



REPORT TO CITY COUNCIL

DATE: JANUARY 22, 2020

TO: MAYOR AND HONORABLE MEMBERS OF THE CITY COUNCIL

FROM: GREG RAMIREZ, CITY MANAGER 

BY: CRAIG STEELE, SENIOR COUNSEL 

SUBJECT: UPDATES TO CAMPAIGN REFORM ORDINANCE

Historically, the City of Agoura Hills' campaign reform ordinance has been one of the more successful local campaign ordinances in the State. After its adoption, other cities modeled their local ordinances after the Agoura Hills system. The ordinance features a restriction on the amounts that can be contributed in City campaigns and the timing of campaign fundraising, as well as transparency requirements for printed campaign communications. Periodically, the City Council reviews the ordinance to ensure that its provisions are up to date and still relevant.

To that end, the City Council appointed an *ad hoc* subcommittee to review the ordinance and make recommendations to the City Council. This proposed ordinance is the result of that review process. The ordinance amendments the Subcommittee recommends are updates and clarifications, and do not represent any major shift in the philosophy of the ordinance. Briefly summarized, the proposed amendments are as follows (section references are to the sections of the proposed ordinance):

Section 2 of the proposed ordinance merely deletes a reference to Proposition 208, a 1996 statewide campaign reform initiative measure that was passed by the voters and later invalidated by the courts.

Section 3 of the proposed ordinance adds clarifying language, at the recommendation of the Subcommittee, to make it clear that candidates may make unlimited contributions or expenditures of their own personal funds to their own campaign, but their contributions to other campaigns are subject to applicable limits.

Section 4 of the campaign changes the pre-election fundraising period for City election campaigns from six months prior to the election to nine months prior to the election. This reflects the reality that fundraising in a system where contributions are strictly limited is difficult, and more time may be necessary to ensure that all candidates have the ability to raise enough funds to run meaningful campaigns. This section also adds a requirement that candidates file a notice with the City Clerk within 24 hours of spending their own personal funds on campaign activities. Previously, a candidate could spend personal funds for certain campaign activities without starting a campaign committee or notifying

the City Clerk. All such expenditures and fundraising activities by a candidate during the first half of the calendar year prior to an election must be reported on FPPC Form 460.

Section 5 of the proposed ordinance simply changes the title of one section of the Code.

Section 6 of the proposed ordinance makes a change to the City's requirements regarding printed campaign communications. Currently, the City requires that copies of all printed campaign communications distributed in quantities of 200 or more pieces be filed with the City Clerk. The Subcommittee identified a concern that making copies of fundraiser invitations public in this manner raises certain privacy concerns, and that hosts of fundraising events should not have to have their addresses and the existence of an event made public. Section 6 adds language to this section of the Municipal Code that exempts invitations to a specified campaign fundraising event from the filing requirement. This exemption is intended to apply to an invitation to a specified event, but not to a more generic fundraising appeal. Thus, the exemption is narrowly written to protect the privacy of the hosts of events.

Section 7 of the proposed ordinance is an update to the Code to reflect the reality of dramatically increased use of electronic communications in campaigns. For electronic communications, such as internet advertising, text messages, and social media posts, the Subcommittee recognized that it is impractical to have copies of such communications timely filed with the City Clerk. Instead, the Subcommittee recommends that the City's ordinance rely on the existing identification requirements of State law, which require that the "paid for by" language be placed on all paid electronic ads in excess of 200 pieces. The proposed ordinance lowers that threshold to 100 pieces, to match the City's tighter restrictions for printed communications. In this way, the Subcommittee feels, the City will continue to give interested persons the ability to determine who is paying for electronic campaign communications, without incurring the administrative burden of trying to acquire and maintain copies of electronic communications in various forms.

Section 8 of the proposed ordinance is an addition to the existing provision which allows an individual voter to bring a lawsuit for a violation of the ordinance. With this addition, the individual voter would be required to give five days' notice to the City Clerk prior to filing a lawsuit. Similar to State law, this requirement would help to ensure that a civil lawsuit would not interfere with the City's criminal or administrative proceeding for the same violation. While it must be noted that there has never been any proceeding - civil, criminal, or administrative - necessary for a violation of this ordinance, it is a best practice to include this notice provision to avoid the possibility of conflict.

