



STAFF REPORT

SAUSALITO CITY COUNCIL

AGENDA TITLE:

Council discussion on enacting campaign finance reform for independent expenditures

RECOMMENDED MOTION:

Provide direction to staff

BACKGROUND

In June, 2009, the Marin County Board of Supervisors adopted an ordinance enacting campaign finance reform relating to independent expenditures. Although the Fair Political Practices Commission (FPPC) imposes certain reporting and disclosure requirements for these independent expenditures, the County wanted to be able to require additional reporting and disclosure requirements for any independent expenditures made in support of or opposition to candidates for County elective office or County ballot measures.

On July 21, 2009, the League of Women Voters came before the Sausalito City Council and requested that the Council consider similar legislation which would impose comparable disclosure and reporting requirements. Following that presentation, Council asked staff to consider this proposal.

On September 1, 2009, the City Attorney returned to Council with a brief report on this subject, noting that adopting such legislation would not have any effect on the upcoming election. She also advised that no other agency in Marin County had adopted like regulations. However, she did note that San Rafael was considering it, but had concerns with enforcement issues. Council requested that staff move forward with such legislation should the City of San Rafael resolve concerns that had arisen. Council also requested that, if possible, such legislation be in place for the 2010 Municipal Election.

On August 16, the San Rafael City Council introduced their ordinance, with the final adoption set for September 7, 2010.

Council now has the opportunity to evaluate these ordinances and determine the best course of action for the City of Sausalito.

Item #: 6D
Meeting Date: 9.14.10
Page #: 1

STAFF RECOMMENDATIONS

Staff recommends that Council hold an open discussion on this issue and direct staff to proceed with a draft ordinance or not.


ATTACHMENTS

1. County of Marin Staff Report dated May 19, 2009 (introduction of ordinance)
2. County of Marin Staff Report dated June 2, 2009 (adoption of ordinance)
3. County of Marin Ordinance No. 3519
4. City of San Rafael Staff Report dated August 16, 2010 (introduction of ordinance)
5. City of San Rafael Ordinance No 1887

PREPARED BY:


Debbie Pagliaro
City Clerk

REVIEWED BY:


Mary Wagner
City Attorney

SUBMITTED BY:


Adam W. Politzer
City Manager

Item #: 6D
Meeting Date: _____
Page #: 2



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

May 19, 2009

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

SUBJECT: Proposed ordinance enacting campaign finance reform for independent expenditures

Dear Board Members:

RECOMMENDATION: It is requested that the Clerk of the Board:

- 1) Read ordinance by title only
- 2) Schedule merit hearing for June 2, 2009 at 10:30 a.m.

SUMMARY: This item was scheduled for first reading on May 12, 2009. Changes were requested by your Board's campaign finance subcommittee, which have been incorporated into the attached ordinance.

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:	<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
	<input type="checkbox"/> Human Resources	<input checked="" type="checkbox"/> N/A
	<input type="checkbox"/> Auditor-Controller	<input checked="" type="checkbox"/> 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



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:	<input checked="" type="checkbox"/> County Counsel	<input type="checkbox"/> N/A
	<input type="checkbox"/> Human Resources	<input checked="" type="checkbox"/> N/A
	<input type="checkbox"/> Auditor-Controller	<input checked="" type="checkbox"/> N/A

Respectfully submitted,


 Matthew H. Lymel
 County Administrator

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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

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9

MARIN COUNTY BOARD OF SUPERVISORS
ORDINANCE NO. 2009-_____

AN ORDINANCE OF THE BOARD OF SUPERVISORS OF THE COUNTY OF MARIN
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:

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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:

- (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.

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)

-END-

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

AYES: SUPERVISORS

NOES:

ABSENT:

PRESIDENT, BOARD OF SUPERVISORS

ATTEST:

CLERK

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15

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, currently 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.

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.

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).

97

(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

CITY OF



San Rafael

Agenda Item No: 17

Meeting Date: August 16, 2010

SAN RAFAEL CITY COUNCIL AGENDA REPORT

Department: City Attorney

Prepared by: Rob Epstein, City Attorney /s/ RE
Lisa Goldfien, Deputy City Attorney II /s/ LG

City Manager Approval: /s/ KN

SUBJECT: Consideration of an Ordinance of the City of San Rafael Adding New Chapter 1.16 to the San Rafael Municipal Code Enacting Disclosure and Reporting Regulations for Independent Expenditures in City Elections

RECOMMENDATION:

Conduct public hearing and consider introduction of ordinance.

