



**CITY OF ALBANY  
CITY COUNCIL AGENDA  
SUPPLEMENTAL STAFF REPORT**

July 29, 2008

**SUBJECT:** Campaign Finance Reform Act

**REPORT BY:** Robert Zweben, City Attorney

---

**BACKGROUND**

At the July 7, 2008 meeting the Council considered recommendations from the Social and Economic Justice Committee on the subject of revisions to the Campaign Finance Reform Act (“Act”). Proposed amendments were presented to the City Council.

Many persons spoke at that meeting. Some spoke in support of the proposed amendments. Many spoke against amending the ordinance and instead suggested that the ordinance be rescinded. After hearing the public comments, council members expressed a general sentiment that the ordinance should be revoked. The Council voted unanimously to direct the staff to prepare an ordinance for the July 21<sup>st</sup> meeting to revoke the Act.

An urgency ordinance to revoke the Act was presented to the Council at its July 21<sup>st</sup> meeting. At that meeting, the Council voted 3 to 2 to revoke the ordinance. Inasmuch as an urgency ordinance requires a 4/5’s vote for adoption (and is effective immediately), the revocation ordinance has been scheduled for a second reading at the August 4 meeting. In addition, an alternative ordinance to adopt revisions to the Act is also before the Council for consideration.

**DISCUSSION/ANALYSIS**

I. Revoking or Amending the Act

Reasons that have been expressed by the public in support of revoking the ordinance are as follows:

1. The provisions of the ordinance are too complicated and cause too much confusion.

2. Since, according to current law, an ordinance can require only voluntary agreement to limit campaign spending, the overall effectiveness of the City’s ordinance is of questionable value.

3. An ordinance cannot limit a candidate from contributing as much money as he/she wishes to contribute.

4. The State of California has adopted a comprehensive set of laws that regulate campaigns. These seem to be sufficient for a jurisdiction the size of Albany.

5. Overall the experience in the elections since the passage of the Act does not suggest that the Albany ordinance achieved any objective goal. The ordinance appears to be mostly of symbolic value.

In addition, since the passage of the original ordinance, over 10 years ago, the U.S. Supreme Court and federal appellate courts have rendered decisions indicating that various provisions ordinances such as Albany's are either unconstitutional or of questionable validity. Amending the City's ordinance to reflect current law would dilute the ordinance provisions to a point that undermine its effectiveness. For example, the geographical restrictions of out of Albany contributions and the ceiling on expenditures of general purpose committees are two provisions that need to be eliminated or adjusted.

With regard to amending the Act, speakers who favored retaining the ordinance in an amended form proposed further restrictions. However it should be noted that most of the suggestions were not consistent with existing law. Simply put, the courts have ruled that it is not possible to place absolute expenditure limits on campaign spending. Individual candidates and PACS may spend unlimited amounts of money and cannot be regulated in such a way as to remove the influence of money in the election process.

The reasons expressed for revoking the Act are understandable. In Albany, even if a candidate agreed to a voluntary ceiling, campaign expenditures by a candidate would still be capped at about \$7,500. Independent committees and general purpose committees would be able to spend whatever money they wished. So even if a candidate agreed to an expenditure ceiling, other money, not directly controlled by the candidate, could be spent in support of the campaign. Over the years some candidates have spent over \$10,000. Other candidates have successfully run low cost campaigns, suggesting that spending money does not guarantee winning elections. In short, the Council cannot pass a valid ordinance that requires a campaign expenditure ceiling to control the amount of money spent in elections. An ordinance, especially in a city the size of Albany, might have symbolic value, but little else.

Given the reasons expressed in support of revoking or amending the ordinance, and the realities of the law, this office recommends that the Council revoke the ordinance. After the election, the Council could always consider the appointment of a special task

force to review whether issues arose that might be addressed by a different set of regulatory enactments.

## II. Eliminating the Private Enforcement Provision.

It may be proposed at the August 4 meeting that the Council modify certain provisions in the Act and eliminate the provision that provides for private enforcement. If the private enforcement provision was eliminated, the City Attorney would be exclusively responsible for enforcement. This office strongly recommends that the private enforcement provision not be eliminated based upon the following considerations.

The disputes that arise between campaign committees occur in a politicized atmosphere, that is not necessarily about preserving the integrity of the City's campaign finance laws. Using taxpayer money and city resources to sort out disputes between competing campaign groups can be very costly and can drain limited public resources. Furthermore, Albany does not have an enforcement process that is suitable for handling these types of disputes. The cities that do have an enforcement component are typically much larger cities with substantial budgets and committed enforcement staff. These cities create special independent oversight committees, hire special legal counsel, and are specially trained to undertake enforcement actions.

It is also important to note that most matters that are alleged to be a violation of the Albany ordinance also constitute a violation of FPPC rules and regulations. Therefore the complaining campaign committee could seek redress through the FPPC.

It should also be noted that since Albany has one elected city attorney and no other legal staff, having the city attorney as the sole enforcement option creates unavoidable ethical and conflict of interest issues. A city attorney cannot be expected to enforce disputes that may involve sitting council members running for office, persons running for office who are supported by sitting council members, or disputes between two persons, one of whom may become a new council member. A city attorney has a special relationship with a city council. This relationship would be fractured if a city attorney were forced to police disputes among sitting council members or persons who will become council members.

On the other hand, a provision for private enforcement allows the city the discretion as to whether and how to enforce a campaign dispute. It is important for a city to retain the ability to exercise discretion with regard to enforcement matters, and there is typically no sound policy reason to limit or prohibit the exercise of discretion on behalf of a city.

Finally, many city ordinances include private enforcement provisions. It is good public policy to allow both private and public enforcement of ordinances, especially when disputes are between two parties and do not necessarily invoke the public interest. As was seen at the last two council meetings, there were speakers who felt that it was a

waste of city time to even have to hear from the persons involved in the complaint that led to a lawsuit during and after the November, 2006 election.

### **CONCLUSION**

Nomination papers are being taken out at this time. Candidates are gearing up for the November 2008 election. City staff and persons involved in the upcoming election would benefit from clarity. If the Act was amended, it would be necessary to educate the campaigns about the new law. If the Act were to be rescinded, candidates would still be required to comply with state law, including all applicable FPPC regulations, with regard to campaign financing issues.

If the Act is not revoked, but is amended, it is recommended that the private enforcement provision be retained.