



Legislation Text

File #: 2022-0727, **Version:** 1

To: Board of Supervisors

Department or Agency Name(s): County Counsel

Staff Name and Phone Number: Robert Pittman, Petra Bruggisser, 565-2421

Vote Requirement: Majority

Supervisory District(s): Countywide

Title:

Campaign Contribution Limits

Recommended Action:

Adopt a resolution introducing, reading the title of, and waiving full reading of an ordinance to repeal and replace Chapter 2, Article XX of the Sonoma County Code, establishing Campaign Contribution Limits.

Executive Summary:

This Board item requests the Board to adopt a resolution introducing, reading the title of, and waiving full reading of a proposed ordinance to repeal and replace Chapter 2, Article XX of the Sonoma County Code, establishing Campaign Contribution Limits. The proposed revisions to Sonoma County's campaign finance ordinance are needed to align Chapter 2, Article XX of the Sonoma County Code (SCC Sections 2-300 through 2-314) with legal developments and changes to current law. The ordinance will be presented to the Board for final adoption on August 30, 2022.

Discussion:

Background

The right to participate in democracy through political contributions is an important right and cornerstone that is cemented into constitutional law and applied by federal, state and local rules. Constituents can exercise that right in a variety of ways: they can run for office themselves, vote, urge others to vote for, or recall, a particular candidate, volunteer to work on a campaign, and financially contribute to a candidate's campaign. Political speech may not be limited simply to reduce the amount of money in politics, or to restrict the political participation of some in order to enhance the relative influence of others. Government may, however, regulate campaign financing to avoid corruption in the political process, that is, to prevent political favors as quid pro quo for financial contributions. Rules and regulations governing campaign contributions can be found in the California Political Reform Act (Cal. Gov't Code Sections 81000-91014), Regulations of the Fair Political Practices Commission (FPPC) (Cal. Code of Regulations Title 2, Division 6), and local ordinances. In addition, courts at the state and federal level provide guidance on the interpretation and application of these laws.

In Sonoma County, the Board first adopted a campaign contribution limit, set at \$1,000 per election, in 1984 to ensure that the financial strength of a few individuals or organizations did not permit them to exercise a disproportionate or controlling influence on the election of Sonoma County supervisorial candidates.

Campaign finance limitations were extended to other elected officials in 2000, disclosure requirements were added in 2008, and contribution limits were increased to \$2,500 per election to address higher campaign costs and spending by independent expenditure committees. Sonoma County's campaign finance ordinance has not been updated since 2008.

Since 2008, the law regarding the constitutionality of campaign finance limitations and disclosure requirements has developed continuously. County Counsel has worked with legal consultant Karen Getman at Olson | Remcho, who is an expert in campaign finance and a former Chairwoman of the FPPC, to identify areas in Sonoma County's current ordinance that need to be updated, and to propose appropriate changes.

To align Sonoma County's Campaign Contribution Limits ordinance (SCC Sections 2-300 through 2-314) with current law, the following revisions are proposed:

Proposed Ordinance Revisions

Sec. 2-300. Intent and purpose.

The stated intent and purpose of the ordinance needs to be revised in light of several Supreme Court decisions that were issued in recent years, which continue to narrow the constitutional line between permissible finance regulations and impermissible limitation of political speech. The Supreme Court has clarified that the only legitimate interest justifying contribution limits is the need to avoid corruption or the appearance of corruption. See, for example, *Citizens United v. FEC*, 558 U.S. 310 (2010); *McCutcheon v. FEC*, 572 U.S. 185 (2014). The proposed revisions to the County's ordinance accordingly focus on the prevention of corruption, to ensure adequate disclosure of the true sources of financial support in County elections, to provide for full and fair enforcement of laws governing campaign contributions, and to maintain public trust in governmental institutions and the electoral process.

The successful realization of campaign contribution limits in Sonoma County is evidenced by the fact that the limits imposed have not had any known corrupting influence on County officials since the inception of the campaign finance ordinance. The absence of instances where corruption occurred or appeared to have occurred is a strong indicator that the campaign finance limitations set forth in Sonoma County's ordinance are effective and continue to be necessary to further the legitimate interest to avoid quid pro quo corruption or the appearance thereof in local elections.

Sec. 2-302. Definitions.

Definitions in this section will be updated to accurately reflect the change in titles of County offices since the ordinance was first enacted, and to clarify that the term county candidate also includes any person running to replace an incumbent in a recall election. Definitions are also added for controlled candidate committees and independent expenditures to clarify which contributions and expenditures are subject to valid limits pursuant to section 2-303.

Sec. 2-303. Contribution limitations.

In 2008, contribution limits were increased to \$2,500 with a biannual escalator of 5%. The current

contribution limit is \$3,517.75. The proposed revised amount is adjusted to \$3,500 with a biannual escalator using the California Consumer Price Index (CPI) for all Urban Consumers in the Bay Area, rounded up to the nearest \$100, to make the limit easier to understand and enforce. The first escalator takes place on January 1, 2025.