BACKGROUND:

An "independent expenditure" is defined by the California Political Reform Act as an expenditure made by any person or committee in connection with a communication which (1) expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage or defeat of a clearly identified measure; or (2) 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. Independent expenditures have been used increasingly in state elections as a means to avoid voter approved limits on direct contributions to candidates for office. Marin County has also seen a rise in the use of independent expenditures in local elections to fund campaign-related communications, some of which have been perceived as misleading to voters.

The Political Reform Act, as implemented by regulations adopted by the Fair Political Practices Commission ("FPPC"), imposes certain reporting and disclosure requirements for independent expenditures, including requiring an FPPC form 496 report to be filed within 24 hours whenever independent expenditures totaling \$1,000 or more are made during the final 16 days prior to an election.

In mid-2009, the Marin County Board of Supervisors adopted an ordinance requiring additional reporting and additional disclosure requirements for independent expenditures made in support of or opposition to candidates for County elective office or County ballot measures. Approximately one year ago, Elissa Giambastiani on behalf of the League of Women Voters, requested that the City Council consider adoption of an ordinance similar to the County's, which would impose comparable disclosure and

FOR CITY CLERK ONLY

File No.: _____

Council Meeting: _____

Disposition: _____

27

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 2

reporting requirements on persons and committees making "independent expenditures" in City of San Rafael elections.

The City Council directed staff to begin drafting the requested ordinance for consideration by the Council but deferred further consideration of the matter at the request of the City Attorney, who wished to have additional time to analyze certain enforcement issues raised by the proposed ordinance. In January of this year, the City Attorney reviewed a revised draft ordinance with the City Council at a study session. At the end of that meeting, the Council appointed a subcommittee consisting of Mayor Boro and Councilmember Connolly to work with the City Attorney in resolving various issues, and in refining the draft ordinance for further review by the City Council. The Council Committee met with the City Attorney twice, leading to the ordinance before the Council at this meeting.

ANALYSIS:

The attached draft ordinance is similar to the County's ordinance, now codified as Chapter 2.02 of the Marin County Code, in imposing local reporting and disclosure requirements for independent expenditures. The ordinance does not, and legally cannot, regulate campaign communications paid for with independent expenditures on the basis of their content. To do so would infringe on constitutionally protected rights of free speech. Nor does the ordinance attempt in any way to impose local limits on the amount of campaign contributions. The ordinance is only designed to increase transparency and improve voter access to information about independent expenditures made in connection with City campaigns.

Required Reporting and Disclosures: The proposed San Rafael ordinance has the following significant features:

1. The ordinance would require a person or committee, upon making independent expenditures totaling \$1,000, to report those expenditures on the FPPC form 496 to the City Clerk within twenty-four (24) hours or by noon of the next City business day, whichever is earlier. Thereafter, each time the \$1,000 threshold is reached, a new report must be filed with the City Clerk. The ordinance would extend the requirement to file the FPPC form 496, within the City only, to cover a period of 90 days prior to the election.
2. A copy of any report filed with the City Clerk must also, within the same time frame, be provided: 1) to the Marin Independent Journal; and 2) to each other candidate for the elective City office, or all committees supporting or opposing the City measure, which is the subject of the independent expenditure.
3. The City Clerk is directed to post the reported information on the City's website on the same or the next City business day.
4. The required reports must disclose, under penalty of perjury, the name and address of the payor and payee and the amount of the expenditure, the identity of the candidate or measure supported or opposed, a copy or script/recording of the mailing/advertisement, telephone call, or transmission, as the case may be, an itemization of each contribution of \$100 or more, including the name and address of the contributor, and a statement that the expenditure was not made at the request of the candidate(s) who benefited from the measure.
5. In addition to the reporting requirements, "campaign communications" as defined in the ordinance, must contain specified disclosures, including the names and city and state of residence of each contributor of \$2,000 or more to the expenditure and a referral to the City's website for a listing of the contributors of \$100 or more to the communication.