Other than the changes discussed above, the Subcommittee discussed and recommended that the City Council review whether the City's existing \$250 per contributor contribution limit is still the right limit for the City's elections. The Subcommittee is not recommending any change, but did emphasize that the City Council should review this issue. Although not legally required, the Subcommittee recommended that the City Council consider this ordinance at a public hearing for increased transparency.

RECOMMENDATION

The Campaign Reform Ordinance Ad Hoc Committee respectfully recommends the City Council conduct a public hearing and introduce, read by title only, and waive further reading of **Ordinance No. 20-447**, An Ordinance of the City of Agoura Hills, California, Amending Chapter 10 (Campaign Reform) of Article II (Administration) of the Agoura Hills Municipal Code Relating to Election Campaigns.

Attachment: Ordinance No. 20-447

ORDINANCE NO. 20-447

AN ORDINANCE OF THE CITY OF AGOURA HILLS, CALIFORNIA, AMENDING CHAPTER 10 (CAMPAIGN REFORM) OF ARTICLE II (ADMINISTRATION) OF THE AGOURA HILLS MUNICIPAL CODE RELATING TO ELECTION CAMPAIGNS

WHEREAS, from time to time, the City Council reviews and revises the City's local campaign finance regulations to ensure consistency with State law, and to ensure that the City's local requirements are up-to-date and narrowly-tailored to continue to protect the integrity of the local election process. The City Council finds that the amendments set forth below, as well as the remainder of the City's existing campaign finance laws, are necessary to protect against corruption and the appearance of corruption in local elections, and to provide the voters of the City with complete and accurate information regarding the sources and uses of campaign funds, while still affording candidates, contributors and other participants in the political process the means to mount viable campaigns.

WHEREAS, on January 22, 2020, the City Council of the City of Agoura Hills conducted a duly noticed public hearing concerning this Ordinance.

WHEREAS, at the public hearing the City Council received and considered testimony from City staff and all interested parties regarding the proposed amendments.

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Agoura Hills hereby ordains as follows:

Section 1. The facts set forth in the recitals of this Ordinance are true and correct.

Section 2. Section 21001 of the Agoura Hills Municipal Code is hereby amended to read as follows (all text to be added in this Ordinance is underlined; all text to be deleted is ~~struck through~~):

"21001. - Purpose.

The purpose of this chapter is:

- a. To require full disclosure of the identity of all contributors to campaigns in support of or in opposition to candidates for the city council and city ballot measures;
- b. To eliminate the possibility of corruption or any appearance of corruption in local elections by limiting the amounts of money any person may contribute, or otherwise cause to be available, to candidates for the city council, and by prohibiting cash contributions as a means of avoiding disclosure;

- c. Pursuant to California Government Code Sections 81009.5 and 81013, to impose contribution limitations, disclosure requirements, and prohibitions that are as or more stringent than those imposed by state law; and
- d. ~~To fully implement the provisions of the Political Reform Act of 1996, passed by the voters as Proposition 208 at the November 5, 1996 statewide election.~~

Section 3. Subsection (h) of 21003 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“(h) No candidate and no committee controlled by a candidate shall make any contribution to any other candidate, any committee that supports or opposes candidates, or any committee that supports or opposes one or more city ballot measure. This section shall not prohibit a candidate from making a contribution from his or her own personal funds only to: (1) his or her own candidacy, or (2) to another candidate or committee subject to the limits, disclosure and record- keeping requirements imposed by this chapter and other applicable law.”

Section 4. Subsection (a) of Section 21004 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“(a) No candidate, including the candidate's controlled committee, and no committee primarily formed to support or oppose any such candidate or candidates, shall accept any contributions more than ~~six (6)~~ nine (9) calendar months prior to any election in which the candidate is attempting, or has qualified, to be on the ballot or is a write-in candidate. In the case of a recall effort, the pre-election fund raising period set forth in this paragraph shall commence on the date a notice of intent to circulate a recall petition is served on the officer.

