

Silva, Arlene

From: Silva, Arlene
Sent: Friday, September 04, 2015 3:24 PM
To: [REDACTED]
Cc: Taber, Toni; Doyle, Richard
Subject: 2016 City Council Elections Questions

Hi Mr. Allen:

I understand you met with Toni Taber and posed the following questions regarding the 2016 City Council Elections. I am following up with the following responses to your inquiries and hope this addresses your questions. Please be aware that the Ethics Commission is currently in the process of reviewing San Jose Municipal Code (SJMC) Title 12 and related portions of the Code as part of its annual plan to address issues and propose recommendations to the City Council in the coming months. I am responding to your questions as it relates to the current state of the SJMC. Should you wish to discuss or have any further questions, please contact me. Thank you.

1. What form(s) must I file with the City Clerk in order to declare my candidacy?

A Candidate shall file nomination papers pursuant to San Jose Municipal Code (SJMC) 12.05.060 with the City Clerk no later than twelve noon on the eighty-eight day before the city municipal election. SJMC provides that voters may nominate candidates for election by signing a nomination paper not earlier than the one hundred thirteenth day nor later than twelve noon on the eighty-eight day before a city municipal election.

Nomination papers are issued by the City Clerk and include several forms and must be filed at the same time. The list includes but may not be limited to: (1) Nomination Papers (also known as the "petition"), (2) Certificate of Residency, (3) Ballot Designation Worksheet and Form, (4) Statement of Economic Interests – Form 700, (5) Candidate Statement of Qualifications Form, (6) Code of Fair Campaign Practices, (7) Form 500 Voluntary Expenditure Limits, and (8) other forms, as required by the County of Registrar of Voters

2. Provided I have opened a campaign bank account and filed a statement of organization with the FPPC, what is the exact time and date when I can start soliciting and accepting donations? (aka 180-day window)

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 is held on the same date as the California Primary Election, which will be June 7, 2016. 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.

3. Prior to the 180-day window, am I permitted to donate and/or spend personal funds for electioneering activities?

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. Therefore, as long as you track expenditures of your own funds through the campaign bank account, you may spend personal funds prior to December 10, 2015. Municipal Code Section 12.06.295 provides additional detail regarding personal funds including restrictions regarding personal loans.

3a. If yes to the previous question, how much am I permitted to donate and/or spend?

There is no limit as to how much personal funds you may donate to and spend on your own campaign. However, any loan that you make to your campaign cannot be in excess of \$20,000 outstanding at any point in time. SJMC Section 12.06.295 provides additional detail regarding personal funds. If you elect to participate in the Voluntary Campaign Expenditure Limits Program (SJMC 12.06.510), your participation in the program subjects you to the expenditure limits as set forth in SJMC 12.06.530.

3b. If yes to 3, are there restrictions on what can be purchased with those funds (i.e. campaign collateral, office supplies, data management systems, etc.)?

The SJMC does not have any restrictions on what can be purchased with campaign funds. However, the Political Reform Act and FPPC regulations apply. All expenses must be reported to the City Clerk on an FPPC Form 460.

4. Can I launch a campaign website and/or social media profile prior to the 180-day window?

Yes. The SJMC does not have applicable restrictions on launching campaign websites and social media. However, there are restrictions in the SJMC on electioneering communications located in Section 12.06.1000 et seq. An electioneering communication is one which is disseminated 90 days prior to the election and refers to a clearly identified candidate. Section 12.06.1010 requires that electioneering communication contain disclosures such as “paid for by” and the name, street address and city of the candidate or candidate controlled committee that paid for the communication. Therefore, if a campaign website is set up prior to the 180-day window, you may need to update it prior to 90 days before the election to include the appropriate disclosures. The FPPC may also have applicable restrictions. Please contact the FPPC to be aware of the requirements and restrictions.

5. Can I display campaign signs prior to the 180-day window?

See Municipal Code 23.04.700-23.04.780. At this time, Election signs, as defined in that section, may be displayed on the first day after the opening of the nomination period for the election. The nomination period for June 7, 2016 city municipal elections begins on February 15, 2016.

You will need to read the rest of the sign codes for further information on other types of signs. See also requirements in SJMC 12.06.1000 et seq. on electioneering communication.

6. Can my campaign hold and promote events prior to the 180-day window – such as house parties and meet-and-greets – provided that the events are not promoted and/or used for the purpose of raising campaign funds?

You may hold and promote such meet and greets providing you follow the rules of the FPPC and City of San José Municipal Code. Such events cannot be held by a lobbyist or lobbying firm. 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.

6a. If yes to previous, how much can be spent by the host without the need to report the expenditure as a non-monetary contribution?

The Municipal Code does not have its own restrictions in this area and relies on the FPPC definition of contribution. The 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. Please further refer to the Political Reform Act and FPPC regulations.

6b. Is this regulation different for businesses and individuals? If so, how?

Municipal Code Sections 12.06.240, 12.06.250 and 12.06.260 provide restrictions regarding business entities. In addition, the FPPC may have applicable restrictions.

7. If I have another candidate-controlled committee, what is the limit on how much I can transfer from that committee to my city council committee?

You have informed us that you have \$500 remaining in a non-city campaign fund collected when you considered running for the Democratic Central Committee. The SJMC only regulates transfers from a City campaign fund. Since the transfer you are proposing is from a non-City campaign fund, there are no Municipal Code restrictions. However, the FPPC has applicable restrictions. Please see Form 460 Schedules E and I. Please refer to the Political Reform Act and FPPC regulations for further information.

7a. Can I make one transfer for the primary and another for the runoff?

Yes.

Please note that these rules apply to the Municipal Code as it exists now. The Ethics Commission is currently in process of reviewing and updating the Municipal Code which may revise some sections that apply to Elections.

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