SAN RAFAEL CITY COUNCIL AGENDA REPORT / Page: 3

Violations and Enforcement: While the FPPC, a state agency, investigates and prosecutes violations of the Political Reform Act, enforcement of any violations of local campaign regulations would be the responsibility of the City. Under the proposed ordinance, any knowing and willful violation would be deemed to be a misdemeanor; and any violation could be prosecuted by the City administratively. Unfortunately, due to the City's size and its staffing and budget resources, the City would not be in a position to conduct an independent investigation of every alleged violation of the ordinance. Accordingly, as drafted, the ordinance does not guarantee enforcement action by the City for every alleged violation, and it also places the burden to provide evidence of a violation on the complaining party. If a complainant is able to make a *prima facie* showing of an ordinance violation by an identified party, then the ordinance provides a speedy notice and hearing procedure for determination of the violation and for imposition of penalties. Upon being notified by the City Clerk of an alleged violation, the accused violator may request a hearing before an independent hearing officer.

The ordinance proposes that the City Attorney will develop a panel of volunteer attorney hearing officers, from which the City Clerk may choose when a hearing is requested. If, after an evidentiary hearing, the hearing officer finds there was a violation of the ordinance, then a penalty may be imposed. The amount of the penalty would vary depending upon various factors, including the number of violations and any mitigating circumstances, however, under the City's Charter, a monetary penalty for violation of a City ordinance may not exceed \$500 per violation.

FISCAL IMPACT:

The adoption of this ordinance would impose additional election-season duties on the City Clerk, and potential costs for enforcement of violations of the ordinance, which may or may not be offset by fines recovered from a person or committee violating the ordinance; however, the ordinance attempts to minimize such expenses for the City.

OPTIONS:

1. Introduce ordinance and pass to print.
2. Continue the introduction of the ordinance to a subsequent meeting and provide direction to staff for further modification of the draft ordinance.
3. Reject the ordinance.

ACTION REQUIRED:

1. Conduct a public hearing and receive input from the public;
2. Pass the Ordinance to print.

ATTACHMENTS:

Ordinance

6
JD



ORDINANCE NO. 1887

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING
NEW CHAPTER 1.16 TO THE SAN RAFAEL MUNICIPAL
CODE ENACTING DISCLOSURE AND REPORTING
REGULATIONS FOR INDEPENDENT EXPENDITURES IN
CITY ELECTIONS**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1.

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

WHEREAS, in prior City elections, various communications funded by independent expenditures have, at times, been perceived to contain misleading information and voters have not always been aware of who supports or opposes a campaign message; and

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

WHEREAS, under applicable State law, including the cases of Stanson v. Mott (1976) 17 Cal.3d 206; and Vargas v. City of Salinas (2009) 46 Cal.4th 1, and California Government Code section 54964, ballot measure or candidate advocacy by a City, its officials or employees, or agents, or the expenditure of public funds or resources by City officials, employees or consultants to support or oppose a ballot measure or candidate, are prohibited;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 2.

Chapter 1.16 is hereby added to the San Rafael Municipal Code as follows:

Chapter 1.16. Disclosure and Reporting Requirements for Independent Expenditures.

Section 1.16.010. Purpose.

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

Section 1.16.020. Intent.

This Chapter is intended to supplement the Political Reform Act of 1974 (Title 9, Sections 81000 et seq., of the California Government Code). Unless a word or term is specifically defined in this Chapter, 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 the Political Reform Act of 1974, as supplemented by the Regulations of the Fair Political Practices Commission (hereafter "FPPC") 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 1.16.030. Definitions.

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

A. "City candidate" means any person who is a candidate for an elective City office as defined in section F below.

B. "City Clerk" means the City Clerk of the City of San Rafael.

C. "City measure" means any local measure placed on the ballot by the City of San Rafael in an election which is governed by the Elections Code.

D. "City election" means any primary, general, runoff, special or recall election for an elective City office or a City measure.

E. "Committee" means any person or combination of persons who directly or indirectly does any of the following:

1. Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.

2. Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

3. Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees. A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214 of the Political Reform Act.

F. "Elective City office" means the office of Mayor, City Councilmember, City Clerk, Trustee, San Rafael Board of Education, or City Attorney of the City of San Rafael.

6D
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G. "Elective City officer" means any member of the City Council or Trustee, San Rafael Board of Education, the Mayor, the City Clerk, or the City Attorney of the City of San Rafael, whether appointed or elected.

H. "Independent expenditure" means, for purposes of this chapter, either 1) an expenditure made by any person or committee in connection with a communication which expressly advocates the election or defeat of a clearly identified City candidate, but which is not made to or at the behest of that candidate or a committee controlled by that candidate; or 2) an expenditure made by any person or committee in connection with a communication which expressly advocates the passage or defeat of a clearly identified City measure, but which is not made at the behest of or reported as a contribution to a committee supporting or opposing that measure.

