

Report of the Albany Campaign Finance Reform Task Force July 14, 2009

At the March 16, 2009 Albany City Council meeting the Council voted unanimously to establish a task force to examine Albany's revised Campaign Finance Reform Ordinance. Specifically, Council voted that, "*The charge of the Task Force is to review the existing ordinance and determine if further modifications to or repealing of the Act are appropriate or desirable; per the recommendation of the Social and Economic Justice Commission to investigate public campaign financing and the issue of legal actions.*" In addition, from the approved minutes of that meeting, Council Member Javandel stated that he is more interested in getting information out to the voters and supports public financing with a threshold for candidates and if the threshold is accepted then the City puts in funding. Council Member Javandel stated that he does not want the Task Force to get caught up in the finance part and to make sure it is an equitable process with the focus being on distribution of information.

To those ends the Task Force met to review the ordinance, consider ways to get information to voters, discuss public financing and the issue of legal actions, and evaluate substantial background materials provided by liason City Attorney Robert Zweben. Task Force membership includes Karen Leeburg, Allan Maris, Margie Marks, and Caryl O'Keefe.

Task Force Actions Overview

First, all Task Force members agree that an ordinance providing for campaign finance reform is desirable for Albany.

Second, Task Force members recommend some modifications to the current ordinance, to enhance incentives to accept voluntary expenditure limits, improve distribution of information to the electorate, and address ambiguities. City Attorney Robert Zweben drafted possible revisions to the current ordinance and that draft was reviewed by the Task Force on July 13.

Third, the Task Force discussed and provided information for Council consideration concerning public campaign financing, and the issue of legal action. The Task Force is available to continue work should Council wish to refer these (or other) matters back with direction.

Fourth, at the end of this report are questions and answers received from the office of Robert Stern of the Center for Governmental Studies, concerning general purpose committees. Finally, one member of the Task Force, Allan Maris, submitted a report attached for Council's consideration.

Task Force Recommended Modifications to the Ordinance

- 1) Increase the level of election information provided on the City of Albany's website by using a checkbox or similar indication next to each candidate's name as to whether the candidate did or did not elect the voluntary expenditure limit for that election.

- 2) Increase the level of election information provided on the City of Albany's website by including for each candidate a reproduction of that candidate's statement of qualifications (which is published in the voter guide and is a matter of public record).
- 3) Modify ordinance provisions 7.3.a and 7.3.b to exclude non-candidate-controlled committees, to reduce ambiguity.
- 4) Eliminate the current section 7.3.d (which is made moot by revisions to 7.3.a and 7.3.b) and re-letter subsequent sections in section 7.3.
- 5) Modify ordinance provision 7.5.e. to specify *committees'* payments, to reduce ambiguity. Also in 7.5.e specify the reference period for the report that is required by this subsection.
- 6) Per Robert Stern's suggestions, clarify provisions 7.5.c, and 7.5.d by replacing "upon" with "within five days".
- 7) Re-date the ordinance, to reduce ambiguity.
- 8) Specify CPI reference for escalation provisions, providing the level of detail suggested by the producer of the CPI, to reduce ambiguity.

Public Financing Proposal

From City Clerk Jacqueline Bucholz the Task Force learned that the City of Albany already provides public financing of campaigns by subsidizing the publication, in the Voter pamphlet, of all candidates' Statements of Qualification. The City Clerk reports that Alameda County's estimated cost for the Candidate Statement for the next November 2009 election would be \$618 per candidate. Albany's new Master Fee Schedule shows a fee for this service to each candidate of \$89.30. Thus in round numbers, Albany is subsidizing over \$500 per candidate per election.

If the City Council decides to continue subsidizing candidates' Statements of Qualification, the Task Force suggests that any subsidization be limited to those candidates who accept the voluntary expenditure limits in the ordinance.

Before the Task Force learned of the current subsidy, it discussed the following public financing idea as a means to improve distribution of election information, and provide additional incentive for participation in the voluntary expenditure limit. This idea reflects the reality that while the City's website offers valuable information, not all voters have easy access to the City's website. Candidates find that it is impossible to reach all electors via door-to-door distribution drops, due to "no soliciting" signs and locked buildings, so mail is the only way to reach all potential voters. But mail is expensive as there are about 7000 Albany households with voters, and first class US postage is \$.49/ounce and climbing.

Despite the good that could come to voters from a publicly financed campaign mailing, there are some drawbacks. Candidates who do not participate in the voluntary expenditure limits may complain about exclusion. The City Clerk will have some workload associated with this proposal.

And a joint mailing is a lot of work and a bit of risk for candidates, some of whom may not feel ideologically comfortable about sharing an envelope. Of course no candidate would be required to participate in a joint mailing, but the notion of cooperating - despite different perspectives - to inform voters during a campaign would benefit the public. Benefiting the public is the only justifiable basis for public funding. Consequently this proposal regarding Albany Campaign Finance Reform Task Force Report draft July 13, 2009 p 2 of 5

public funding focuses on a process that benefits voters. Features include a requirement that multiple candidates must agree to a joint mailing, these candidates must do all the work, and pay all initial expenses. The candidates must make claim for reimbursement and total reimbursement is a function of how many participate.

