



City of Culver City

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Legislation Text

File #: 15-201, **Version:** 1

CC - Introduction of an Ordinance Amending Chapter 3.06 of Title 3 of the Culver City Municipal Code Pertaining to Campaign Finance and Other Political Activities.

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Fiscal Impact: Yes No **General Fund:** Yes No

Public Hearing: **Action Item:** **Attachments:** Yes No

Commission Action Required: Yes No **Date:**
Commission Name:

Public Notification: (E-Mail) Meetings and Agendas - City Council (08/19/15); (Publish) Culver City News (08/13/15); (Posted) Public Notification Webpage (08/12/15)

Department Approval: Carol A. Schwab, City Attorney (08/19/15)
Martin R. Cole, Assistant City Manager/City Clerk
(08/19/15)

RECOMMENDATION

Staff recommends that the City Council introduce an ordinance amending Chapter 3.06 of Title 3 of the Culver City Municipal Code (CCMC) which provides revisions and updates to the current CCMC provisions pertaining to campaign finance and other political activities.

BACKGROUND

State regulations governing campaign finance in California are found in the Political Reform Act (PRA) and Fair Political Practice Commission (FPPC) regulations. The FPPC enforces the provisions of the PRA. However, local entities have the authority to supplement the PRA by adopting additional restrictions and regulations as long as they do not conflict with the state's provisions. Further, any such additional restrictions are also subject to applicable federal law, including decisions of the Supreme Court of the United States (SCOTUS).

For over 25 years, Culver City has had its own regulations (currently found in Chapter 3.06 of the CCMC) related to the financing of campaigns, including restrictions on the amount of contributions which may be made to candidates and campaign committees. In addition, there are CCMC provisions which address political activities by City employees and City contractors, as well as campaigning on City property.

Chapter 3.06 of the CCMC was last amended in 1989. Many local governmental entities adopted campaign finance regulations in order to impose contribution limits on local candidate races. At that time, SCOTUS appeared supportive of contribution and expenditure limits. SCOTUS made it clear, though, that political contributions are protected by the First Amendment to the U.S. Constitution; participating in democracy through political contributions is a right, although that right is not absolute. It is a long standing premise of campaign law that governmental entities may regulate campaign contributions to protect against corruption or the appearance of corruption. At the same time, SCOTUS has repeatedly made it clear that contributions may not be regulated simply to reduce the amount of money in politics or to “level the playing field,” and political expenditures by the candidate and the candidate’s committee cannot be limited.

Since 1989, SCOTUS has issued a series of rulings curtailing the ability of government to control private campaign activity. Due to the many changes in state and federal campaign finance law, including changes to the PRA, in 2014, the City Council appointed a subcommittee consisting of Vice Mayor Weissman and Council Member Clarke to work with City staff to review the CCMC and recommend to the City Council appropriate amendments to update the CCMC in light of current law (including rulings of SCOTUS). The Subcommittee has met a number of times with staff and made substantive recommendations to update the CCMC, which recommendations are reflected in the proposed ordinance.

Many of the significant changes proposed have come as a result of SCOTUS’ rulings and other regulatory changes in the past 10-15 years, focusing on the issues of contribution and expenditure limits. Some of the most significant cases are cited below.

In 2006, in *Randall v. Sorrell*, SCOTUS struck down the state of Vermont’s candidate contribution limits of \$400 for a two-year election cycle for governor, and even lower limits for other state offices, finding that the limits were so restrictive as to impede the ability of challengers to raise sufficient funds to mount a meaningful campaign. Additionally, SCOTUS found that Vermont’s campaign contribution law failed to provide a cost of living adjustment, which could have a significant impact over time.

In 2010, in *Citizens United v. Federal Election Commission*, SCOTUS struck down federal law that barred corporations from making independent expenditures in support of or in opposition to candidates. Unlike California law, under federal law corporations are barred from making contributions to candidates, and before 2010, federal law also barred corporations from making contributions to non-candidate committees that expressly advocated for the election of candidates. SCOTUS struck down the prohibition on corporate contributions to independent expenditure committees on the grounds that the prohibition was not narrowly tailored to serve the government’s interest in preventing corruption or the appearance of corruption.