I. "Person" means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them, or any other entity which is recognized by law as the subject of rights or duties.

J. "Primarily formed committee" means a committee pursuant to subdivision (a) of Section 82013 of the Political Reform Act which is formed or exists primarily to support or oppose any of the following:

1. A single candidate.
2. A single measure.
3. A group of specific candidates being voted upon in the same city, county, or multi-county election.
4. Two or more measures being voted upon in the same city, county, multi-county, or state election.

Section 1.16.040. Reporting of Independent Expenditures.

Requirements for the disclosure and reporting of independent expenditures shall be as follows:

A. During the last ninety (90) days prior to the date of any City election, when any person or committee has made independent expenditures that cumulatively total \$1,000 or more, that person or committee shall report such independent expenditures as provided in this section.

B. One report required under this section shall be made by the filing with the City Clerk of a completed and signed FPPC form 496 (Independent Expenditure Report) to which is attached a copy of any communication funded by the independent expenditure. The report shall be filed with the City Clerk by personal delivery, guaranteed overnight mail, fax or e-mail within

60
33

twenty-four (24) hours, or by noon of the next City business day whichever is earlier, after the independent expenditures have been made. For purposes of this chapter, an independent expenditure has been made when a payment is made in connection with the development, production, or dissemination of the communication, or when the communication is disseminated to the public, whichever is earlier. A new FPPC form 496, with a copy of the funded communication, shall be filed with the City Clerk each time the person or committee makes additional independent expenditures that cumulatively reach the \$1,000 threshold.

C. In addition to the report required under subsection B of this section, whenever the Political Reform Act requires the filing of a completed and signed FPPC form 465 in any jurisdiction within the State of California, if the disclosures required in that filing include any independent expenditures (as defined in Section 1.16.030(H)) then, on the same day as, and in addition to, any other filing of that form 465 pursuant to the Political Reform Act, the form 465 shall also be filed with the City Clerk.

D. Whenever a report is filed with the City Clerk pursuant to subsections B and/or C of this section, a copy of the filing shall also be delivered within the same twenty-four (24) hours to 1) the Marin Independent Journal; and 2) all other City candidates for the elective City office that is the subject of the independent expenditures, or to all primarily formed committees supporting or opposing the City measure that is the subject of the independent expenditures. The delivery required hereunder shall be made either by personal delivery, guaranteed overnight mail, fax or e-mail. The report filed with the City Clerk shall include a proof of the service of copies required by this section. The proof of service shall comply with the requirements of Code of Civil Procedure Section 1013a.

E. The City Clerk shall post each report and attached communication filed pursuant to this chapter on the City's website on the same City business day as received or as soon thereafter as possible.

Section 1.16.050. Additional Requirements for Campaign Communications Funded By Independent Expenditures.

A. Campaign communications pertaining to a City candidate or an elective City office and funded by an independent expenditure shall contain a specific statement, on any material published, displayed or broadcast, that the communication was not authorized by a candidate, or a committee controlled by a candidate. Campaign communications pertaining to a City measure and funded by an independent expenditure shall contain a specific statement, on any material published, displayed or broadcast, that the communication was not authorized by any primarily formed committee supporting or opposing that measure.

B. Campaign communications funded by an independent expenditure shall disclose the identity of the person or committee making the independent expenditure, and the name, city and state of residence of each contributor of cumulative contributions totaling \$2,000 or more to the person or committee making the independent expenditure, listed in order of the size of their cumulative contributions, with the largest contributor listed first. If a listed contributor is a

committee, the campaign communication shall also disclose the identity of the treasurer of the donor committee. For purposes of this section the term “cumulative contributions” shall be defined as provided in Government Code section 84502. The communication shall further include the following statement: “Additional information regarding the contributors of \$100 or more to this communication can be found at www.cityofsanrafael.org/government/city_clerk/elections.html.”

C. Any person or committee making an independent expenditure or any person acting in concert with that person or committee shall be prohibited from creating or using a business entity, a noncandidate-controlled committee, or a nonsponsored committee to avoid, or that results in the avoidance of, the disclosure of any individual, industry, business entity, controlled committee, or sponsored committee as a funding source.

D. The disclosures required by this section shall be presented in a clear and conspicuous manner so as to give the reader, observer or listener adequate notice as follows:

1. For printed campaign communications that measure no more than 864 square inches (e.g. twenty-four 24 inches by 36 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 in not less than 10 point type, in contrasting color to the background on which it appears. For printed campaign communications larger than 864 square inches, 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 of the communication.

