CITY COUNCIL AGENDA REPORT

City of Anaheim
OFFICE OF THE CITY ATTORNEY

DATE: JANUARY 23, 2024
FROM: OFFICES OF THE CITY ATTORNEY AND CITY CLERK
SUBJECT: ANAHEIM CAMPAIGN REFORM LAW AND POTENTIAL MODIFICATIONS

ATTACHMENT (Y/N): YES ITEM # 27
GOVERNMENT CODE § 84308 APPLIES: NO

RECOMMENDATION:

That the City Council discuss and provide direction to staff to implement any changes to the City’s Campaign Reform Law.

DISCUSSION:

At the November 28, 2023 City Council meeting, the City’s current Campaign Reform Law was outlined (Attachment No. 2) and the Council discussed and asked questions about potential modifications to the City of Anaheim’s Campaign Reform Law.

A. Potential Campaign Finance Regulations - Responses to Questions
(Memorandum – Craig Steele, Legal Consultant)

The attached memorandum (Attachment No. 1) from special legal consultant, Craig Steele, responds to City Council questions and the salient points are summarized in this staff report.

1. Whether the City may impose restrictions on independent expenditure campaigns.

Local limits on the amount spent on independent expenditures would likely be held to be unconstitutional.

2. Whether the City may require that the beneficiaries of independent expenditures recuse themselves from decisions that would impact the funders of independent expenditures.

No case has ruled on the constitutionality of such recusal rules. Although the Supreme Court has ruled that a legislator has no personal First Amendment right to vote on legislation, any requirement that an officeholder recuse themselves from proceedings that effect the funders of independent expenditures could potentially burden the speech and associational rights of the funders and, possibly, the officeholder’s constituents.
Anaheim may have justification for imposing such a rule, but it would be a “test case” that would likely be decided by the courts.

3. Whether the City may limit the amount of a candidate’s personal funds they may loan to their campaign, or otherwise limit fundraising for debt repayment.

While the City probably cannot impose limits on candidates’ personal contributions to their own campaigns (other than possibly adopting a $100,000 limit as recently imposed on other jurisdictions by Government Code Section 85307), it can impose limits on debt reduction that would restrict the time period for fundraising and the amount a candidate could be repaid, which could have a similar effect.

On June 7, 2022, for example, the Council considered a proposal, along with other campaign reform measures proposed by then Councilmember Moreno, to limit the time for candidates to accept contributions for the purpose of retiring outstanding debt from one year immediately preceding the general municipal election through no more than 180 days after the date of the election. This proposal failed to pass.

4. Whether the City could require more reporting from independent expenditure committees, such as by extending the reporting periods prior to elections.

Yes, requiring additional disclosure at the local level is permitted, as long as the additional requirements do not prevent or excuse the subject of the regulation from complying with the Political Reform Act.

5. Whether the City may lower the threshold for independent expenditure committees to disclose major funders.

Provided that sufficient findings are made, and the dollar threshold is narrowly to meet the governmental interest of preventing potential corruption, this would not violate the Constitution.

B. Disclosure of Independent Expenditure Communications

At the request of the Mayor at the November 28 City Meeting, the City Clerk has reviewed the City of Los Angeles independent expenditure disclosure laws. Currently, City of Los Angeles requires disclosure of independent expenditure communication. Pursuant to the City’s Municipal Code, a person(s) who makes or incurs expenditures must file a copy of the independent expenditure communication, if one of the following thresholds are met:

- Independent expenditures of $1,000 or more;
- Independent expenditures of $100 or more, is a committee, and distributes the communication to 200 or more persons; or
- Independent expenditures of $100 or more, is not a committee, and distributes the communication to 1,000 or more persons.

Within five business days after making or incurring the expenditure, a copy of the communication; if telephone call or similar communication, a copy of the script, if communications is recorded, the audio or video recording is provided.

All filed independent expenditure communications are posted on the City’s website. If the communication supports or opposes a City candidate, all candidates in the race are notified within one business day or receiving the required notice.

**IMPACT ON THE BUDGET:**

There is no budgetary impact associated with this discussion.

Respectfully submitted,

Robert Fabela
City Attorney

Theresa Bass
City Clerk

**Attachments:**

1. Memorandum Re: Potential Campaign Finance Regulations – Responses to Questions
2. Staff Report (November 28, 2023)