The proposed contribution limit is determined to be reasonable and sufficient to allow candidates to raise funds for an effective campaign. Campaign contribution limits are generally permissible if they are focused narrowly on the stated interest to avoid corruption and the appearance of corruption, if they leave the contributor free to affiliate with a candidate, and if they allow the candidate to amass sufficient resources to wage an effective campaign. The proposed contribution limit of \$3,500 with a biannual CPI escalator meets those requirements. The contribution limit is within the range of contribution limits imposed by other Bay Area counties (which range from no limits, \$500, \$2,500, up to \$40,000), and is lower than the \$4,900 limit imposed by state law (AB 571), which created a default contribution limit for counties and cities that have not adopted their own contribution limits. In the past, the limit has not caused any difficulties in allowing candidates to raise sufficient funds. Historically in Sonoma County, campaign spending can vary widely depending on the type of elected office, whether incumbents are running and whether it is a contested race. Campaign costs in Sonoma County can be less than \$10,000, or exceed \$100,000, (data for all candidate filings can be accessed at <https://www.southtechhosting.com/SonomaCounty/CampaignDocsWebRetrieval/>), and candidates have run successful campaigns in the past within those margins applying Sonoma County's existing contribution limits. The increase of contribution limits since 2008 using a biannual escalator of 5% roughly tracked the cost of living adjustment (COLA) and CPI in Sonoma County. Going forward, using the CPI as metric for increasing contribution limits biannually will be more precise to adjust to rising costs of running election campaigns.

In addition, Section 2-303(c) will be revised to clarify that a limit for recall election committees only applies if the committee is controlled by a candidate to align with current law, which holds that independent expenditure limits for recall committees are only valid under the corruption rationale if the committee is coordinating with a candidate. Absent coordination, the risk that expenditures will be given as a quid pro quo for improper commitments from the candidate is alleviated and limits may not be imposed.

Double contribution limits in Section 2-303(e) will be increased to match the new contribution limits.

Sec. 2-304. Outstanding debt retirement and reporting.

References to the form numbers and particular schedules of the campaign reports will be eliminated to provide flexibility since the FPPC's forms, schedules, and reporting requirements may change over time. In addition, the timing to expend contributions to retire outstanding debt is clarified to include contributions that are received at the end of the reporting period and must be expended within 30 days of receipt or the end of the reporting period, whichever is earlier.

Sec. 2-307. Multiple campaign committees.

This section will be amended to include candidate-controlled ballot measure committees in the list of committees that county candidates and officers are expressly permitted to establish.

Sec. 2-308. Loans to county candidates and their controlled committees.

Section 2-308 will be amended to provide clarity with respect to personal loans and existing state law. Sonoma County's existing ordinance does not distinguish personal loans from contributions made by a candidate to their own committee and allows unlimited loans from a candidate to their committee. Cal. Gov't Code § 85307(b), in contrast, includes a state limit of \$100,000 on personal loans. However, that state law section does not apply to jurisdictions that impose a contribution limit, like Sonoma. To avoid confusion, the proposed amendment expressly states that unlimited personal loans from candidates are allowed. In addition, the proposed ordinance would add a sentence prohibiting a candidate from charging interest on any loan the candidate made to the candidate's own campaign.

Sec. 2-309. Funds, property, goods or services received by officials treated as contributions.

Section 2-309 will be amended to clarify that the limitations and disclosure obligations placed on travel payments under the Political Reform Act and other state laws are not abrogated by this Section. While reimbursements for travel expenses related to holding public office are excluded from the contribution limits, travel payments can constitute reportable gifts under state law and can be subject to the gift limit or other restrictions, which are not intended to be abrogated by this Section.

Sec. 2-310. Disclosure requirements.

This section will be simplified to align disclosure requirements with existing state law under the Political Reform Act, and to require disclosure of top contributors on the outside envelope of independent expenditure advertisements, regardless of whether the cumulative contributions reach or exceed \$50,000.

Sec. 2-311. Reporting of cumulative contributions.

The proposed revisions will clarify that the reporting requirement applies to candidate-controlled committees and reiterates the information that is required to be reported by the FPPC.

Sec. 2-312. Reporting of late contributions.

Section 2-312 will be revised to clarify to that the late reporting requirement applies only to the recipient of such contributions. The currently existing language did not clearly state who was responsible for late reporting. This proposed amendment alleviates any potential for confusion.

Sec. 2-313. Notice of independent expenditures.

This section would clarify that persons making independent expenditures in excess of \$1,000 in support of or in opposition to a county candidate must report such expenditures in compliance with state law.

Sec. 2-314. Enforcement of chapter.

Section 2-314(e) proposes to place the District Attorney or County Counsel in charge of enforcing the ordinance and to delegate authority to retain other independent counsel to file and prosecute a civil action for campaign finance violations, instead of referring the matter to the Attorney General's Office, which has

historically declined to enforce local ordinances.

Sec. 2-315. Effective Date.

Lastly, Section 2-315 would be added to make the revised ordinance effective on January 1, 2023, to avoid any confusion during the ongoing 2022 election cycle.

Recommendation:

Considering the legal developments and changes to campaign finance laws in recent years, it is recommended that the Board approve the proposed revisions to Sonoma County's Campaign Contribution Limits ordinance (SCC Sections 2-300 through 2-314) to bring it into alignment with current law. If the proposed revisions are approved, the ordinance will be brought back to the Board for final adoption on August 30, 2022.

Strategic Plan:

N/A

Prior Board Actions:

None

FISCAL SUMMARY

Narrative Explanation of Fiscal Impacts:

Adoption of the revised campaign finance ordinance does not have any fiscal impact.

Narrative Explanation of Staffing Impacts (If Required):

N/A

Attachments:

1. Resolution introducing, reading the title of and waiving further reading of a proposed ordinance
2. Proposed ordinance to repeal and replace Chapter 2, Article XX of the Sonoma County Code, establishing Campaign Contribution Limits
3. Redline of proposed changes to existing Chapter 2, Article XX of the Sonoma County Code, establishing Campaign Contribution Limits
4. Pre-adoption summary

Related Items "On File" with the Clerk of the Board:

Ordinance No. 3355, adopted October 23, 1984

Ordinance No. 5231, adopted April 18, 2000

Ordinance No. 5798, adopted September 16, 2008