



**CITY OF PACIFIC GROVE**  
300 Forest Avenue, Pacific Grove, California 93950

**AGENDA REPORT**

**TO:** HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL  
**FROM:** Scott Miller, Council Member  
**MEETING DATE:** July 19, 2006  
**SUBJECT:** **INTRODUCE A CAMPAIGN FINANCE ORDINANCE**

**RECOMMENDATION:**

Introduce a Campaign Finance Ordinance.

**DISCUSSION:**

The Campaign Finance Reform/Conflict of Financial Interest Subcommittee has prepared the attached report and draft ordinance for introduction.

**FISCAL IMPACT:**

Minimal additional staff time to enforce the provisions of the Ordinance.

RESPECTFULLY SUBMITTED:

A handwritten signature in black ink that reads "Scott Miller".

Scott Miller  
Council Member

**Pacific Grove Campaign Finance Reform and  
Conflict of Financial Interest Committee Report**

**July 8, 2006**

Members: Councilwoman Lisa Bennett, Councilman Scott Miller, Craig Riddell, Robin Tokmakian, and David Dilworth.

The committee met from March 2006 until July 2006 with the direction given by the Council to prepare a Campaign Finance Reform and Conflict of Financial Interest ordinance for Pacific Grove.

**Our Intent – To Rebuild Public Trust by Severing Money From Political Decisions**

Broad public participation is a critical pillar of a healthy democracy, and participation requires the public's perception that the political process is fair. However, with some justification, many people in this country believe that campaign contributors receive preferential access to, and favors from, elected officials in the governmental decision-making process. This belief leads to ordinary people feeling alienated from their government, not willing to participate. Low voter turnout is a symptom of this problem. We can do something in Pacific Grove to address this problem.

Our committee began work intending to create a legal framework to sever money from political decisions to help rebuild Pacific Grove voters' trust. We propose here a preventive legal guard against actual scandals and perceived scandals, to look ahead and to learn from the hard experiences of other cities. An indirect benefit is that a good ordinance would save limited staff time and resources.

**The Legal Context**

No jurisdiction in Monterey County has any campaign finance ordinance regulating campaign contributions<sup>1</sup>. Local jurisdictions rely on the disclosure provisions, and minimal restrictions or requirements of California State law. As a result, contributions to candidates from corporations, wealthy individuals, and PACs can be not merely enormous but overwhelming.

**The Solution in Context**

With these concerns in mind, we set out to create a preventive ordinance that would save the city time and effort and hopefully restore people's trust in elected officials' decisions. California State law sets only minimum requirements and restrictions for Campaign Financing, essentially limited to disclosure.

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<sup>1</sup> Recent federal Campaign Finance Reform and Conflict of Financial Interest legislation (McCain-Feingold) limited individual contributions to \$2,000 and PAC contributions to \$5,000 for federal office candidates, but in Monterey County no contribution limit exists for local candidates at either the county or city levels.

**Cities and Counties may adopt stricter laws** affording increased or full disclosure, meaningful campaign contribution limits and disqualification provisions and public financing of elections. More than one hundred jurisdictions throughout California have passed various types of laws to address the problem of undue influence on elections, public officials, and their decisions. These provisions can be divided into several categories.

The National Civic League study on local campaign finance reform (last updated 2/2002) includes a chart listing ninety-four California jurisdictions which have some form of campaign finance reform and classifies them by the types of reforms. These include contribution limits; expenditure limits; public financing; conflict of financial interest; publishing candidate compliance with voluntary limits; time limits on fundraising; reporting of independent expenditures; restriction on contractors. It is encouraging that **local elected officials and community leaders are experimenting with innovative ways to reduce the influence of money in local politics and re-engage citizens in elections.**

We discussed the many provisions adopted by some one hundred cities and counties in California. We examined a model ordinance prepared by the non-partisan League of Women Voters of the Monterey Peninsula, one prepared by the non-partisan Helping Our Peninsula's Environment and endorsed by nine community organizations, and committee member Riddell prepared his own version about halfway through our set of meetings.

Passage of meaningful campaign finance reform legislation is the key to leveling the playing field between the few with financial interests and public interest groups on almost every economic, social, environmental, and governmental issue. Campaign finance reform can have a direct, positive impact on all issues.

