

Marin County
Independent Expenditures
Frequently Asked Questions

GENERAL INFORMATION

What is an "Independent Expenditure"?

"Independent Expenditure" means an expenditure made by any person or committee in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is *not made to or at the behest of the affected candidate or committee.*

Why is the County regulating these?

Voters are not always aware of who supports or opposes a campaign message funded with independent expenditures. Although existing law requires disclosure of the campaign committee's name, requiring clear and prominent disclosure of the top donors can better inform voters about the interests behind an advertisement or communication. In addition, requiring reporting and posting within 24 hours will ensure timely public information.

How are these regulated now?

The state Fair Political Practices Commission enforces the Political Reform Act and requires certain reporting and disclosure information of independent expenditures that affect County and local candidates. All independent expenditures currently must be reported to the Registrar of Voters, and the PRA dictates when this occurs.

Can independent expenditures be capped or stopped altogether?

No. Independent expenditures are a form of political free speech and therefore protected under the First Amendment. The public's interest to ensure elections are free of undue influence therefore must always be balanced with the right to protected speech.

Who can make independent expenditures?

Independent expenditures can be made by individuals or committees. "Independent Expenditure committees" are those that make independent expenditures but don't necessarily receive donations. "Primarily formed" committees can also make independent expenditures. These are committees that are primarily formed to endorse or oppose a candidate or measure but are not controlled by the candidate or initiative committee. They both make and receive contributions. "General Purpose Committees" (PACs) receive contributions but are not formed to support or oppose any specific candidate or measure in any specific election.

REPORTING REQUIREMENTS

What are the additional reporting requirements of the County's ordinance?

The ordinance requires individuals or committees that make independent expenditures of \$1,000 to file a report with the County Registrar of Voters within 24 hours each time the threshold is met. Absent the County ordinance, current law requires this only during the 16-day period before any election.

What will be required in the report to be filed?

Much of the same information that is currently required in the FPPC Independent Expenditure Form 496 (for 16-day period before an election) and Form 465 (used any other time) and other committee forms disclosing contributions. The Registrar of Voters will specify the form to be used. Per the ordinance, the information to be reported includes:

- The candidate or measure supported or opposed by the expenditure
- The amount spent
- Date and amount of payment
- Description of the type of communication for which the payment was made or incurred
- Name and address of the person making the payment
- Name and address of the payee or committee
- All contributions of \$100 or more
- In addition, a copy of the mailing or advertisement or copy of the script or recording of the call, transmission or advertisement must be filed.

When will the report need to be filed?

Within 24 hours of making independent expenditures that total to \$1,000. Each time the threshold is met, a report must be filed with the County of Marin Registrar of Voters.

Will a candidate or committee still be required to file other forms already required by the FPPC and according to those filing dates?

Yes. Check with County Registrar of Voters on filing deadlines for all other forms.

COMMUNICATIONS

What is a "campaign communication"?

The PRA defines a campaign communication as expressly advocating support or opposition of clearly identifiable candidates or measures

Per the County's ordinance

- More than 200 substantially similar pieces of campaign literature distributed within a calendar month, including not limited to mailers, flyers, facsimiles,

pamphlets, door hangers, e-mails, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger

- Posters, yard or street signs, billboards, super-graphic signs and similar items
- Television, cable, satellite and radio broadcasts;
- Newspaper, magazine, internet website banners and similar advertisements
- 200 or more substantially similar live or recorded telephone calls made within a calendar month.

What is not considered a "campaign communication"?

- Small promotional items such as pens, pencils, clothing, mugs, potholders, skywriting or other items on which the statement required by this section can not be reasonably printed or displayed in an easily legible typeface
- Communications paid for by a newspaper, radio station, television station or other recognized news medium; also editorials or news stories are excluded.
- Communications from an organization to its members other than a communication from a political party to its members

What is required to be included in campaign communications, per the County's ordinance?

For communications funded by an independent expenditure, the following are required:

- "This communication was not authorized by candidate X for Y office" or "initiative proponent"
- Names of 3 largest contributors to the committee of \$2,000 or more, listed in order of contribution amount, with their city and state of residence.
- In the event more than three meet this threshold at identical contribution levels, the three highest shall be selected according to chronological sequence of their donations
- "Additional information regarding this independent expenditure committee can be found at www.marinvotes.org."

