



STAFF REPORT – CITY COUNCIL MEETING

January 05, 2022

TO: Honorable Mayor and City Council Members

FROM: Nancy Diamond, City Attorney

PREPARER: Nancy Diamond, City Attorney

DATE: December 28, 2021

TITLE: **Ordinance No. 1555, for Introduction, Amending the Arcata Municipal Code Title II, Chapter 10, to Make Biennial Consumer Price Index Adjustments to Campaign Contribution Limitations.**

RECOMMENDATION:

It is recommended that the Council introduce Ordinance No. 1555, Amending the Arcata Municipal Code Title II, Chapter 10, to Make Biennial Consumer Price Index Adjustments to Campaign Contribution Limitations; waive reading of the text and consent to read by title only.

INTRODUCTION:

In 1992, the Arcata voters adopted a ballot measure that established campaign contribution limitations (codified in the Arcata Municipal Code at §§ 3011–3018, Title II, Chapter 10). This ballot measure set local office candidate campaign contribution limitations and requirements for disclosure of independent expenditures at \$100 per election cycle, to be adjusted every even-numbered year by the consumer price index (CPI). Ordinance No. 1555 makes this adjustment for 2022.

DISCUSSION:

CPI adjustments to the contribution limitation and independent expenditure disclosure requirement made since adoption of the campaign finance ballot measure raised the \$100 threshold to \$210 in 2020. Ordinance No. 1555 presented for introduction would raise the campaign contribution limits and disclosure thresholds for the 2022 election cycle to \$220 based on a CPI adjustment calculation made by the Finance Director.

General Legal Issues. The law surrounding campaign finance, including campaign contribution limitations and independent expenditure disclosure, is complex and subject to change by federal and state court interpretation. State laws are found in the California Political Reform Act (PRA, Government Code §§ 84100-91014) and are regulated by the FPPC. The following sets out an analysis of the legal framework for campaign contribution limitations, independent campaign expenditure disclosure requirements, and expenditure limitations on ballot measures, initiatives and referenda.

Campaign Contribution Limitations. Campaign contribution limitations infringe on First Amendment freedoms by restricting the contributor's ability to engage in free communication and association. (*Citizens United v. Federal Election Commission* (2010) 130 S.Ct. 876; *Buckley v. Valeo* (1976) 424 U.S. 1; *SpeechNow.org v. Federal Election Commission* (2010) 599 F.3d 686.) As a result, restrictions on contributions are permissible only if necessary to advance a legitimate state interest and are "closely drawn" to avoid unnecessary abridgment of associational (First Amendment) freedoms. To date, courts have identified the elimination of corruption or its appearance as the only governmental interest that will support limitations on direct campaign contributions. (E.g., *Federal Election Comm'n v. Nat'l Conservation Political Action Committee* (1985) 470 U.S. 480, 496-497.) Importantly, the goal of equalizing political opportunities between candidates and parties has been expressly **rejected** as a legitimate justification for the adoption of campaign contribution limitations. (*Buckley*, 424 U.S. at 48). Additionally, courts have determined that, as a matter of law, anti-corruption is not a legitimate interest in regard to independent groups, and no justification for limiting campaign contributions to independent organizations simply because it is a corporation therefore exists. (*Citizens United, supra, SpeechNow, supra.*)

A number of statewide initiative measures establishing contribution limitations have been adopted over the last 20 years and have been largely declared as unconstitutional by reviewing courts. For example, limitations established by initiative measure adopted in 1994 imposing *inter alia* a \$100 campaign contribution limitation on local elections in small jurisdictions were found largely unconstitutional in 1996. (*California Profile Council PAC v. Scully* (ED Cal 1998) 989 F. Supp. 1282, Aff'd (9th Cir. 1999) 164 F.3d. 1189.) However, that Court also indicated that local campaign contribution limitation ordinances *could* potentially pass constitutional muster if challenged through a case-by-case analysis of facts pertinent to the local jurisdiction such as size, available news media coverage, and cost of media, printing and support staff. (*Id.* 989 F. Supp. 1189 at 1299.)

At present, local campaign limitations made directly to candidates are authorized by the California Elections Code § 10202 ("A city may, by ordinance or resolution, limit campaign contributions in municipal elections"), provided such limitations are in compliance with the Political Reform Act (Government Code § 81013 et seq.). If challenged in court as violating First Amendment rights, local limits would be evaluated case-by-case to determine whether they are locally justified. The specific dollar amount imposed as a contribution limit must not "burden substantially more speech than is necessary to further the government's legitimate interest." (*Ward v. Rock Against Racism* (1989) 491 US 781, 799.)

Arcata's campaign contribution limitation ordinance has never been challenged as violating First Amendment Laws, and its need in protecting against political corruption has never been tested. Additionally, I am not aware that formal analysis has been made as to whether the amount of the limitation permits adequate campaigning within the City. As a result, it is impossible to state with certainty whether the proposed \$220 limitation under the Arcata Municipal Code § 3012(A)(1) is locally justified.

Expenditure Disclosure Limitations. In contrast to the narrow purposes for which a local government may impose direct campaign contribution limitations, courts have found that a legitimate governmental interest exists in the public's knowledge of the sources of political contributions because they educate the voters about interests a candidate is likely to respond and become beholden to. (*Buckly v. Valeo* (1976) 424. U.S. 1, 68). Under Government Code § 82031, independent expenditures of \$1,000 or more made in support or opposition to a candidate or measure must be reported to the FPPC. There appears to be no prohibition against requiring disclosure of smaller contributions such as the proposed \$220 disclosure threshold under AMC § 3012(D).

Limitations on Ballot Measures, Initiatives and Referenda Contributions. Although Arcata’s campaign contribution limitations ordinance does not limit contributions made to support or defeat ballot measures, initiatives and referenda; the following discussion is included to provide a broader understanding for campaign finance regulation. Courts have determined that the elimination of corruption and associated “political debt” is not a valid justification for limiting contributions made to support or defeat ballot measures, initiatives and referenda. One court has stated:

“Whatever the justification for prohibiting contributions that are prone to create political debts, it largely evaporates when the object of prohibition is not contributions to a candidate or party, but contributions to a public referendum. The specter of a political debt created by a contribution to a referendum campaign is too distant to warrant this further encroachment on First Amendment rights.” (*PG&E v. City of Berkeley* (1976) 60 Cal.App3d 123, 128-129, quoting *Schwartz v. Romnes* (2d. Cir. 1974) 495 F. 2d 844, 852-853.)

This decision arose from a ban prohibiting corporate contributions to support or defeat local measures, as opposed to an across-the-board limitation equally applicable to individuals and corporations. Nonetheless, the principal stated is important: valid justifications for burdening First Amendment speech in the context of candidate contribution limitations may not be valid in the context of ballot measures.

COMMITTEE/COMMISSION REVIEW:

None.

ENVIRONMENTAL REVIEW (CEQA):

This ordinance is exempt from the California Environmental Quality Act (CEQA) Guidelines pursuant to Section 15061(b)(3) of the CEQA Guidelines.

BUDGET/FISCAL IMPACT:

Not applicable.

ATTACHMENTS:

Ord 1555 Campaign Contribution Limitations updated, 2022 (PDF)