### **The Provisions**

After studying the various options, we decided to include the following in the ordinance:

1. **Campaign donation limitations** (Section 4, page 1/2)
  - a) donations may be made only by individuals
  - b) maximum dollar amount: \$500
2. **Enhancement of disclosure rules** beyond the state-mandated requirements. (Sections 5, page 2 and 7c, page 2/3).
3. **Recusal requirements** – to prevent corruption and undue influence (Section 6, page 2)

Although a potential solution in the future, public financing of campaigns is not an option in the city's current economic situation. Voluntary limits and publication seemed unlikely to have impact considering the continuing behavior of public officials regardless of its exposure. We chose to include contribution limits and conflict-of-interest recusal. We could have included additional limitations (e.g. Prohibition of Non-Election Year Contributions and One Campaign Committee and One Checking Account Per Candidate), but we settled on a shorter ordinance.

These additional limitations could be included if the Council so desires. Our goal was that the ordinance be both clear and concise in language and content.

*1. Campaign donation limits*

a. Limiting or capping campaign contributions helps to ensure “maximum citizen participation.” We have chosen a fairly high limit of **\$500** when contrasted with the Center for Government Studies 2004 Model Ordinance. The 1976 Supreme Court decision *Buckley v. Valeo* upheld the idea that campaign contributions are a form of free speech, but can be limited when there is either a direct or indirect influence on political decisions.

We have carefully considered how the recent U.S. Supreme Court action on the legality of campaign finance laws in the State of Vermont (*Randall et al. v. Sorrell et al.*) would apply to our proposed ordinance. The Vermont case dealt with both donation limits and expenditures. The Vermont law which limited donations to \$200 and \$400 was ruled unconstitutional for various reasons (from notes of election law scholar Richard Hasen, Loyola Law School): 1) contribution limits appear to significantly restrict the amount of money available to challengers to run competitive elections, 2) same low limits are imposed on political parties, harming the right to association, 3) law treats volunteer expenses too harshly, 4) limits are not adjusted for inflation, 5) record does not show a particular danger of corruption to justify such stringent limits on constitutional rights. It should be noted that the U.S. Supreme Court upheld the court's ground breaking 1976 decision of *Buckley v. Valeo* that donation limits are constitutional. The Vermont ruling implies that there is a floor to the limit, given the guidelines listed above. Our limit of \$500 is, relatively, much higher than the Vermont law, given the size of our community (a small city verse a small state). We would recommend that the ordinance be reviewed periodically to into account inflationary changes. In addition, we are not addressing volunteer expenses, which are addressed within California Election Law.

b. The committee’s recommendation to require contributors to be people, rather than corporations or other entities, enables candidates to compete more equitably and more candidates to enter the arena. Several California cities including San Diego use this provision in their campaign finance reform ordinances. Likewise the California Clean Money bill (AB 583) restricts seed-money contributions to individuals. Limiting campaign contributions to individuals reconnects the voter to the candidate. It also reduces the influence of business and corporate entities in financing campaigns. It is entirely too easy for business contributions to be considered an operational expense and a tax write-off, and therefore too available for influencing the political process. By prohibiting businesses, corporations and other organizations from making campaign contributions, we believe the potential negative influence of money is reduced, and the **role of the voter is enhanced**. This helps prevent corruption and undue influence and maximizes citizen participation in the political process.

*2. Disclosures prior to deposit of contributions*

We recommend that disclosure of contributors occur prior to depositing their checks into the campaign bank account. Current law allows contributions to be used right away, yet the full disclosure of the contributor can be delayed for 60 days. In addition, a substantial number of the names of contributors are never disclosed, or disclosure is delayed, until after the election and

enforcement is essentially non-existent. To assure accountability and responsibility for clean campaigns, this disclosure requirement prior to deposit will limit access to funds whose contributors are not fully disclosed immediately.

Our suggested disclosure limit (\$100) does not lower that required by state law. Other local jurisdictions have decided that the threshold should be as low as \$50 or as high as \$200.

### ***3. Recusal requirements***

Campaign contributions (of \$250 or more) require elected officials to recuse themselves from voting and influence on contributor's projects. As our study progressed, one of our concerns was that while existing laws require recusal either before a vote granting financial benefit to a contributor or after – we could find none which combined the two.