How is this disclosure information required to appear?

- For printed communications that measure no more than 24" x 36", the disclosure statements must be printed in at least 10 point type in contrasting color to the background on which it appears. For oversize communication, all disclosure statements must be at least 5% of the height of the material and printed in contrasting color.
- For video broadcast, the information must be written and spoken either at the beginning or end of the communication. The written disclosure must air for at least 5 seconds. A spoken disclosure is not required if the disclosure statement is written for at least 5

seconds of a broadcast of 30 seconds or less, or 10 seconds of a 60 second broadcast,

- For audio, telephone or radio advertisement, the disclosure must be spoken in a clearly audible manner at the same speed and volume as the rest of the advertisement, for at least 3 seconds at the beginning or end of the communication. The requirement will be satisfied by using the words "on behalf of" immediately followed by the name of the individual or committee that pays for the communication.

What is already required by the PRA?

For communications supported by independent expenditures, current law requires:

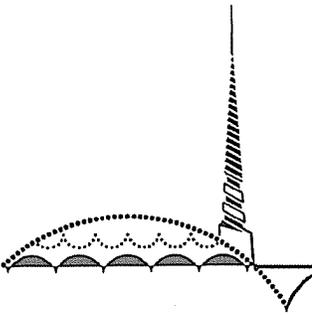
- Name of the committee making the independent expenditure
- Names of 2 largest contributors to the committee of \$50,000 or more, listed in order of contribution amount
- Statement that the advertisement was not authorized by a candidate or a committee controlled by a candidate
- For printed communications, disclosure statements to be printed clearly and legibly in no less than 10 point type in a conspicuous manner, or spoken clearly if broadcast
- Highest major contributor of \$50,000 in an electronic broadcast of 15 seconds or less or in print media which is 20 square inches or less.
- For video, the written information must appear for at least 4 seconds. If the written disclosure appears for 5 seconds of a broadcast of 30 seconds or less, or 10 seconds of a 60 second broadcast, no spoken disclosure is required.
- For audio, disclosure must occur for at least 3 seconds in duration.
- For 500 or more similar phone calls that expressly advocate support for or opposition to a candidate or measure, the name of the independent expenditure committee must be disclosed to recipients.

What is the penalty for violation of the ordinance?

Violation is a misdemeanor. In addition, any person who intentionally or negligently violates the ordinance is subject to an administrative fine of \$5,000 or up to 3 times the amount of the communication.

Where do I find information about candidates or independent expenditures made?

The County Registrar of Voters website – marinvotes.org – contains all required statements filed by candidates and committees per election.



COUNTY OF MARIN
OFFICE OF THE ADMINISTRATOR

3501 Civic Center Drive, Room 325, San Rafael, CA 94903
415-499-6358 - Fax 415-507-4104

MATTHEW H. HYMEL
COUNTY ADMINISTRATOR

June 2, 2009

Marin County Board of Supervisors
Marin County Civic Center
Room 329
San Rafael, CA 94903

SUBJECT: Merit hearing for ordinance enacting campaign finance reform for independent expenditures

Dear Board Members:

RECOMMENDATION: It is requested that the Board of Supervisors

- 1) Conduct a public hearing of the proposed ordinance (attached).
- 2) Consider adopting ordinance to add Chapter 2.02 to the Marin County Code regarding disclosure and reporting requirements for independent expenditures.

SUMMARY:

The first reading for this ordinance was held May 19, 2009. Your Board has requested that staff evaluate various campaign finance reform options to provide transparency and prevent the appearance of undue influence on local elections. In January 2009, your Board directed staff to propose an ordinance regulating independent expenditures and return at a future date with other options for campaign donation limits.

This ordinance expands existing campaign disclosure requirements to better and more quickly inform voters about who is funding campaign communications if paid with independent expenditures. Independent expenditures are expenses for communications (typically mailers or other advertising) made to oppose or assist specific candidates or measures made without their cooperation, approval or direct knowledge. The ordinance is proposed in light of the growing concern with confusing campaign advertisements in which voters are not always aware of who supports or opposes a campaign message.

