



CAMPAIGN FINANCE REGULATION WORKSHOPS

**June 8, 2016 – Turlock High School
June 9, 2016 – Cunningham Elementary School
June 15, 2016 – Dennis Earl Elementary School
June 16, 2016 – Turlock Junior High School**



Overview of Presentation

PART I

**The City of Turlock's
campaign regulation history**



Overview of Presentation

PART II

1. The Political Reform Act disclosure requirements
2. Campaign contributions and disqualification under the Political Reform Act
3. Constitutional protections that apply to contribution and expenditure limits
4. Regulating contribution limits
5. Regulating expenditure limits
6. Regulating independent expenditures



Overview of Presentation

PART III

Review and discussion of:

-  Permissible regulations
-  Regulations that may be unconstitutional and the Council should proceed with caution
-  Regulations that are unconstitutional



PART I

The City of Turlock's Campaign Regulation History

On January 28, 2014, Council member Nascimento asked the Turlock City Council to consider adopting a campaign finance ordinance

On February 11, 2014, the City Attorney presented to the Council a campaign contribution ordinance authored by Council member Nascimento

Following are the proposed provisions of that ordinance:

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Proposed TMC section 2-12-01 Decision-making prohibition.

(a) No member of the Council of the City of Turlock, shall

- 1) make,
- 2) participate in making, or
- 3) in any way attempt to use his/her official position to

influence a governmental decision in which s/he knows or has reason to know s/he has a financial interest

Whenever used in this chapter, the words "member of the Council" shall include the Mayor.

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(b) A member of the Council has a financial interest in a decision within the meaning of subsection (a) of this section if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effects on the public generally, on a major campaign contributor to that member.



(c) A major campaign contributor to a member of the Council, within the meaning of subsection (b) of this section, is a person or entity that has contributed Two Thousand and no/100ths (\$2,000.00) Dollars or more in the aggregate over the past thirty-six (36) months to that member of the Council and/or to a campaign committee controlled by that member and/or to a committee not controlled by that member.



Contributions include moneys, loans, debts incurred, property-in-kind, or things having a monetary value incurred or received by a candidate or his/her agent or other person on behalf of the candidate for use in advocating the election of the candidate.



(d) In the case of contributions of Two Thousand and no/100ths (\$2,000.00) Dollars or more that a person or entity makes to a committee not controlled by a candidate for the City Council but which committee expends money in support of a candidate for the City Council, a portion of such contribution shall be deemed to have been made by the contributor to the member or candidate in support of whom the committee expended money.



The amount of such deemed contribution shall be determined by multiplying the contribution to the committee by that fraction obtained by dividing the amount expended by the committee in support of the candidate by the total expenditures of the committee.

Whenever used in this chapter, the words "candidate" or "candidate for Council" shall include any candidate for Mayor.

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(e) In the case of contributions of Two Thousand and no/100ths (\$2,000.00) Dollars or more that a person or entity makes to a committee not controlled by a candidate for the City Council but which committee expends money in opposition to a candidate for City Council, the portion expended in opposition shall be deemed to have been made by the contributor in support of all other candidates for City Council.

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The amount of such deemed contribution shall be determined by multiplying the contribution to the committee by that fraction obtained by dividing the amount expended by the committee in opposition to the candidate by the total expenditures of the committee.

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Proposed TMC section 2-12-02 Administration and enforcement.

The City Clerk shall be responsible for the administration and enforcement of the provisions of this chapter.

Proposed TMC section 2-12-03 Administrative penalties.

The City Clerk shall impose administrative penalties against any candidate for the Council of the City of Turlock, or his/her campaign committee, for any violation of the provisions of this chapter in the amount of Five Hundred and no/100ths (\$500.00) Dollars per violation.

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After consideration of all of the public testimony, Mayor Lazar asked Council members Nascimento and Bublak to discuss the proposed ordinance and report back to the Council.

Between February and April of 2014, Council members Bublak and Nascimento worked collaboratively to bring forward a recommended ordinance for Council consideration.

On April 8, 2014, the City Attorney presented to the Council the campaign contribution ordinance proposed by Council members Bublak and Nascimento.

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The proposed provisions of the ordinance are:

Any campaign contribution meeting the following requirements would be required to be reported on a form designated by the City Clerk:

- (1) The campaign contribution has not been previously reported to the City Clerk as required under State law; and
- (2) The campaign contribution is an amount that is required to be itemized under State law; and

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- (3) The campaign contribution is from a person or entity with a financial interest in any matter on the City Council agenda.