It is important to understand that the recusal requirements (in our recommended ordinance) do not restrict a public official's vote on an issue unless there is a financial benefit to the contributor greater than that a similar benefit realized by the general public.

“Several cities in California use a conflict of interest approach to campaign contributors, the most prominent being Oakland and San Francisco. However, those cities only prohibit city contractors from making campaign contributions during contract negotiations. On the other hand, Chula Vista, Santa Ana, Modesto, and Costa Mesa, California all require abstention if a city councilor has received a large (the amounts vary) campaign contribution from the person or entity who stands to benefit from the vote.” (NCL study)

The California Commission on Campaign Financing also supports this in their 1988 Model Ordinance. Its provision section 1004 "Disqualification" states in part - "In addition to any other penalties prescribed by law, if an official receives a contribution in violation of sections 300-305, the official shall not be permitted to make, participate in making, or in any way attempt to use his or her official position to influence a governmental decision in which the contributor has a financial interest."

### ***4. Enforcement***

Our Committee intends to pursue viable methods of enforcing the provisions of this ordinance.

**Background: P.G. Election Spending in 2002**

In Pacific Grove the highest-spending candidate (\$17,993) was elected. The second highest spender (\$15,954) was not elected. Two candidates raised around \$11,000 and one was elected (\$11,268) and one was defeated (\$10,835). The remaining candidates raised \$50, \$4,769 and \$5,014 and were defeated while the mayoral candidate raised \$3,104 and was elected. Incumbency was likely an issue in numerous races in both cities.

**Background: Money Buying Political Influence**

Political corruption exists at all levels. A few recent examples include –

- **Federal (Convicted Lobbyist Jack Abramoff and Congressmen Duke Cunningham** (\$2.4 million in bribes), to name two)
- **State (Illinois Governor Ryan & 78 other state officials), and**
- **Cities (San Diego, Chicago City Clerk).**

These abuses are too well documented in Monterey County and include --

- A. Attorneys ghost-writing governmental land-use regulations which weaken governmental oversight of their clients<sup>2</sup>;
- B. Campaign contributions made within a short time before or after an elected official has voted in favor of a related project;<sup>3</sup>
- C. Corporations soliciting campaign contributions from their employees with the promise of a larger bonus as a reward<sup>4</sup>.
- D. Rapidly escalating local Campaign budgets<sup>5</sup> putting viable candidacy out of reach of most people.

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<sup>2</sup> The "Bernardi Public Records Act lawsuit" revealed a local land use lawyer as author of Official County documents for projects represented by his firm.

<sup>3</sup> A Monterey County Supervisor was found to have accepted a \$1,000 campaign contribution less than 60 days after she cast the key vote, in a 3-2 vote, on the contributor's development. While this action was perfectly legal, we believe it was not ethical.

<sup>4</sup> Money laundering has not yet been proven in Monterey County, but it is routinely discovered in other parts of California.

<sup>5</sup> The November 2004 election for District 5 County Board of Supervisors involved an enormous amount of money contributed by those with financial business before the County - more than one million dollars.

**DRAFT Campaign Finance Ordinance for Pacific Grove (July 8, 2006)**

Section \_\_\_\_1. TITLE.

This Chapter shall be known as the Clean Government Decisions Act

Section \_\_\_\_2. FINDINGS AND DECLARATIONS.

(a) The Council of the City of Pacific Grove does ordain as follows: that elected officials should be held to a standard of conduct to which citizens can expect that the receipt of funds, campaign contributions and such other monetary and non-monetary gifts do not influence the process of public decision making or the deposition of public assets.

(b) Accordingly, the Council declares that there is a compelling interest to prevent potential and perceived corruptive influence of any campaign contributions on the decisions of public officials in the management of public assets and franchises, in the disposition of public funds, and in decisions that provide for uncommon financial benefits.

Section \_\_\_\_3. DEFINITIONS

Unless otherwise defined in this section, or the contrary is stated or clearly appears from the context, the definitions and provisions of the California Elections Code Section 300-363 and the Political Reform Act of 1974, Government Code Sections 81000 et seq., as amended, specifically including "Contribution," and the definitions in this section, shall govern the interpretation of this chapter.