The Task Force acknowledges the challenges and fiscal impact of this proposal, and offers it for consideration by the City Council. Possible language is:

Subject to funding availability to be determined by City Council before each election, the City of Albany will reimburse, for US postage cost only, an amount not to exceed \$2,000 per election, for a single, joint mailing of campaign literature to the voters. Only a one-time-per-election joint mailing of candidates' campaign literature, mailed no later than one month before election day, is eligible. Additionally, a mailing is eligible for reimbursement only when at least 50% of the eligible candidates (for all elected positions) join in the joint mailing. Under no circumstance may the mailing be for one candidate only. The City shall do no preparation, editing, arrangements, distribution, nor any aspect of the mailing work. Candidates who participate in an eligible joint mailing must each submit a voucher for reimbursement of each candidate's equal share of the total US postage cost. One candidate must submit on behalf of all participating candidates the original US postage receipt, and provide for the City Clerk one item of the eligible mailing.

Legal Action

In the Task Force's consideration of legal action in the City's ordinance, a member of the public encouraged adding to the ordinance a provision to grant attorney's fees for the prevailing party in any lawsuit relying upon Albany's ordinance. The Task Force was interested also in finding a way to discourage misuse of the ordinance for personal political gain.

Regarding attorney's fees, the Task Force noted that in a lawsuit against seven Albany political committees and individuals in 2006, for which an Alameda County Superior Court judge ordered the plaintiffs to pay the defendants' attorneys' fees and expenses, the plaintiffs have not yet paid the judgment. The Task Force could not determine how Albany could enforce payment through its ordinance, when payment ordered by a judge is not made.

Consequently the Task Force has no recommendation regarding legal action.

General Purpose Committees

Under the proposed revisions to the ordinance, general purpose committees (examples from recent Albany elections are Kids First, Citizens for the Albany Shoreline,

Concerned Albany Neighbors) are excluded from the ordinance. The exclusion is recommended to reduce operational complexity in tracking contributions across committees. General purpose committees must follow State of California Fair Political Practices guidelines, and file required financial reports of contributions received, and expenditures made. Thus Albany voters will still be able to see who donated \$100 or more to each general purpose committee.

In the Task Force's research we obtained information from Robert Stern's office, the Center for Governmental Studies, regarding General Purpose Committees. Questions and answers (where available – not all questions were answered), and an excerpt from FPPC § 18247.5. Primarily Formed and General Purpose Committees, are below for information for General Purpose committees in Albany. *(The Task Force is not suggesting this is legal advice, it represents the answers we received during our work.)*

Question: Is there any drawback to a flat-amount-per-year-limit on contributions from persons to general purpose committees (in lieu of limiting a total amount donated in support of or opposition to a candidate - across committees) in a given calendar year?

Answer: As I understand your question, the potential drawback to a yearly contribution limit from individuals to general purpose committees, instead of a contribution limit on the total amount that individuals can give to all committees to support or oppose a candidate, is that this would benefit long-term general purpose committees because individuals could contribute yearly, as opposed to per election. Would the result be that newly formed general purpose committees could collect \$1,000 per year while older general purpose committees could collect \$4,000 per election cycle? Also, how would the city control out of city general purpose committees?

Question: When does a City general purpose committee become a "primarily formed" committee?

Answer: I believe when at least 70% of its contributions and expenditures are made on candidate(s) or measure(s).

Question: What is a "group of specific candidates" as mentioned in the definition of a primarily formed committee? For instance, if six candidates ran for three School Board seats in one election, and a general purpose committee endorsed three of those candidates who were running independently of each other, are those three candidates a "group"? Does the term "group" require a slate team, 2 or more candidates who share expenditures?

Answer: I'll have to check on this.

Question: in the definition of primarily formed committees, does the 70%+ apply for any ONE (and only ONE) of the four numbered options?

Answer: My reading is that it applies "on any of the following," meaning on any one of the following.

Question: If candidate(s) and measure(s) are supported/opposed in one flyer....how does the general purpose committee apportion expenditures across candidate(s) and measure(s)?

Answer: According to the amount of space given to each candidate or measure.

FROM FPPC § 18247.5. Primarily Formed and General Purpose Committees

(a) Primarily Formed Committee. For purposes of Section 82047.5, a recipient committee under Section 82013(a) is considered to be formed or existing primarily to support or oppose a candidate or measure if it makes more than 70 percent of its total contributions and expenditures, as calculated pursuant to subdivision 20(c), on any of the following:

- (1) A single candidate. A committee formed or existing primarily to support or oppose a single candidate includes a committee that makes contributions and expenditures for a particular candidate and against that candidate's opponent(s).
- (2) A single measure.
- (3) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (4) Two or more measures being voted upon in the same city, county, multicounty, or state election.

(b) General Purpose Committees... *(skipping State and County committees)*

(3) City General Purpose Committee. A "city general purpose committee" is a committee that meets the criteria in subparagraphs (b)(3)(A) and (b)(3)(B):

(A) The committee makes contributions or expenditures to support or oppose candidates or measures voted on in only one city, or in one consolidated city and county, including contributions to city general purpose committees in the same city or the same consolidated city and county, that total more than 50 percent of the contributions and expenditures made by the committee, as calculated pursuant to subdivision (c).

(B) The committee is not a state general purpose committee as defined in paragraph (b)(1). (c) Calculations.