The proposed ordinance includes provisions related only to independent expenditures and contains the following provisions:

- Applies to any person or committee that makes an independent expenditure in support of or opposition to any candidate for elective County office or Countywide measure, whether the person or committee has filed as an "independent expenditure committee," "primarily formed committee" or other type of committee.
- Requires that each time independent expenditures that combine to \$1,000 are made by an individual or committee, the activity is to be reported to the Marin County Registrar of Voters within 24 hours. It also requires that contributions of \$100 to the individual or committee be listed. (Currently the Fair Political Practices Commission requires this to be reported within 24 hours, but only if independent expenditure is made 16 days prior to an election).
- Requires the Marin County Registrar of Voters to post the report immediately on the County's website.
- Specifies language on campaign communications funded by independent expenditures, including the names of three largest campaign contributors of \$2,000 or more, listed in order of their contribution amounts, with their city and state of residence. It also requires Inclusion of the following language: "Additional information regarding the contributors of \$100 or more to this committee can be found at www.marinvotes.org." It also requires other disclosure information be provided and clearly legible.
- Specifies disclosure of audio, telephone call or radio advertisements as well as internet and video distribution.
- Makes knowing violation a misdemeanor. In addition, violation could also result in an administrative fine of \$5,000 or up to three times the cost of the communication that violated the ordinance.

If adopted, the ordinance would be in place for the June 2010 primary elections for County elected offices and measures. A "Frequently Asked Questions" sheet is attached that will be available once the ordinance is adopted.

FISCAL IMPACT:

No significant additional costs are anticipated as a result of the adoption or implementation of the ordinance. Costs for staff time for enforcement of administrative fines are not expected to be significant but will be reviewed on a case by case basis. Fines are not expected to generate significant revenue.

REVIEWED BY: County Counsel N/A
 Human Resources N/A
 Auditor-Controller N/A

Respectfully submitted,

Matthew H. Hymel
 County Administrator

Attachments:

Ordinance
FAQs

Cc: Michael Smith, Treasurer-Tax Collector
Roy Givens, Assistant Treasurer-Tax Collector
Elaine Ginnold, Registrar of Voters
Dan Miller, Elections Clerk, Registrar of Voters
Sheila Lichtblau, County Counsel III

ORDINANCE NO. 3519
ORDINANCE OF THE MARIN COUNTY BOARD OF SUPERVISORS
ENACTING CAMPAIGN FINANCE REFORM FOR INDEPENDENT EXPENDITURES;
AND ALSO FOR PROVIDING PENALTIES FOR VIOLATION OF THE TERMS
OF THIS ORDINANCE

SECTION I. FINDINGS

The Marin County Board of Supervisors finds as follows:

WHEREAS, integrity in the political process is of paramount importance in County elections; and

WHEREAS, in prior County elections, mailers by independent expenditures have, at times, contained misleading information and voters have not always been aware of who supports or opposes a campaign message; and

WHEREAS, meaningful disclosure laws related to independent expenditures in County elections are essential to the political process because they ultimately affect the voters' ability to make informed choices; and

WHEREAS, increased disclosure requirements for independent expenditures in County elections will ensure transparency of independent expenditures so that voters are provided information on contributors, contributions and expenditures in a timely manner.

NOW, THEREFORE, the Board of Supervisors of the County of Marin does hereby ordain as follows:

SECTION II. Chapter 2.02 is hereby added to the Marin County Code as follows:
Chapter 2.02 Disclosure and Reporting Requirements for Independent Expenditures.

Section 2.02.010 **Purpose:**

The purpose of this ordinance is to ensure transparency of independent expenditures so that voters are provided information on contributors, contributions and expenditures in a timely manner.

Section 2.02.020 **Intent:**

This ordinance is intended to supplement the Political Reform Act of 1974. Unless a word or term is specifically defined in this ordinance, or the contrary is stated or clearly appears from the context, words and terms used herein shall have the same meaning as defined or used in Title 9 of the California Government Code, in which the Political Reform Act of 1974 is codified, and as supplemented by the Regulations of the Fair Political Practices Commission as set forth in Title 2, Division 6 of the California Code of Regulations, as the same may be, from time to time, amended.

