

**TO:** BOARD OF FAIR CAMPAIGN AND POLITICAL PRACTICES  
**FROM:** Board Member Tom Pavel  
**SUBJECT:** 2025 SJMC Revision Proposals  
**DATE:** Mar 14, 2024

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The purpose of this memo is to track an evolving set of ideas for San Jose Municipal Code (SJMC) rule changes that came out of discussions in the past several board meetings. In essence, these topics are the start of our 2025 cycle of recommended changes to the Municipal Code. Since the items still require refinement, it makes sense to start working on them as early as possible. Once we decide on the details of proposed SJMC changes, we can go back to a shorthand description suitable for tracking in the previous spreadsheet. This memo reflects my recollection of these issues and is meant just as a starting point for future discussions. Any updates or additions are welcome and will be incorporated into future revisions. Prior descriptions are marked in grey so as to highlight the changes from previous memos.

## (1) Additional Disclosure for Independent Committees

This item is now our main work area. We are looking for advice from the City Attorney's Office (CAO) as to the enforceability and constitutionality of our two proposed approaches to additional disclosures. One approach is to follow the City of Santa Clara and adjust the reporting threshold for Independent Expenditure Committees (IECs) and rely on the State Major-Donor disclosure requirements to illuminate the ultimate sources of donations coming through non-profits or other entities. The other approach is to add a new disclosure requirement on IECs to identify a complete set of "decision-makers" for political spending. We have discussed a few ways of defining this set of decision-makers, but selecting the most robust scheme is still an open question.

The concern here is that independent expenditure committees (PACs) sponsored by 501(c)4 non-profits can be quite opaque as to who is funding and who is running these PACs (in particular, whether City candidates or officeholders are heavily involved). We discussed the legal constraints on our ability to limit spending by these PACs or to force disclosure of the donors to the non-profit. Hence, we settled on the idea of legislating disclosure of "decision-makers" of the PAC. How exactly to frame this best is an open question for which we asked for legal advice from the City Attorney's Office (CAO). We could ask for disclosure of all officers in the PAC, all board members, everyone who votes on spending decisions, or anyone with "significant influence" on spending (or perhaps there are further options we haven't yet

considered). Our guidance to the CAO is that we wanted the broadest measure that was legally defensible and practical. We also heard from the City Clerk's Office that it is feasible to create new campaign disclosure forms as needed to support these sorts of new disclosures, should this change be approved by the City Council in the future.

A recent news story (links below) illustrated another example of how important the disclosure of affiliations between candidates and PACs funded by nonprofits can be. In this case, an FPPC complaint alleged that a 501(c)3 paid for Facebook ads without filing campaign spending disclosures. My understanding is that a formal independent-expenditure committee was never established (which is one part of the complaint). However, the ads were advocating on issues that aligned with the Santa Clara mayor, but the relationship between the mayor and the nonprofit remains unclear in the news reports (and is another element of the complaint). Hopefully, any disclosure rules we might propose would clarify such a relationship in similar circumstances in the future.

<https://sanjosespotlight.com/santa-clara-mayor-accused-of-ties-to-dark-money-group/>

<https://www.mercurynews.com/2023/09/18/santa-clara-councilmembers-file-ethics-complaint-against-group-they-say-has-ties-to-mayor-lisa-gillmor/>

At the Jan 2024 meeting, we discussed the approach taken by the City of Santa Clara, which involved lowering the threshold for Independent Expenditure Committee reporting (to \$100) and relying on the State Major-Donor disclosure requirements to illuminate the ultimate sources of donations coming through non-profits or other entities. There have been recent legal challenges to these State disclosure requirements (AFP v. Bonta) and the effectiveness of this scheme is therefore under significant doubt.

The main other approach, which we have discussed previously, is the idea of requiring disclosure of all “decision-makers” or board members of the PAC, which would represent a novel but untested approach to disclosure. It is unclear if such disclosure would sufficiently illuminate the sources of dark money. In addition, concerns were raised in our discussion about presuming or dictating any particular structure for the governance of PAC boards. The State FPPC defines principal officers as those primarily responsible for expenditure decisions and also requires a treasurer for recipient committees but doesn’t posit any other requirements on the boards or governance of these committees (see [https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Manuals/Manual\\_4/Final\\_Manual\\_4.pdf](https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/TAD/Campaign%20Manuals/Manual_4/Final_Manual_4.pdf)).

## **(2) Concerns about Candidate-Controlled Ballot Measure Committees**

We agreed at the Oct 2023 meeting to table this item until the other topics make further progress. As a matter of priorities, we felt this topic was less pressing. Perhaps it may be time to discuss this again.

This item arose from a 2016 investigative report in the Mercury News (link below), regarding potential abuse of ballot-measure committees by statewide officeholders. There have not been reports of such issues at the City level, but the analogy is straight-forward. The concern is that because the SJMC does not limit contributions or put any time restrictions on ballot-measure committees, a City candidate or officeholder could potentially solicit contributions to a ballot-measure committee that could be used as a “slush fund” to benefit the officeholder/candidate in ways that pose conflicts of interest. The idea here is that perhaps we could legislate some limits on ballot-measure committees to get ahead of this

before an actual conflict arises. The main proposal we discussed was to require time limits on ballot-measure committees, such as limiting them to a 2-year election cycle, perhaps with some limited ability to roll over to another cycle if the ballot measure were delayed. A fair question was raised in discussion of whether this should only apply to ballot-measure committees associated with (or controlled by) candidates or officeholders, and we did not have a clear consensus on that question. There was also some concern as to whether this danger was too speculative and therefore whether legislative changes in this area were justified. We agreed to keep discussing the topic in future board meetings.

<https://www.mercurynews.com/2016/08/20/sacramentos-new-slush-funds-ballot-measure-committees/>

For some additional context on the potential conflicts that could arise and some ideas on how to define instances of officeholder affiliation for independent committees, I found this report from the NYU Brennan Center a useful resource (even though it mainly describes federal campaigns).

<https://www.brennancenter.org/our-work/research-reports/elected-officials-secret-cash>

### **(3) Disclosure Requirements for Op-Eds**

The Board decided to permanently close this topic at the Jan and Feb 2024 meetings. The consensus was that the public interest in distinguishing official campaign non-advertising statements from spontaneous third-party posts was insufficient to outweigh the difficulties of avoiding free speech restrictions (for example, on low-level campaign volunteers).

### **(4) Disclosures for Telephone Solicitations**

The Board decided to permanently close this topic at the Jan and Feb 2024 meetings, after hearing from the CAO that both voice and text-message campaigns are covered under the existing advertising disclosure rules (SJMC 12.06.10) when paid for by candidates or independent expenditure committees.

### **(5) Ways to publicize existing rules**

This topic was spawned from discussion around Item (4). We expect that many people, both members of the public and those working for candidates, are not aware of the advertising disclosure rules as they relate to telephone solicitations. That raised the question of whether the Board, or the City more broadly, has a good mechanism to publicize such rules. We touched on a number of ideas, ranging from an FAQ on the City Clerk's website to outreach from our Board to the local press or via social media, but there was not a consensus on what would be most effective for the particular issue of telephone advertising disclosures. We did clarify that any outreach should be approved by a Board majority. Further ideas and discussion are warranted.