



Ogaz requested, and City Clerk Mary Lavelle provided confirmation that only one IEC was reported, and that IECs seem to operate more at the state or county level rather than locally.

Councilmember Gomez asked what triggers a local registration versus a county or state filing. Clerk Lavelle responded that the purpose for which the committee is formed. Councilmember Gomez inquired how to ensure that a committee formed for statewide purposes but still be active in local campaigns would still have to file locally. City Attorney Ogaz advised that this may be one area where the City could legislate and possibly create a form similar to the Form 460. After some discussion, Attorney Ogaz stated he believes the City can require disclosure to the City Clerk for expenditures for a local election. Councilmember Gomez stated he was interested in reporting of the content of mailer and the amount. City Attorney Ogaz stated he would bring back a proposed document at the next meeting.

**B. Disclosure of campaign contributions by land-use project proponents:** Assistant City Attorney Bryan Otake summarized the City Attorney's Office's opinion on whether the City can require mandatory disclosure by City Councilmembers of contributions received from someone appearing before the Council, for example on a land use project. Mr. Otake explained that in theory the City could create such a requirement, but advises using caution in that it must not be applied in such a manner that it would result in the councilmember feeling he or she had to recuse him or herself from voting on the item. Mr. Ogaz explained that if a requirement for such mandatory disclosure is done in a way that creates a chilling effect where one feels constrained from exercising one's First Amendment rights, then it could be potentially illegal and therefore caution should be used.

Councilmember Polanski inquired if it is possible to incorporate a request that Councilmembers disclose such contributions into the disclosure of conflicts portion of each City Council meeting, or if this could be mandatory. City Attorney Ogaz suggested that such a disclosure requirement is not precluded by the Supreme Court case that governs this issue, but in exercising caution a request rather than a mandatory requirement for such disclosure would pose less risk. Mr. Ogaz suggested that staff could amend the Open Government Ordinance adding to the City Attorney's conflict disclosure reading stated at the beginning of City Council meetings. The additional language would request that Councilmembers disclose any contributions received from persons with business before the Council. Councilmember Polanski and Councilmember Gomez agreed that this would be acceptable.

**C. Disclosure of Campaign Consultants:** Assistant City Attorney Bryan Otake summarized the City Attorney's Office's opinion on whether Milpitas can require the disclosure of campaign consultants. Mr. Otake stated that this is not prohibited by state law and the City may enact such an ordinance. Mr. Otake referred the Task Force to the example San Francisco ordinance which is set out in the City Attorney Memorandum dated July 20, 2011. Councilmember Polanski stated that she would like to see a similar ordinance for Milpitas but less cumbersome and the process for how it would work with our City Clerk. Councilmember Gomez stated the goal is for disclosure by paid political consultants of who else they are working for and what business they have with the City. He stated that often they will work for a candidate at a reduced rate with the intention of lobbying later so the question is who they are working and/or lobbying for. After discussion it was agreed that the disclosure requirements will apply only to paid or otherwise compensated campaign consultants and be kept separate from the City's lobbyist requirements. City Attorney Ogaz stated that staff would prepare a draft separate ordinance.

**D. Proposed Ordinance:** Assistant City Attorney Bryan Otake gave a brief summary of the proposed ordinance attached in the agenda packet which amends the existing Campaign Contributions Ordinance. He went over the changes, which include adding voluntary expenditure limits, changing the legal purpose section, increasing the contribution limit from \$350 to \$500 per person based on the CPI, and adding subsection (e) which requires aggregation of contributions received from organizations

controlled by one person. Mr. Otake explained the two alternative versions of the voluntary expenditure limits section, with one based on the total city population and one based on the number of registered voters. Mr. Ogaz noted that there are blanks in the two versions for the Task Force to weigh in on the amount to be calculated per resident or per voter. He also noted that the ordinance contains a cap of \$50,000 in expenditures by a candidate for any election, which could be changed. After further discussion it was agreed that \$60,000 is currently an appropriate amount for the voluntary expenditure limit for any campaign candidate for City office and there is no need for a per person/voter calculation. Staff was directed to make the appropriate revisions to the proposed ordinance.

Councilmember Gomez asked if the voluntary expenditure limit could be tied to the contribution limit, whereby a candidate who agrees to the voluntary expenditure limit would have a higher contribution limit. Mr. Otake responded that current law indicates that the courts are leaning against that, although some cities do this. After further discussion, the Task Force did not direct staff to pursue this further.

#### **6. Task Force Direction: Next Steps**

In addition to direction discussed above, the Task Force members confirmed direction to staff to bring back to the next meeting the following:

1. Draft disclosure requirements for IECs when they are active in local elections.
2. Draft amendment to the Open Government Ordinance which requests Councilmembers to disclose at City Council meetings contributions received from persons before the Council.
3. Draft ordinance to require disclosure by paid campaign consultants.

A member of the public, Bill Ferguson, commented on what he believed to be unclear language in the aggregation provision of the proposed Campaign Contribution Ordinance amendment. It was agreed that staff would look at whether the language could be made more clear. He also raised issues that were previously discussed by the Task Force, including (1) prohibiting accepting contributions from a business doing business with the City; (2) limiting the length of campaigns; and (3) prohibiting multiple campaign accounts being open at a time. He also inquired about the penalty for violation of the proposed ordinance amendment and whose role it is to enforce the ordinance. After some discussion, the Task Force members agreed that the default infraction penalties were sufficient. Mr. Ferguson also commented on the amounts for voluntary expenditure limits.

Councilmember Gomez asked if there is a way to have investigations of complaints of campaign misconduct held off until after an election. City Attorney Michael Ogaz stated he would look into this and provide an answer.

Councilmember Polanski clarified with the City Attorney that all of the City's municipal laws are enforced by the City Attorney.

#### **7. Next Meeting Date**

August 22, 2011 at 5:00 p.m.

#### **8. Adjournment**

Councilmember Polanski adjourned the meeting at 5:41 p.m.

*Minutes prepared by Susan Barrett, Recording Secretary*