Most recently, in the 2014 case of *McCutcheon v. Federal Election Commission*, SCOTUS struck down blanket “aggregate limits” on contributions to federal candidates and committees. SCOTUS opined that aggregate limits, where a limit is placed on the overall total a person, entity or committee may contribute during a campaign to multiple committees or candidates, deny an individual the ability to exercise his/her free speech rights by contributing to a candidate who will advocate for the contributor’s policy preferences.

In addition to the many decisions changing federal campaign law, there have been changes to the PRA (California Government Code Sections 81000 et seq.), on which the CCMC relies. In 2000, for example, Proposition 34 was adopted by the voters, which imposed contribution limits (adjusted for changes in the cost of living on a biennial basis) on candidates for elective state office and made changes to many of the definitions and reporting requirements on which the City had relied.

As a result of the above, the Subcommittee has supported bringing forward the proposed revisions to the 1989 provisions of the CCMC to the full City Council in order to make certain that the City maintains the most up-to-date regulations.

DISCUSSION

The proposed ordinance provides recommended campaign contribution limits and requirements that are specific to Culver City. It also includes and references many definitions and provisions found in the PRA and FPPC regulations, in order to facilitate ease of compliance. It should be noted that prior to raising or spending money in connection with an election, candidates, campaign managers and committee treasurers should become familiar with both the state and the City's various campaign finance laws and regulations, including appropriate disclosure forms and reporting requirements.

Below are both a summary of the updates to the CCMC as contained in the proposed ordinance and a more in-depth explanation of the proposed changes.

Summary of Updates

Given the length of time since the last revision, coupled with the significant change in the views of SCOTUS on campaign funding, there are a number of updates and amendments included in the proposed ordinance. While the changes involve complex subjects, following is a brief summary of major changes (for more information, please see the more detailed discussion included later in this report):

- **In-Kind Contributions:** Currently, the CCMC excludes in-kind contributions from campaign contribution limits. Thus, there are no restrictions on making in-kind contributions to a candidate. Consistent with the PRA, the proposed ordinance removes this exclusion for in-kind contributions, referred to as "non-monetary contributions" in the proposed ordinance, with two narrow exceptions, so the value of the in-kind (non-monetary) contributions will be counted toward the contribution limit.
- **Contribution Limit Applicable to a Person:** The current contribution limit, set in 1989, is \$500. To account for inflation, the proposed ordinance sets an initial contribution limit of \$1,000 and provides for an increase of this limit based upon changes in the CPI. Please also see the change in definition of Person below, which now includes committees and other entities and groups.
- **Contribution Limit Applicable to Committees:** The current Committee contribution limit is \$1000, which is double the \$500 amount from persons. Since

Committees are now included in the definition of Person, the new contribution limit would remain at \$1,000. A higher contribution limit of \$2000 is now proposed for "Small Contributor Committees", as they are made up of contributions of 20 or more persons, consistent with state law.

- **Candidate's Receipt of Total Contributions from All Committees:** Currently, a candidate may only receive a total of \$2,500 from all committees. Consistent with SCOTUS' rulings, this limit is eliminated in the proposed ordinance and a candidate may receive contributions from any number of committees.
- **Definitions:** The proposed ordinance updates certain definitions, including those of the terms PERSON and COMMITTEE. Also, the new term of SMALL CONTRIBUTOR COMMITTEE has been added consistent with the PRA.
- **Contributions by Contractors with the City:** The current CCMC prohibits any contributions within one year from the date of a proposed contribution for those that have a contract of \$25,000 or more with the City. The proposed ordinance allows for a \$250 limit on contractor contributions and includes a change in the period of time when such a limit would apply.
- **Aggregate Limit on Contributions:** Under the current ordinance, if a person makes a contribution to a candidate and also to a committee supporting that candidate, their total contribution is limited to \$500. This aggregate restriction has been eliminated in the proposed ordinance, to be consistent with current law.

In addition to the above summary, Attachment 4 is a "Summary of Key Proposed Changes to Campaign Finance Ordinance" which compares, in tabular format, existing and proposed language.

