REPORT TO COUNCIL 13
City of Sacramento

915 I Street, Sacramento, CA 95814-2604
www. CityofSacramento.org

Consent
December 11, 2007

Honorable Mayor and
Members of the City Council

Title: Administrative Modifications to the City Code Sections Pertaining to Contribution Limits and Fair Campaign Practices

Location/Council District: Citywide

Recommendation: Adopt an **Ordinance** amending various sections of Chapters 2.13 and 1.20 of the Sacramento City Code relating to contribution limits and fair campaign practices.

Contact: Stephanie Mizuno, Assistant City Clerk, 808-8093; Shirley Concolino, City Clerk, 808-5442.

Presenters: N/A

Department: City Clerk

Division: N/A

Organization No: 0700

Description/Analysis

Issue: Amend the City Code in the sections relating to campaign finance and fair campaign practices to clarify the issues of separate campaign accounts for candidates and general purpose committees, and align the filing deadline of the Code of Fair Campaign Practices to correspond with the filing of nomination documents.

Policy Considerations: None

Environmental Considerations: None

Commission/Committee Action: The proposed changes were presented to the Law and Legislation Committee on November 20, 2007. The Committee recommended that the changes be forwarded to the full Council for approval.

Rationale for Recommendation: In preparation for the 2008 elections, the proposed amendments to the City Code are necessary to clarify and align certain sections so that regulations are recorded, effective and in place before the election.

Financial Considerations: N/A

Emerging Small Business Development (ESBD): N/A

Respectfully Submitted by: S. Mizuno
Stephanie Mizuno,
Assistant City Clerk

Recommendation Approved:

Shirley Condolino
Shirley Condolino
City Clerk

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Attachment 1

Background:

City Code Section 1.20 – Fair Campaign Practices:

This section needs amendment to align the filing of the "Code of Fair Campaign Practices" form (FCP Code) with the filing of the Statement of Acceptance of Public Financing form and other nomination documents. Currently, the City Code sets a filing deadline for the FCP Code that is not aligned with the filing of nomination documents for City elective office.

The filing date discrepancy is occurring because the filing deadline for the FCP Code remains aligned with the filing cycle for nomination documents that existed when City of Sacramento held its elections in September and November of odd-numbered years. When the City Charter was amended in 1989 to change City elections to the statewide primary and general election dates, the filing deadline for the FCP Code was not changed to align with the new election cycle. Specifically, the change to a statewide cycle shifted the time frame for the opening and closing of the nomination period, which in turn misaligned the filing deadline for the FCP Code. Although the City Clerk has always recommended that candidate's file the FCP Code with nomination documents, City Code permitted the filing of the FCP Code up to twenty-eight (28) days later.

This discrepancy was not particularly problematic until this year when the City Council, in February, added Section 2.14.105 to the City Code. This section required candidates to comply with the fair campaign practices code as a condition of receiving matching public funds. The requirement starts when the candidate files the FCP Code form with the Statement of Acceptance of Public Financing form. Both forms are intended to be filed together and at the time of filing nomination documents.

The proposed modification will align the filing deadline of the FCP Code to correspond with the Statement of Acceptance of Public Financing form (as required by City Code Section 2.14.105) and the candidate's other nomination documents.

City Code Section 2.13.050 (d) – Independent Committees and Separate Accounts for City Elections:

This section needs amendment to recognize that committees, other than controlled committees of a candidate, are authorized to solicit and accept contributions in excess of the contribution limits as outlined in City Code Section 2.13.050 so long as those funds are not used for contributions to candidates for city elective office or for making expenditures in support of or opposition to City elective candidates. The proposed modification allows such committees (e.g. general purpose committees) to accept contributions in excess of the City's contribution limits, provided the committee has established a separate bank account for the deposit and expenditure of funds pertaining to City elective office, and does not deposit into this account any contribution that exceeds the City's established limits.

The City and County of San Francisco has committee contribution limits similar to ours, and the proposed amendment to Section 2.13.050 is patterned substantially on the San Francisco regulations that establish a separate account requirement.

City Code Section 2.13.070 (b) – Transfer of Funds or Contributions by Committees to Controlled Committees of Candidates for City Elective Office:

The City Council amended this Code section in February of this year to establish a "last in, first out" (LIFO) or "first in, first out" (FIFO) rule for the transfer of funds one candidate controlled account to another account controlled by the same candidate. This rule requires that contributions be "attributed" to specific contributors for purposes of ensuring that the limits have not been exceeded. The proposed modification will clarify that the re-designation of an existing account for a future election is no longer an option, and that a new account for future elective office is required to allow for proper tracing of contributions.

