Councilmember Polanski stated that if it is part of the ordinance, and the limit, it makes it fair and candidates will pay closer attention.

Councilmember Polanski also stated that she thinks that establishing voluntary expenditure limits based on population would be good to propose to Council. Assistant City Attorney Bryan Otake stated that the amount of the limits varies from \$.25 to \$1.00 per resident in other cities. City Attorney Ogaz

suggested that staff prepare draft legislation that would leave a blank for that amount which can be filled in later by the Task Force. After further discussion, Mr. Ogaz suggested that staff create separate calculations based upon population and based upon registered voters for the Task Force to compare. Councilmember Gomez stated that another question is what should a campaign cost. Councilmember Polanski stated that the recent City Council race ranged from \$2,000 to \$50,000 and that the Mayor's race ranged from \$52,000 to \$96,000 in expenditures. Councilmember Polanski stated that she would calculate that the voluntary expenditure limit should be \$50,000. It was agreed that staff would create draft legislation based on a \$50,000 limit for voluntary expenditure limits.

Councilmember Gomez requested information on whether the City can require additional disclosure from IECs and clarification on what their disclosure requirements are. Mr. Ogaz stated that he believes they are required to disclose contributions of \$5,000 or more, but he would confirm the information and report back, as well as whether the City can require additional disclosure.

Councilmember Polanski asked if there is any way to restrict candidates from raising/accepting campaign contributions at certain timeframes before or after an election. Mr. Ogaz stated that he believed this issue was addressed in a prior memo by former City Attorney firm Meyers Nave which resulted in a change in legislation in the City of Milpitas, but that he would look into it and report back.

Councilmember Polanski requested to have the legal opinions and answers to the questions raised by the Task Force to provide to the Council and the public at the time the Task Force makes its final recommendation to the City Council. City Attorney Ogaz responded that staff would prepare a report to address this.

City Attorney Ogaz requested direction as to whether staff is to create draft ordinances at this time or report back on the ordinances. Councilmember Polanski stated she would like the draft ordinances and additional information requested to be provided at the next meeting to allow time for review, changes and/or additional items to be considered. Councilmember Gomez agreed with this approach. Mr. Ogaz stated that staff will endeavor to get the Task Force the proposed drafts before the next meeting, which was acceptable by the Task Force.

7. Next Meeting Date

July 25, 2011, 4:45 p.m.

8. Adjournment

Councilmember Polanski adjourned the meeting at 6:45 p.m.

Respectfully submitted,

Susan Barrett, Recording Secretary