

ARLENE SILVA
Deputy City Attorney

June 4, 2015

VIA U.S. MAIL

Mr. Johnny Khamis
[REDACTED]

Re: City 2016 Election Questions

Dear Councilmember Khamis:

This letter is in response to your correspondence to Richard Doyle dated May 7, 2015 and received by our office on May 11, 2015 concerning your questions regarding the 2016 City of San Jose Elections. We are responding to your request pursuant to the San Jose Municipal Code (SJMC) Section 12.05.080 which states "that any person may request the City Attorney to provide written advice with respect to the person's duties under the provisions of Chapter 12.05 and Chapter 12.06." The following are responses to your inquiries:

(1) The fundraising window begins on December 10, 2015?

SJMC Section 12.06.290 provides that no person shall solicit or accept any campaign contribution or deposit any contribution for any campaign in any municipal bank account before the one hundred eightieth day before the primary municipal election. Pursuant to SJMC Section 12.05.020.A., the City's 2016 primary election will be held on June 7, 2016, the same date as the California Primary Election. One hundred eighty days before June 7, 2016 is December 10, 2015. Thus, the campaign contribution period for the City's 2016 primary election begins on December 10, 2015.

(2) Are individuals who host coffees in their home or business prior to the beginning of the fundraising period considered making a contribution when they provide refreshments to help me meet their friends and neighbors?

The Fair Political Practices Commission (FPPC) provides that the term "contribution" does not include a payment made by an occupant of a home or office for

costs related to any meeting or fundraising event held in the occupant's home or office, if the total cost of the meeting or fundraising event is \$500 or less, exclusive of the fair rental value of the premises. Thus, if a person, other than a lobbyist or lobbying firm, holds a coffee event in his or her home or office, the costs incurred by the occupant of the home or office need not be reported as long as the total cost of the event is \$500 or less. However, if someone else donates food, beverages, or anything else of value to the event, the fair market value of those donated goods is a nonmonetary contribution. In addition, the donated goods must be counted to determine whether the total cost of the event is \$500 or less. For this home/office fundraiser contribution exception to apply, the total cost of the event must be \$500 or less, no matter how many candidates or committees benefit from the event.

As you know, the SJMC prohibits a person from soliciting or accepting any contributions for any campaign into any municipal campaign bank account except during the campaign contribution period. Our office has previously opined that soliciting individuals to serve on a campaign fundraising committee prior to the campaign contribution period is allowed as it is merely a planning and coordinating stage for soliciting and accepting contributions to a campaign. However, lining up financial or in-kind pledges or contributions prior to the campaign contribution period would indicate that some degree of solicitation was made and is therefore prohibited except during the campaign contribution period. Therefore, depending on the activity conducted at these coffees, they could be considered a prohibited solicitation of contributions if held prior to December 10, 2015. As long as no solicitation of contributions is being conducted, and the FPPC rules regarding home or office events are adhered to, a meet and greet coffee in someone's home or office with no other donated goods or services supplied, would not be considered a prohibited contribution for the 2016 election cycle if held prior to December 10, 2015.

(3) Can you as the candidate loan yourself money to cover certain expenses prior to the fundraising period? If so, what are the limits?

SJMC Section 12.06.290 generally prohibits a person from soliciting or accepting any contributions from others prior to 180 days before an election. There is no such time limitation on the deposit of personal funds. SJMC 12.06.295 entitled "Deposit of personal funds into campaign bank account," provides in part that the SJMC does not prohibit a candidate from making unlimited contributions to his or her campaign. Loans from candidates to their own campaign or campaign committee are limited under SJMC 12.06.295(D) to a total of \$20,000 at any one point in time. These funds can be deposited and expended prior to the campaign contribution period. However, such expenditures will count against the voluntary expenditure limits for that election, should the candidate accept them.

It should be noted that the FPPC requires that candidates file a statement of intention and establish a campaign bank account before making any expenditure from


personal funds pursuant to Government Code Section 85201. Furthermore, 85201(c) of that section requires all contributions or loans made to the candidate be deposited in the account.

There are no set deadlines in the SJMC in reporting expenditures. However, the SJMC provides in 12.06.910 that "each candidate and candidate controlled committee receiving contributions or making expenditures in a city election must file with the city clerk campaign disclosure statements in the form and at the times required by Chapter 12.06 and the Political Reform Act." SJMC relies upon the times set forth by the regulations of the FPPC. This letter is intended to interpret the City's Municipal Code only. For detailed information on campaign reporting requirements, please contact the FPPC.

We hope that this addresses your question concerning the City's Municipal Code sections on Elections and Municipal Campaign Contributions. Please feel free to contact our Office if you have further questions or need clarification with regard to this letter.

Very truly yours,

RICHARD DOYLE, City Attorney

By: 
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