Attachment 2

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

AN ORDINANCE AMENDING THE SACRAMENTO CITY CODE CHAPTER 1.20, SECTIONS 1.20.010 THROUGH 1.20.060 PERTAINING TO THE CODE OF FAIR CAMPAIGN PRACTICES; AND CHAPTER 2.13, SECTIONS 2.13.050 AND 2.13.070 PERTAINING TO CONTRIBUTION LIMITS

BE IT ENACTED BY THE COUNCIL OF THE CITY OF SACRAMENTO:

SECTION 1:

Chapter 1.20 of Title 1 of the Sacramento City Code is amended to read as follows:

1.20.010 Definitions.

Unless otherwise indicated, the definitions set forth in this section shall govern the interpretation of this Chapter.

"Campaign advertising or communication" means a communication authorized by a candidate or a candidate's controlled committee as defined in section 82016 of the Government Code, or by a committee making independent expenditures, as defined in section 82031 of the Government Code, for the purpose of advocating the election or defeat of a qualified candidate through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing of five or more identical or nearly identical pieces of mail, or any other type of general, public, political advertising.

"Candidate ~~for public office~~" means any individual who seeks election to any elective office for the City of Sacramento. ~~an individual who has qualified to have his or her name listed on the ballot of any election, or who has qualified to have written votes on his or her behalf counted by election officials, for election to the office of mayor or councilmember which is filled at an election~~

"City Clerk" means the City Clerk for the City of Sacramento.

"Code" means the Code of Fair Campaign Practices set forth in section 1.20.030 of the Sacramento City Code.

"Nomination documents" means the nomination papers and the verified affidavit of acceptance of nomination of candidacy specified in California Election Code sections

10220 and 10223.

1.20.020 Signing of Code.

A. At the time the City Clerk makes the nomination documents available to a candidate, the Clerk shall also furnish the candidate with a copy of the code of fair campaign practices and a blank form of acceptance of the code. The City Clerk shall inform candidates that acceptance of the code is voluntary. Any candidate who does not sign and file a form of acceptance of the code with the first nomination documents filed by the candidate shall be deemed to have refused to sign the code.

~~At the time an individual files his or her declaration of candidacy, nomination papers, or any other paper evidencing an intention to be a candidate for public office, the city clerk shall give the individual a blank form of the Code of Fair Campaign Practices and a copy of the provisions of this chapter. The city clerk shall inform each candidate that subscription to the code is voluntary. Any candidate who does not sign the code at least sixty (60) days before a primary election or at least thirty-nine (39) days before a run-off election shall be deemed to have refused to sign the code.~~

B. In the case of a committee making an independent expenditure within the meaning of section 1.20.010 of this Chapter, the City Clerk shall provide a copy of the code of fair campaign practices and a blank form of acceptance of the code to the individual who files the initial campaign statement on behalf of the committee in accordance with Title 9 (commencing with section 81000) of the Government Code. If a statement of acceptance of the code is not signed and filed within thirty (30) days of the date of the filing of the initial campaign statement, the committee shall be deemed to have refused to sign the code.

~~In the case of a committee making an independent expenditure within the meaning of Section 1.20.010 of this chapter, the city clerk shall provide a blank form and a copy of the provisions of this title to the individual filing, in accordance with Title 9 (commencing with Section 81000) of the Government Code, an initial campaign statement on behalf of the committee.~~

1.20.030 Code of Fair Campaign Practices.

The text of the Code shall read, as follows:

CODE OF FAIR CAMPAIGN PRACTICES

There are basic principles of decency, honesty, and fairness ~~fair play~~ which every candidate for public office in the City of Sacramento has an ethical ~~moral~~ obligation to observe and uphold, in order that, after vigorously contested, but fairly conducted campaigns, ~~our citizens may exercise their constitutional rights to a free and untrammeled choice and the will of the people may be fully and clearly expressed on the issues.~~ the integrity of the electoral process has been preserved.

Therefore:

(1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents which merit such criticism.

(2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or her or his personal or family life.

(3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical health, status, or age.