Below is a more detailed discussion of the key changes contained in the proposed ordinance:

Definitions

In the current CCMC, Section 3.06.010, the definitions in the PRA are applicable, except for three specifically defined terms: "candidate", "committee", and "contribution". In the proposed ordinance, all definitions have been updated, and in an effort to make the ordinance easier to read and navigate, PRA definitions have been incorporated so that the City automatically incorporates future changes in state law into the CCMC, and the state definitions are repeated when necessary or useful for a candidate or voter to understand.

Important to note among the proposed definition updates:

Candidate

The term Candidate is defined in the PRA; it is included in the proposed ordinance to clarify that the City is only regulating local candidates, and also to clarify that under the PRA and under the City's ordinance as well, incumbents retain their status as candidates during the entire time they hold office. This ensures that they continue to file campaign reports so the public is informed

of any fundraising or political expenditure activity.

Committee

The term Committee now specifically refers to the PRA, and includes, but is not limited to, any person or combination of persons who receives contributions of \$1000 or more in a calendar year, or who makes independent expenditures totaling \$1000 or more in a calendar year. Under the PRA, persons or combinations of persons must receive contributions or make independent expenditures totaling \$1,000 or more before such committees become subject to disclosure obligations. Otherwise, there is a question of whether the burden of having to register and file reports is too severe for persons who make relatively small independent expenditures.

Contribution

The term Contribution also specifically adopts the PRA definition, and expressly sets out the exceptions in the PRA for volunteer personal services, or for an in-kind contribution in the form of a home or office fundraiser where the occupant pays for all of the costs of the event, which may not exceed \$500, exclusive of the fair rental value of the premises. The current definition of “contribution” contained in the CCMC has a broad exception for in-kind transfers but does not contain the necessary limitations laid out in the PRA.

Small Contributor Committee

The proposed ordinance defines a Small Contributor Committee, to differentiate it from the general definition of “committee.” State and federal law allow for a small contributor committee where a group of persons who each make a small contribution to the committee may band together to have their political voice heard. Under the proposed ordinance, a small contributor committee is one that has been in existence at least 3 months, receives contributions from twenty or more persons of \$200 or less per calendar year, and that makes contributions to two or more candidates for elected City office.

Person

Under the PRA and the proposed ordinance, the term Person includes not only individuals, but also corporations, limited liability companies, partnerships, firms, and all other forms of formal as well as informal entities, including associations, committees and any group of persons acting in concert.

Contribution Limits

Under the CCMC’s current language, a person may not contribute more than \$500 per candidate, per election (CCMC Section 3.06.015(A)). Although the City’s limit is similar to that in some other jurisdictions, it has not been adjusted since 1989. From January 1989 to June 2015 (the most currently available statistic), using the Consumer Price Index - All Urban Consumers (Los Angeles -Riverside-Orange County, CA), the cost of living has increased 196.998%. Applying this increase to the current \$500.00 limit yields a limit (in today’s dollars adjusted for inflation) of \$984.99. To keep pace with the increase in CPI, a widely available indicator of inflation, the proposed ordinance raises the contribution limit from \$500 to \$1000 per candidate, per election. This contribution limit applies to all persons, with the exception of small contributor committees. Under the proposed ordinance, small contributor committees may contribute up to \$2,500 per election per candidate. State law permits this type of higher contribution limit for such committees, to encourage small donors to combine with others to enhance the value of their contributions.

Additionally, consistent with the direction of the courts and the PRA, the proposed ordinance incorporates a cost of living adjustment to be applied every two years, rounded to the nearest \$10.

Limits on Contractor Contributions

The proposed ordinance updates and clarifies the limit on contributions from a contractor doing business with the City. In Section 3.06.020, the CCMC provides that a contractor may not contribute to a candidate or a committee if the contractor has contacted with the City within one year of the date of the proposed contribution, and the contract value is \$25,000 or more. The proposed ordinance (Section 3.06.020) places a limit on contractor contributions to candidates of \$250, but does not completely ban contractor contributions. This reduces the influence a contractor may have on a candidate, but does not completely prevent the contractor from exercising its First Amendment right to support candidates. Additionally, instead of a one-year restriction, the contractor may not make more than a \$250 contribution between the time negotiations commence until such time either a final determination is made by the City to reject the award of contract or one year after approval of the contract or termination of negotiations for the contract.