E. For purposes of this chapter, “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, and similar items.

3. Television, cable, satellite and radio broadcasts.

4. Newspaper, magazine, internet website banners and similar advertisements.

5. 200 or more substantially similar live or recorded telephone calls made within a calendar month.

F. For purposes of this chapter, "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 on its own behalf; and communications from an organization to its members other than a communication from a political party to its members.

Section 1.16.060. Violations; Penalties.

A. Violations. Any person who knowingly or willfully violates any provision of this Chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to five hundred dollars (\$500) may be imposed upon conviction for each violation. All other violations of this Chapter shall be deemed to be infractions and subject to the penalties set forth in Section 1.42.010 of this Code. Any violation of this Chapter shall also be deemed to be a public nuisance, and may be enforced by an action for injunction or civil penalties as provided in Section 1.42.020 of this Code or by imposition of administrative penalties in a sum not to exceed five hundred dollars (\$500) per violation. Except as otherwise specifically provided in this Chapter, all such remedies shall be alternative to or in addition to or in conjunction with, and not exclusive of, one another. The election of remedies shall be at the sole discretion of the City.

B. Notice of Violation; Right to Hearing.

1. Whenever the City Clerk shall determine that there is a prima facie showing of a violation of this chapter by an identifiable person or committee, the City Clerk may issue a Notice of Violation to that person or committee. The Notice of Violation shall advise that the City Clerk has determined there is probable cause to find that the identified person or committee has violated this chapter, and shall set forth a brief description of the facts constituting the violation. The Notice of Violation shall also disclose the amount of the penalty established for the violation of this chapter, and shall advise that the penalty shall be imposed by the City unless the notice recipient submits a written request for hearing to the City Clerk within seven (7) calendar days after the date of the Notice. The written request for hearing shall set forth all grounds upon which the person or committee requesting the hearing contends that this Chapter has not been violated or that the specified penalty should not be imposed by the City.

2. If no hearing is requested within the time provided herein, the City Clerk shall have the authority to impose the penalty specified in the Notice of Violation, and shall mail a Notice of Penalty to the violator. Such penalty shall be due and payable within thirty (30) days after the date of the Notice of Penalty.

3. Within two (2) business days after receipt of a written request for hearing under this section, the City Clerk, or his or her designee, shall mail to the accused violator and to the complainant(s), if any, a written Notice of Hearing setting forth the date and time of a hearing at which the accused violator and complainant(s) may present oral or written evidence concerning the alleged violation or the penalty proposed. Such hearing shall be set no earlier than five (5) business days after the date of the Notice of Hearing.

4. A hearing requested pursuant to this section shall be held by a hearing officer chosen from a panel of volunteers appointed by the City Attorney for such purpose pursuant to guidelines to be established by resolution of the City Council. At such hearing, the hearing officer shall consider all the evidence presented by the City Clerk, the accused violator and the complainant(s), if any, concerning the alleged violation, and may consider any mitigating circumstances, including but not limited to efforts made to correct any violation. Upon conclusion of the hearing or within five (5) business days thereafter, the hearing officer shall issue a written decision setting forth findings as to whether the accused has violated this chapter, and imposing a specific penalty for any violations found. The decision of the hearing officer shall be final. Any person aggrieved by the decision of the hearing officer may obtain review of the decision by filing a notice of appeal with the Marin County Courts in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

C. Notwithstanding any other provision of this chapter, the City Clerk shall not be required to issue a Notice of Violation for any alleged violation of this chapter, nor shall the City in any instance be required to take any enforcement action pursuant to this Chapter.

D. In any case where the City Clerk determines that he or she may have a conflict of interest in the enforcement of this ordinance, the City Clerk may delegate such enforcement to independent counsel to be selected by the City Clerk in consultation with the City Attorney.

Section 1.16.060. Applicability to City.

The reporting requirements set forth in Sections 1.16.040 and 1.16.050 of this Chapter shall not apply to the City of San Rafael and its agents and employees while acting in the course and scope of their agency or employment with the City of San Rafael.

DIVISION 3.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 4.

A summary of this Ordinance shall be published and a certified copy of the full text of this

Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

ALBERT J. BORO, Mayor

ATTEST:

ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No.1887 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 16th day of August, 2010 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Brockbank, Connolly, Heller, Levine & Mayor Boro

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 7th day of September, 2010.

ESTHER C. BEIRNE, City Clerk