

March 15, 2016

**Sent Via Email**

Re: San Jose Campaign Guidance – Campaign Funds

Dear Councilmember Khamis:

You have asked the following question:

Can any leftover campaign funds from your campaign be used for the following and whether there are any limits as to how much can be spent on them:

1. Donations to other council campaigns?
2. Donation to non-profits i.e. YMCA?
3. Donations to fund ballot measures i.e. Marijuana?

Answer:

The ability to expend leftover campaign funds depends on when the expenditure is made.

San Jose Municipal Code Section (SJMC) 12.06.720 designates any remaining campaign funds in excess of expenses incurred for allowable expenses as specified under the Political Reform Act as surplus campaign funds. Within one hundred eighty days after withdrawal, defeat, or election to office, the surplus campaign funds are required to be either returned to the contributors on a pro rata basis, or turned over to the general fund of the City.

Prior to campaign funds becoming “surplus” campaign funds, the City and State law restrictions are as follows:

1. Donation to other Council Campaigns: While State law allows candidates to make contributions to other candidates and committees, SJMC Section 12.06.410 prohibits the transfer of any city campaign funds to any other person's city campaign funds or to any other candidate's non-city campaign fund.
2. Donation to non-profits: The SJMC is silent on the transfer of City campaign funds to nonprofit organizations and therefore, State law applies. State law allows for campaign funds to be used to make donations to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations as long as the donation is reasonably related to a political, legislative, or governmental purpose. In addition, the donation may not personally benefit the officeholder, candidate, committee treasurer, or any individual with authority to approve the expenditure of campaign funds, or any such person's immediate family member. Please refer to guidelines of the Fair Political Practices Commission for further information.
3. Donations to fund ballot measures: The SJMC does not limit or prohibit the transfer of City campaign funds to ballot measure committees or the expenditure of campaign funds to support the qualification of measures for the ballot. State law does not prohibit the use of City campaign funds to support ballot measures or ballot measure committees. The FPPC has concluded that at a minimum, expenditures of campaign funds must be reasonably related to a political, legislative, or governmental purpose.

## CONCLUSION

Prior to the campaign funds becoming "surplus", they can be donated to a nonprofit organization and to a ballot measure campaign, but not to another council campaign. After the funds are deemed surplus, the SJMC provides that the surplus campaign funds must be returned to the contributors on a pro rata basis or turned over to the general fund of the city. Campaign funds are deemed surplus funds once a candidate withdraws, is defeated or elected to office. A candidate is defeated or elected when the results of the election are certified.

Please note that this letter is intended to interpret only the City's Municipal Code. The California Fair Political Practices Commission is charged with interpretation and enforcement of the Political Reform Act and its implementing FPPC regulations. Court decisions have held that reliance on the advice of a city attorney is not a defense in the event of an inquiry as to whether the state regulations have been violated.

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We hope that this addresses your question concerning the City's Campaign Ordinance. Please feel free to call if you have further questions or need clarification with regard to this letter.

Very truly yours,

RICHARD DOYLE, City Attorney

By:   
ARLENE SILVA  
Deputy City Attorney

AS:ml

cc: Toni J. Taber, CMC, City Clerk