(4) I SHALL NOT USE OR PERMIT any dishonest or unethical practices which tend to corrupt or undermine our American system of free elections, or which hamper or prevent the full and free expression ~~or~~ of the will of the voters, including acts intended to hinder or prevent any eligible person from registering to vote~~, enrolling to vote,~~ or voting.

(5) I SHALL provide to my opponents, at the addresses ~~the specify~~ on their Code of Fair Campaign Practices form, and ~~for public inspection~~ to the City Clerk for public inspection, any campaign advertising or communication which ~~names~~ directly names or refers to any of my opponents at least eight (8) days prior to dissemination of ~~said~~ the advertising or communication by me or my controlled committee.

(6) I SHALL NOT COERCE or permit coercion of my employees to make monetary or non-monetary campaign contributions to me or any other candidate. ~~coerce election help or campaign contributions for myself or for any other candidate from my employees.~~

(7) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE any support ~~driving~~ from any individual or group which resorts, on behalf or my candidacy or in opposition to any opponent, to the methods and tactics which I condemn. I shall promptly redress and accept responsibility ~~to take firm action against any subordinate who~~ for a violation of any provision of this Code or the laws governing elections by any subordinate or by my controlled committee.

(8) I SHALL DEFEND AND UPHOLD the right of every qualified ~~American~~ voter to full and equal participation in the electoral process.

(9) I SHALL clearly identify myself or my controlled committee as the sender of ~~all my~~ any and all campaign advertising to be mailed.

I, the undersigned, candidate for election to public office in the City of Sacramento or treasurer or chairman of a committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge ~~myself~~ to conduct my campaign in accordance with the above principles and practices.

_____ _____
Date Signature

_____
Campaign Address

1.20.040 Applicability of provisions 5 and 9 of Code.

Provisions 5 and 9 of the Code of Fair Campaign Practices shall only apply if all candidates for election to that public office sign the Code.

1.20.050 Signing of Code voluntary.

Unless required under section 2.14.130 of the City Code, no candidate shall be required to subscribe to the Code of Fair Campaign Practices.

~~Except to the extent that Section 2.14.105 requires candidates who file a statement of acceptance of matching public funds under Chapter 2.14 to also agree to abide by the Code of Fair Campaign Practices as a condition for receiving matching public funds under that chapter, no candidate for city elective office shall be required to subscribe to or endorse the code.~~

1.20.060 Violation—Penalty.

The violation of any provision of this Chapter shall not be deemed a misdemeanor or infraction, and shall not ~~be~~ form the basis of any civil liability or administrative penalty.

SECTION 2:

1. Section 2.13.050 (D) of Chapter 2.13 of the City Code is amended as follows:

   D. Contributions to Committees. Limits: No person shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any person a contribution or contributions totaling more than nine hundred dollars ($900.00) in a calendar year; and no large political committee shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any large political committee a contribution or contributions totaling more than three thousand five hundred dollars ($3,500.00) in a calendar year. The provisions of this subsection shall not apply to contributions to candidates and candidate-controlled committees, which shall be subject to the limits set forth in subsections A and B of this section.

   1. Exception: A committee may solicit and accept contributions in excess of the limits established by subsection 1 above if the committee makes expenditures for any lawful purpose other than supporting or opposing candidates for City elective office,

provided that:

a) funds received from contributions in excess of the limits set forth in subsection 1 above are used only for lawful purposes other than supporting or opposing candidates for City elective office or making contributions to candidates for City elective office; and

b) the committee shall establish a separate bank account to be used for making expenditures to support or oppose candidates for City elective office or for making contributions to candidates for City elective office. All expenditures to support or oppose candidates for City elective office and all contributions made by the committee to candidates for City elective office must be made with funds from this account. A committee may not deposit into this account any contributions that were solicited or accepted in excess of the limitations established by subsection 1 above.

2. Except as Paragraph D is amended by section 1 above, Section 2.13.050 shall remain unchanged and in full force and effect.

SECTION 3:

1. Section 2.13.070 (B) of Chapter 2.13 of the City Code is amended as follows:

B. Intra-Candidate Transfer of Funds: Except as otherwise prohibited by state law, a candidate for city elective office, including an incumbent running for the same or different city elective office, may transfer funds from any other committee controlled by the candidate to the candidate's committee for election to city elective office, provided ~~that both~~ all of the following requirements are met:

1. The candidate for city elective office establishes a new campaign account into which funds will be transferred. The candidate may not re-designate an existing campaign account.