In addition, in order to promote transparency, the state required form for reporting campaign contributions and any report filed with the City Clerk pursuant to the new ordinance would be posted on the City's website.

After council discussion, Council members Nascimento and Bublak agreed to move forward with staff placing campaign contribution forms online, to withdraw the proposed ordinance from the agenda, and not take any additional action.

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PART II

The Political Reform Act Disclosure Requirements

The Political Reform Act (PRA) was approved by California voters in 1974 (Government Code Section 81000, et seq.).

One of the purposes of the Political Reform Act is to ensure that disclosure of political payments is accurate, timely, and made in a transparent manner.

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The Political Reform Act Disclosure Requirements

The Political Reform Act requires elected officers, candidates and committees to file campaign statements by specified deadlines disclosing contributions received and expenditures made.



The Political Reform Act Disclosure Requirements

These documents are public and may be audited by the Fair Political Practices Commission and Franchise Tax Board to ensure that voters are fully informed and improper practices are prohibited.

Despite the fact that disclosure laws burden constitutional rights, such requirements have generally withstood constitutional scrutiny.



Campaign Contributions and Disqualification under the Political Reform Act

Campaign contributions are generally not an economic interest under the conflict of interest provisions of the Political Reform Act.

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Campaign Contributions and Disqualification under the Political Reform Act

Receipt of campaign contributions generally will not create a conflict of interest for an elected officeholder in the performance of his or her duties (i.e. City Council member or Mayor acting in his/her elected capacity).

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Campaign Contributions and Disqualification under the Political Reform Act

The Political Reform Act provides for disclosure of campaign contributions by recipients of contributions rather than disqualification of recipients from acting on matters in which the contributor is interested.

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Campaign Contributions and Disqualification under the Political Reform Act

Political contributions involves an exercise of fundamental freedoms protected by the First Amendment to the United States Constitution and Article I, Section 2 of the California Constitution.

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Campaign Contributions and Disqualification under the Political Reform Act

Adopting a sweeping rule that a city council member must recuse himself from decisions concerning campaign contributors may violate the First Amendment rights of those who wish to participate in the electoral process by making campaign contributions.

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Constitutional Protections

Contribution and expenditure limits are held to infringe on a person's First Amendment rights of freedom of expression (communication) and freedom of association. Because of this, courts review any such regulations under the strictest standard of review, and strike down any regulations that are not justified by sufficient governmental interests. In addition, any regulation must be "closely drawn" and not burden these constitutional rights any more than necessary.

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Contribution Limits

- The Political Reform Act currently does not contain contribution limits for local candidates.
- A city may, by ordinance or resolution, limit campaign contributions in municipal elections.
- Contribution limits restrict the amount that a person or entity can give to a candidate or a candidate controlled committee.
- Cities and counties that have adopted a campaign finance ordinance must submit a copy to the Fair Political Practices Commission.

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Contribution Limits

- The Fair Political Practices Commission may identify those provisions of the local ordinance that may conflict with or impede a person's compliance with the Political Reform Act.
- The Fair Political Practices Commission may not interpret or comment on the viability, enforceability or constitutionality of a local ordinance.

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Contribution Limits

Contribution Limits to Candidates – Cities may constitutionally impose limits on contributions to local candidates and their controlled committees.

Cities must demonstrate a sufficiently important interest and employ means closely drawn to avoid unnecessary abridgement of associational freedoms and speech.

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Contribution Limits

Contribution limits must not be so low as to prevent the mounting of an effective campaign. Contribution limits that are too low could have a severe impact on political expression if the limits prevent candidates and committees from amassing the resources necessary for effective advocacy.

Cities may constitutionally prohibit corporate contributions to candidates. Such a restriction may be upheld upon a showing of a compelling governmental interest.

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Contribution Limits

State law does not prohibit corporations and unions from making contributions in support of or in opposition to candidates.

Unlike contribution limits for candidate elections, contribution limits for and bans on corporate contributions to ballot measure committees are subject to strict scrutiny and have been struck down as unconstitutional.

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Limits on Expenditures

Expenditure limits restrict what a person or entity spends overall.

Limits on campaign expenditures are almost certainly unconstitutional, as they are subject to strict scrutiny, and the government interest in eliminating corruption or the appearance of corruption does not justify them.

Thus, the Supreme Court has rejected expenditure limits on individuals, groups, candidates, and parties.

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Limits on Independent Expenditures

State law defines an independent expenditure as one made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate or the qualification, passage, or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election but which is not made to or at the behest of the affected candidate or committee.