Aggregate Limit on Contributions

For purposes of the current \$500 per person, per election contribution limit, Section 3.06.015(A) of the CCMC aggregates (i.e. combines) all contributions made by a person to a candidate with the contributions made by the same person to any committee supporting that candidate. In other words, if an individual has contributed the maximum \$500 to a candidate, that individual is prohibited from contributing to any committee supporting that candidate, such as an independent expenditure committee. Additionally, current Section 3.06.015(B) aggregates committee contributions in a single election as well.

Under recent court rulings, however, the City may not restrict the right of a person to make contributions to committees that are not coordinating expenditures with the candidate, such as an independent expenditure committee. The courts have ruled that because independent expenditures are, by definition, done without coordination with the candidate, the potential for corruption that justifies contribution limits is absent. Thus, in the proposed ordinance, the reference to an aggregate cap has been removed.

Additionally, the current CCMC language (Section 3.06.015(B)) prohibits a candidate from receiving contributions in excess of a total of \$2,500 from all committees. This provision has been eliminated; otherwise, the current provision could restrict a committee from making a contribution to a candidate of its choosing if that candidate has already accepted contributions at the limit from other committees. Thus, in the proposed ordinance, a candidate may accept contributions from any number of committees.

Contributions Made by Related Donors

Current CCMC Section 3.06.030 provides that contributions from organizations with “controlling individuals” are deemed to be a contribution of that individual. An individual with control is defined as any individual who has more than a ten percent (10%) interest in or is a trustee, director, partner or officer of the contributing organization. The 10% threshold is inconsistent with state law, which requires majority ownership (more than 50%), and it raises a question about whether a

person who owns only 10% of an organization has the authority to make contribution decisions on behalf of that organization. Therefore, the proposed ordinance deletes this provision, replacing it with a new Section 3.06.025.

This Section incorporates state law, which requires the aggregation of contributions made by an individual and an entity that is majority owned by the individual, unless the organization acts independently, without the input of the majority owner. It also provides that contributions from multiple organizations owned or controlled by the same person or group of persons will be combined for purposes of the contribution limits.

Election Campaign Accounts and Records

This provision (Section 3.06.030) is slightly modified to conform more closely to the PRA.

Mass Mailing and Political Advertising Disclosure

This new section (Section 3.06.035) replaces current Section 3.06.040 "*Identification of Sponsor of Political Advertisements*", to conform to the PRA regarding mass mailings and advertising.

Enforcement

Updated enforcement provisions are found in Section 3.06.040 of the proposed ordinance and update former Section 3.06.050, "*Enforcement; Injunctive Relief*". Provisions were added to clarify the City Clerk's duties and obligations as the Elections Official to monitor campaign forms and statements and notify the candidate or person of apparent violations on the face of the forms and statements. Enforcement options for the City Attorney are clarified, where the City Attorney may utilize administrative, criminal or civil remedies for violations of the CCMC. The City Attorney also may refer an investigation to a special prosecutor. Additionally, the proposed ordinance anticipates the passage of Assembly Bill 910, which if enacted would give local jurisdictions the option of contracting with the FPPC to enforce their local ordinance.

Violations and Penalties

This section (Section 3.06.045) has been updated for clarity, but is essentially the same as the current ordinance, which is consistent with the provisions of the PRA.

Political Activity of City Employees

Current Section 3.06.055 has been split into two separate sections in the proposed ordinance. Proposed Section 3.06.050, "*Political Activity-Ballot Measure on Working Conditions*", is currently set forth in Section 3.06.055(B). Section 3.06.055 has been updated and incorporates various provisions of the Government Code which prohibit activities such as campaigning while at work, in uniform, or while using City resources.

Based upon the information above, the Subcommittee and staff recommend the City Council consider the recommendations set forth and introduce the proposed ordinance.

FISCAL ANALYSIS

There is no fiscal impact on the City associated with the adoption of this ordinance.

ATTACHMENTS

1. Proposed Ordinance - clean copy
2. Proposed Ordinance- strike through version
3. Existing CCMC Chapter 3.06
4. Summary of Key Proposed Changes to Campaign Finance Ordinance

MOTION

That the City Council:

Introduce an ordinance amending Chapter 3.06 of Title 3 of the Culver City Municipal Code pertaining to campaign finance and other political activities.