- (a) "Candidate Committee" means a candidate or their controlled committees.
- (b) "Uncommon Financial Benefit" is a financial effect of \$250 or more resulting from a governmental decision not similarly provided to the general public or a large class of persons.
- (c) "Public official" includes elected officials, and appointed officials.
- (d) "Recuse" means to not make or influence a governmental decision in the same manner as provided by Government Code Section 87100.
- (e) "Solicitor" means a person who asked the contributor for a campaign contribution for the candidate.

Section \_\_\_\_4. CAMPAIGN CONTRIBUTION LIMITS.

- (a) Prohibition on Contributions from Non-Individuals: A Candidate Committee shall not accept any contributions from non-individuals.
- (b) Individual Contributions Limit per Election: A Candidate Committee shall not accept any contributions exceeding \$500 from an individual in any single Election campaign.

Section \_\_\_\_5. DISCLOSURES PRIOR TO DEPOSIT OF CONTRIBUTIONS.

- (a) Reporting forms shall include contributor's name, address, occupation, and employer and the contribution Solicitor.
- (b) Disclosures prior to deposit. Until the name, address, occupation, and employer of the contributor is on file in the records of the Candidate Committee and the City's election official, no contribution of \$100 or more shall be deposited into a Candidate Committee campaign account.

Section \_\_\_\_6. PUBLIC OFFICIALS AND CAMPAIGN CONTRIBUTORS SHALL NOT EXCHANGE FINANCIAL ADVANTAGES.

- (a) Prohibition on Making Governmental Decisions Affecting a Contributor: For a period of the term of office beginning with date of swearing in, or beginning with the date of the contribution if the public official currently holds office, the receipt of campaign contributions which accumulate to \$250 or more from a single contributor, a public official shall Recuse him/herself from a governmental decision which directly provides an Uncommon Financial Benefit to the contributor.
- (b) Prohibition on Contributions after a Governmental Decision: For the period of the term of office following a governmental decision by an official in which an Uncommon Financial Benefit is given to a person, the public official shall not receive and the person shall not make contributions, which accumulate to \$250 or more, to the official's Candidate Committee.

Section \_\_\_\_7. RESPONSIBILITIES OF CITY PUBLIC OFFICIALS.

- (a) Yearly elected public official notification: The City Attorney shall inform appropriate officials of the provisions of this Chapter at least once per year, in a public forum or council meeting, with standard public notice of agenda items.
- (b) Candidate acknowledgment of receipt of this Chapter. The City Attorney shall provide each candidate for City office a copy of this Chapter as well as copies of any subsequent amendments. Each City candidate will be required to sign a form prepared by

the City Attorney acknowledging receipt of a copy of this Chapter and any subsequent amendments.

- (c) Electronic filing and internet availability to public.
- i. The City Clerk shall implement the ability to electronically file campaign finance forms.
  - ii. If the statement is filed electronically, no paper copy need be filed.
  - iii. All data filed electronically shall be made available on the Internet to the public free of charge and as soon as possible, but no later than two (2) business days after receipt. Information about all Late Contributions and expenditures shall be made available on the Internet within twenty-four (24) hours of receipt.
  - iv. The City shall maintain all data filed online for ten (10) years after the date it is filed, and then archive the information in a secure format so that it is available to the public. The City shall provide on its web site a list of statements that have been filed electronically and also a list of campaign statements that have been filed by paper. The City shall ensure that both amendments and the original statements are available for inspection.

Section \_\_\_8. DISCLOSURE OF THE LAW.

The City shall provide any person, corporation, firm, partnership, association, or other person or entity applying or competing for any Uncommon Financial Benefit with written notice of the provisions of this Chapter and the limitations it imposes. Said notice shall be incorporated into requests for 'proposal', bid invitations, or other existing informational disclosure documents to persons engaged in prospective business with, from, or through the City.

Section \_\_\_9. COMPLAINTS.

- (a) Public Complaint: Any member of the public may make a complaint under this section and file it with the City Clerk of Pacific Grove. The City Attorney shall request of the involved parties a statement of facts and seek to ascertain whether the complaint is addressed by this Chapter. Such determination shall be made within 10 days of said complaint. If in the opinion of the City Attorney the complaint can be addressed by this Chapter, the City Attorney will take the steps necessary to enforce this Chapter.

Section \_\_\_10. SEVERABILITY.

If any provision of this Article is held invalid, such invalidity or unconstitutionality shall not affect other provisions or applications that can be given effect without the invalidated provision, and to this end the provisions of this Article are severable.

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