Section 2.02.030. **Definitions:**

The following definitions shall be used for the purposes of interpreting the provisions of this ordinance:

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- (a) "County candidate" means any person who is a candidate for a county office as defined in section (d) below.
- (b) "County measure" means any local measure placed on the ballot by the County of Marin in an election which is governed by the Elections Code.
- (c) "County election" means any primary, general, runoff, special or recall election.
- (d) "County office" means the office of county supervisor, assessor-recorder, auditor-controller, county clerk, treasurer-tax collector, district attorney, sheriff, and coroner.
- (e) "Elective county officer" means any member of the board of supervisors, the assessor-recorder, auditor-controller, county clerk, treasurer-tax collector, district attorney, sheriff, or coroner, whether appointed or elected.
- (f) "Individual" means a living person contributing funds.
- (g) "Independent Expenditure" means an expenditure made by any person or committee in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

Section 2.02.040. Reporting of Independent Expenditures:

- (a) Disclosure of Payments for Independent Expenditures shall be as follows:
 - (1) At any time, any person, including any committee, that makes or incurs independent expenditures that combine to \$1,000 or more in support of or in opposition to any candidate for elective County office or any County measure as defined herein shall report to the Marin County Registrar of Voters office within twenty-four (24) hours by certified mail, fax or e-mail each time this threshold is reached. The form of notification is described in subsection (a) (2) and (a) (3) of this section. Additionally, all contributions of \$100 or more shall be itemized in the report and shall be posted with the report immediately to the County's website.
 - (2) The notification shall consist of a declaration made under penalty of perjury and signed by the person or officer and the treasurer of the group making the expenditure, specifying the following: (i) if applicable, each candidate who was supported or opposed by the expenditure; (ii) the amount spent to support or oppose each candidate or measure; (iii) if applicable, whether the measure was supported or opposed; and, (iv) the expenditure was not behested by the candidate or candidates who benefited from the expenditure.
 - (3) In addition, the notification will include the date and amount of the payment, a description of the type of communication for which the payment was made or incurred, the name and address of the person making the payment, the name and address of the payee or committee, and a copy of the mailing or advertisement, or a copy of the script or recording of the call, transmission, or advertisement. The Marin County Registrar of Voters shall determine the reporting form to fulfill the notification requirement.

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Section 2.02.050. Additional Requirements for Campaign Communications Funded By Independent Expenditures

- (a) Campaign communications funded by an independent expenditure supporting or opposing County candidates or County measures shall include the following disclosures: "This communication was not authorized by candidate _(name)_ for _(office)_" or "_(name) initiative proponent".
- (b) Campaign communications funded by an independent expenditure supporting or opposing County candidates or County measures shall include the names of the three largest contributors of \$2,000 or more listed in order of their contribution amounts (the largest contributor listed first), city and state of residence. In the event that more than three donors meet this disclosure threshold at identical contribution levels, the first three highest shall be selected according to chronological sequence. If the committee can show, on the basis that contributions are spent in the order they are received, that one or more of the contributions received from the three highest contributors have been used for expenditures unrelated to the candidate or ballot measure featured in the communication, the committee shall disclose the contributors making the next largest cumulative contribution of \$2,000 or more. The communication shall further include the following: "Additional information regarding the contributors of \$100 or more to this committee can be found at www.marinvotes.org." The disclosure required by this section shall be presented in a clear and conspicuous manner as to give the reader, observer or listener adequate notice as follows:
 - (1) For printed campaign communications that measure no more than twenty-four inches by thirty-six inches, all disclosure statements required by this section shall be printed using a typeface that is easily legible to an average reader or viewer, but is not less than 10 point type in contrasting color to the background on which it appears. For oversize printed campaign communications, all disclosure statements shall constitute at least five percent of the height of the material and be printed in contrasting color.
 - (2) For video broadcasts including television, satellite, internet, telephone and cable campaign communications, the information shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than five seconds.
 - (3) For audio, telephone call or radio advertisement campaign communications, the disclosures shall be spoken in a clearly audible manner at the same speed and volume as the rest of the telephone call or radio advertisement at the beginning or end of the communication and shall last at least three seconds. The requirement shall be satisfied by using the words "on behalf of" immediately followed by the name of the candidate or committee that pays for the communications.