~~1~~2. The contributions transferred to the candidate's committee for election to a city elective office are attributed to specific contributors to the campaign contribution account from which they were transferred. Contributions shall be allocated and attributed to individual contributors on a "first in, first out" or "last in, first out" basis. For purposes of this section, the terms "first in, first out" and "last in, first out" shall have the following meanings:

a. "First in, first out" means the campaign funds being transferred are attributed to the transferring committee's contributors in chronological order beginning with the earliest of its contributors or, if there has been a prior transfer, beginning with the earliest contributor for which unattributed contributions remain.

b. "Last in, first out" means that campaign funds being transferred are attributed to the transferring committee's contributors in reverse chronological order beginning with the most recent of its contributors or, if there has been a prior transfer, beginning with

the most recent contributor for which unattributed contributions remain.

~~2~~3. The contributions transferred to the candidate's committee for election to a city elective office, when aggregated with all other contributions from, and transfers attributable to, the same contributor do not exceed the amount that the contributor could have contributed to the candidate, or the controlled committee of the candidate, pursuant to Section 2.13.050.

2. Except as Paragraph B is amended by section 1 above, the provisions of Section 2.13.0070 shall remain unchanged and in full force and effect.

Attachment 3

ORDINANCE NO.

Adopted by the Sacramento City Council

Date Adopted

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"Candidate" means any individual who seeks election to any elective office for the City of Sacramento.

"City Clerk" means the City Clerk for the City of Sacramento.

"Code" means the Code of Fair Campaign Practices set forth in section 1.20.030 of the Sacramento City Code.

"Nomination documents" means the nomination papers and the verified affidavit of acceptance of nomination of candidacy specified in California Election Code sections 10220 and 10223.

1.20.020 Signing of Code.

A. At the time the City Clerk makes the nomination documents available to a candidate, the Clerk shall also furnish the candidate with a copy of the code of fair campaign practices and a blank form of acceptance of the code. The City Clerk shall inform candidates that acceptance of the code is voluntary. Any candidate who does not sign and file a form of acceptance of the code with the first nomination documents filed by the candidate shall be deemed to have refused to sign the code.

B. In the case of a committee making an independent expenditure within the meaning of section 1.20.010 of this Chapter, the City Clerk shall provide a copy of the code of fair campaign practices and a blank form of acceptance of the code to the individual who files the initial campaign statement on behalf of the committee in accordance with Title 9 (commencing with section 81000) of the Government Code. If a statement of acceptance of the code is not signed and filed within thirty (30) days of the date of the filing of the initial campaign statement, the committee shall be deemed to have refused to sign the code.

1.20.030 Code of Fair Campaign Practices.

The text of the Code shall read, as follows:

CODE OF FAIR CAMPAIGN PRACTICES

There are basic principles of decency, honesty, and fairness which every candidate for public office in the City of Sacramento has an ethical obligation to observe and uphold, in order that, after vigorously contested, but fairly conducted campaigns, the integrity of the electoral process has been preserved.

Therefore:

(1) I SHALL CONDUCT my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing without fear or favor the record and policies of my opponents which merit such criticism.

(2) I SHALL NOT USE OR PERMIT the use of character defamation, whispering campaigns, libel, slander, or scurrilous attacks on any candidate or her or his personal or family life.

(3) I SHALL NOT USE OR PERMIT any appeal to negative prejudice based on race, sex, religion, national origin, physical health, status, or age.

(4) I SHALL NOT USE OR PERMIT any dishonest or unethical practices which tend to corrupt or undermine our American system of free elections, or which hamper or prevent the full and free expression of the will of the voters, including acts intended to hinder or prevent any eligible person from registering to vote or voting.

(5) I SHALL provide to my opponents, at the addresses on their Code of Fair Campaign Practices form, and to the City Clerk for public inspection, any campaign advertising or communication which directly names or refers to any of my opponents at least eight (8) days prior to dissemination of the advertising or communication by me or my controlled committee.

(6) I SHALL NOT COERCE or permit coercion of my employees to make monetary or non-monetary campaign contributions to me or any other candidate.

(7) I SHALL IMMEDIATELY AND PUBLICLY REPUDIATE any support from any individual or group which resorts, on behalf or my candidacy or in opposition to any opponent, to the methods and tactics which I condemn. I shall promptly redress and accept responsibility for a violation of any provision of this Code or the laws governing elections by any subordinate or by my controlled committee.