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Limits on Independent Expenditures

Independent Expenditures can be made by individuals, candidates, committees, political action committees, candidate committees, political party committees, unincorporated businesses, corporations, and unions.

Limits on independent expenditures have been struck down as unconstitutional.

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Limits on Independent Expenditures

State law does not prohibit corporations and unions from making independent expenditures in support of or in opposition to candidates.

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Limits on Independent Expenditures

In 2010, the United States Supreme Court held unconstitutional the long standing ban on corporations and labor unions using their general treasury funds to make independent expenditures on behalf of federal candidates.

The Court held that political speech may not be banned based on corporate identity. In addition, the Court held that the ban on corporate independent expenditures also failed to meet the only rationale constitutionally acceptable as a basis for upholding limits.

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Voluntary Expenditure Limits

The Supreme Court has upheld the use of voluntary expenditure limits as a condition of receiving public financing. However, it has struck down expenditure limits in virtually every other context.

The City can not adopt public financing because

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Voluntary Expenditure Limits

- ◆ The Political Reform Act prohibits payment of public moneys in the form of matching funds or cash subsidies for financing elections, except for elections in charter cities and counties. The City of Turlock is a general law city.
- ◆ In addition, a governmental agency cannot use public funds for materials or activities that reasonably are characterized as campaign materials or activities.

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PART III Review

1. The Political Reform Act requires disclosure of contributions received and expenditures made
2. Campaign contributions are not economic interests under the Political Reform Act
3. The Political Reform Act generally requires disclosure of contributions and not disqualification based upon receipt of a contribution

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Review

4. Contribution and Expenditure Limits infringe on a persons First Amendment rights of freedom of expression and association
5. The Supreme Court has rejected expenditure limits on individuals, groups, candidates, and parties
6. Independent expenditures may be made by individuals, candidate committees, political action committees, political party committees, unincorporated businesses, corporations, and unions

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Review

7. State law does not prohibit corporations and unions from making contributions and independent expenditures in support of or in opposition to candidates
8. Political speech may not be banned based on corporate identity and bans on corporate independent expenditures are unconstitutional
9. Involuntary expenditure limits are unconstitutional

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Review

10. The Political Reform Act prohibits the payment of public money in the form of matching funds or cash subsidiaries for the financing of elections
11. Public funds cannot be used for campaign materials or activities
12. Cities may limit campaign contributions in municipal elections, however, they cannot be too low and should have a cost of living adjustment

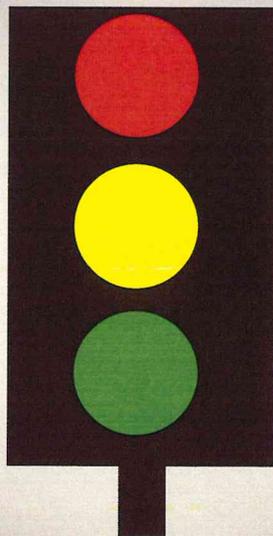
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Review

13. Cities may not limit a candidate's own personal contribution to his/her campaign
14. Cities may prohibit corporate contributions to a candidate
15. Contribution limits and bans on corporate contributions to a ballot measure committee are unconstitutional

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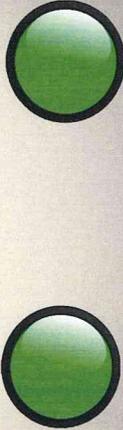


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Contribution Limits
to candidates and
candidate controlled
committees

Contribution Ban
on corporations
on unions



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Contribution Limit
different amount based upon
acceptance of voluntary
expenditure limit

Contribution Limit
by political parties to candidates



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Contribution Limit
to independent
expenditure committees  

Contribution Limit
to ballot measure committees 

Contribution Limit
by the candidate to his/her
campaign 

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Expenditure by
public agency 

Voluntary Expenditure
limits 

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Expenditure Limits

- for parties
- for individuals
- for groups
- for candidates



Independent Expenditures Limits

- by individuals
- by corporations
- by unions
- by candidate committees
- by political action committees
- by political party committees
- by unincorporated businesses



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Expenditure Limits

- issue advocacy for corporations and unions



Expenditure Limits

- express advocacy for corporations and unions



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Public agency financing 

Disclosure regulations 

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Review

- Disclosure Regulation 
- Voluntary Expenditure Limits
- Contribution Limits – individuals, corporations and unions
- Expenditure Limits 
- Independent Expenditures
- Contribution Limits – independent expenditure committees, ballot measure committees, and by the candidate

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