- (c) For purposes of this section, "campaign communication" includes any of the following campaign related items:
- (1) More than 200 substantially similar pieces of campaign literature distributed within a calendar month, including but not limited to mailers, flyers, facsimiles, pamphlets, door hangers, e-mails, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger;
 - (2) Posters, yard or street signs, billboards, super-graphic signs and similar items;
 - (3) Television, cable, satellite and radio broadcasts;
 - (4) Newspaper, magazine, internet website banners and similar advertisements;
or,
 - (5) 200 or more substantially similar live or recorded telephone calls made within a calendar month.
- (d) For purposes of this section, "campaign communication" does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, skywriting or other items on which the statement required by this section can not be reasonably printed or displayed in an easily legible typeface; communications paid for by a newspaper, radio station, television station or other recognized news medium; and communications from an organization to its members other than a communication from a political party to its members.

Section 2.02.060. Enforcement of Chapter

- (a) Notwithstanding any other provision of the Marin County Code, any person who knowingly violates any provision of this chapter shall be guilty of a misdemeanor and shall be liable as set forth in Section 1.04.270.
- (b) In addition to the penalty set forth in subsection (a) of this section, any person who intentionally or negligently violates any section of this chapter shall be subject to an administrative fine for a sum of \$5,000 for each violation, or up to 3 times the amount of the communication, whichever is greater. In imposing the administrative fine, the Registrar of Voters shall issue a notification of violation setting forth the violation and the amount of the fine.
- (c) Any person subject to an administrative fine pursuant to subsection (b) of this section shall have the right to request an administrative hearing within forty-five days of the issuance of a citation for a civil violation of this chapter pursuant to the authority granted to the board of supervisors by Government Code Section 25845, subdivision (i). To request such a hearing, the person requesting the hearing shall notify the Marin County Administrator's office in writing within forty-five days of the issuance of the citation. The Marin County Administrator's office shall refer any request for a hearing to an administrative law judge. The administrative law judge shall conduct an evidentiary hearing on the matter within ninety days of the request for the hearing unless one of the parties requests a continuance for good cause. The administrative law judge shall render a decision within thirty days of the conclusion of the hearing. Either party may appeal the decision of the administrative law judge pursuant to the requirements set forth below in subsection (d).

(d) The person upon whom a civil fine is imposed pursuant to subsection (c) of this section may appeal the decision of the administrative law judge. The county may also appeal the decision of the administrative law judge. No appeal can lie unless the party filing the appeal has first properly requested and obtained a hearing as set forth under subsection (c) of this section. The appeal must be filed within twenty days after service of the final decision issued by the administrative law judge pursuant to California Government Code Section 53069.4, subdivision (b). The procedures outlined in Government Code 53069.4 shall apply. (Ord. 3462 § 1 (part), 2006)

Section 2.02.070. Severability and Preemption

If any provision of this chapter or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect any other provision or application, and to this end the provisions of this chapter are severable. The civil fines and fees imposed by this chapter do not preclude other potential civil actions or criminal prosecution under any other provision of law.

Section 2.02.080. Enforcement of Chapter

This ordinance shall be and is hereby declared to be in full force and effect as of thirty (30) days from and after the date of its passage and shall be published once before the expiration of fifteen days after its passage, with the names of the supervisors voting for and against the same, in the MARIN INDEPENDENT JOURNAL, a newspaper of general circulation published in the county of Marin. (Ord. 3462 § 1 (part), 2006)

PASSED AND ADOPTED at a regular meeting of the Board of Supervisors of the County of Marin held on this 2nd day of June, 2009 by the following vote:

AYES: SUPERVISORS Susan L. Adams, Steve Kinsey, Charles McGlashan,
Judy Arnold, Harold C. Brown, Jr.
NOES: NONE
ABSENT: NONE



PRESIDENT, BOARD OF SUPERVISORS

ATTEST:


CLERK

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