(8) I SHALL DEFEND AND UPHOLD the right of every qualified voter to full and equal participation in the electoral process.

(9) I SHALL clearly identify myself or my controlled committee as the sender of any and all campaign advertising to be mailed.

I, the undersigned, candidate for election to public office in the City of Sacramento or treasurer or chairman of a committee making any independent expenditures, hereby voluntarily endorse, subscribe to, and solemnly pledge to conduct my campaign in accordance with the above principles and practices.

_____ _____

Date Signature

_____

Campaign Address

1.20.040 Applicability of provisions 5 and 9 of Code.

Provisions 5 and 9 of the Code of Fair Campaign Practices shall only apply if all candidates for election to that public office sign the Code.

1.20.050 Signing of Code voluntary.

Unless required under section 2.14.130 of the City Code, no candidate shall be required to subscribe to the Code of Fair Campaign Practices.

1.20.060 Violation—Penalty.

The violation of any provision of this Chapter shall not be deemed a misdemeanor or infraction, and shall not form the basis of any civil liability or administrative penalty.

SECTION 2:

1. Section 2.13.050 (D) of Chapter 2.13 of the City Code is amended as follows:

D. Contributions to Committees. No person shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any person a contribution or contributions totaling more than nine hundred dollars ($900.00) in a calendar year; and no large political committee shall make to any committee which contributes to any candidate for city elective office or makes expenditures for or against any candidate for city elective office, and no such committee shall accept from any large political committee a contribution or contributions totaling more than three thousand five hundred dollars ($3,500.00) in a calendar year. The provisions of this subsection shall not apply to contributions to candidates and candidate-controlled committees, which shall be subject to the limits set forth in subsections A and B of this section.

1. Exception: A committee may solicit and accept contributions in excess of the limits established by subsection 1 above if the committee makes expenditures for any lawful purpose other than supporting or opposing candidates for City elective office, provided that:

a) funds received from contributions in excess of the limits set forth in subsection 1 above are used only for lawful purposes other than supporting or opposing candidates for City elective office or making contributions to candidates for City elective office; and

b) the committee shall establish a separate bank account to be used for making expenditures to support or oppose candidates for City elective office or for making contributions to candidates for City elective office. All expenditures to support or oppose candidates for City elective office and all contributions made by the committee to candidates for City elective office must be made with funds from this account. A committee may not deposit into this account any contributions that were solicited or accepted in excess of the limitations established by subsection 1 above.

2. Except as Paragraph D is amended by section 1 above, Section 2.13.050 shall remain unchanged and in full force and effect.

SECTION 3:

1. Section 2.13.070 (B) of Chapter 2.13 of the City Code is amended as follows:

B. Intra-Candidate Transfer of Funds: Except as otherwise prohibited by state law, a candidate for city elective office, including an incumbent running for the same or different city elective office, may transfer funds from any other committee controlled by the candidate to the candidate's committee for election to city elective office, provided all of the following requirements are met:

1. The candidate for city elective office establishes a new campaign account into which funds will be transferred. The candidate may not re-designate an existing campaign account.

2. The contributions transferred to the candidate's committee for election to a city elective office are attributed to specific contributors to the campaign contribution account from which they were transferred. Contributions shall be allocated and attributed to individual contributors on a "first in, first out" or "last in, first out" basis. For purposes of this section, the terms "first in, first out" and "last in, first out" shall have the following meanings:

a. "First in, first out" means the campaign funds being transferred are attributed to the transferring committee's contributors in chronological order beginning with the earliest of its contributors or, if there has been a prior transfer, beginning with the earliest contributor for which unattributed contributions remain.

b. "Last in, first out" means that campaign funds being transferred are attributed to the transferring committee's contributors in reverse chronological order beginning with the most recent of its contributors or, if there has been a prior transfer, beginning with the most recent contributor for which unattributed contributions remain.

3. The contributions transferred to the candidate's committee for election to a city elective office, when aggregated with all other contributions from, and transfers attributable to, the same contributor do not exceed the amount that the contributor could have contributed to the candidate, or the controlled committee of the candidate, pursuant to Section 2.13.050.

2. Except as Paragraph B is amended by section 1 above, the provisions of Section 2.13.0070 shall remain unchanged and in full force and effect.