(1) Any person who solicits or accepts contributions, or who expends his or her personal funds, to support his or her candidacy for city council shall file a Candidate Intention Statement (Form 501) with the City Clerk within 24 hours of such contribution or expenditure, in addition to any other filing required by applicable law.

(2) All contributions received and expenditures made by any candidate or that candidate's controlled committee prior to June 30 of the election year shall be reported on the applicable semi-annual Recipient Committee Campaign Statement (Form 460) and timely filed with the City Clerk.”

Section 5. Section 21010 of the Agoura Hills Municipal Code is re-titled to read “Printed Campaign Communications, Mass Electronic Mailings, and Electronic Campaign Advertisements.”

Section 6. Subsection (a) of Section 21010 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“(a) For the purposes of this section, a printed campaign communication shall include any printed or copied flier, advertisement, brochure, letter, mailer or other substantially similar communication which directly or indirectly attempts to influence the action of the voters for or against the election of any candidate or candidates or the qualification, passage or defeat of any city ballot measure. An invitation to a specified fundraising event shall not be considered a printed campaign communication for the purpose of this section.”

Section 7. Existing Subsection (d) is hereby re-lettered to be Subsection (e), and new Subsection (d) is hereby added to Section 21010 of the Agoura Hills Municipal Code to read as follows:

“(d) All candidates, candidate-controlled committees, and committees established to support or oppose a candidate for city elective office, or to support or oppose a city ballot measure, shall comply with the requirements of Government Code Sections 84501 through 84511, inclusive, as the same may be amended from time to time, “(e) The advertising disclosure requirements of Government Code Sections 84501 through 84511, inclusive, as the same may be amended from time to time, except that the threshold of 200 substantially similar pieces distributed in any calendar month shall be 100 for the purposes of this chapter.”

Section 8. Subsection (c) of Section 21012 of the Agoura Hills Municipal Code is hereby amended to read as follows:

“(c) Any person residing in the city may sue in Los Angeles County Superior Court to enjoin violations of, or to compel compliance with, the provisions of this chapter after providing at least five (5) business days’ advance written notice to the City Clerk of the intent to file such suit. Any person who is found by a court of competent jurisdiction in such an action to have intentionally or negligently violated any provision of this chapter may be held liable for a civil penalty not to exceed three (3) times the amount in controversy. In determining the amount of a civil penalty, if any, the court shall take into consideration the seriousness of the violation, and the degree of culpability of the defendant. In lieu of, or in addition to, a civil penalty, the court may order compliance with the provisions of this chapter. Civil penalties, if any, shall be paid to the person or persons filing the action. The prevailing party in any such action shall be entitled to seek and be awarded its attorneys’ fees and court costs. Any action for civil injunctive relief and/or civil penalty must be filed within one (1) year of the date of the alleged violation. No civil action may be brought if a criminal or administrative proceeding is pending for the same or related violations, unless such proceeding ~~criminal action~~ is dismissed by the prosecuting attorney.”

Section 9. If any section, subsection, sentence, clause, portion, or phrase of this Ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining sections, subsections, sentences, clauses, portions, or phrases of this Ordinance. The City Council hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, portion, or phrase without regard to whether any other section, subsection, sentence, clause, portion, or phrase of the Ordinance would be subsequently declared invalid or unconstitutional.

Section 10. The City Council hereby finds that this ordinance relates to an election and, as such, that it shall take effect immediately upon adoption. The City Clerk shall certify the adoption of this ordinance and shall publish the same in the form and content required by law.

PASSED, APPROVED, AND ADOPTED this ____ day of _____
2020, by the following vote to wit:

AYES: ()

NOES: ()

ABSENT: ()

ABSTAIN: ()

Illece Buckley Weber, Mayor

ATTEST:

Kimberly M. Rodrigues, City Clerk, MMC

APPROVED AS TO FORM:

Candice K. Lee, City Attorney