



# California Fair Political Practices Commission

May 23, 1989

Joan R. Gallo  
City Attorney  
City of San Jose  
151 West Mission Street  
San Jose, CA 95110

Re: Your Request for Informal Assistance  
Our File No. I-88-454

Dear Ms. Gallo:

This is in response to your request for assistance relative to the newly enacted provisions of the Political Reform Act (the "Act").<sup>1/</sup> Since your advice request does not seek to clarify the duties of a specific person under the Act, we are treating your request as one for informal assistance.<sup>2/</sup>

This response has been delayed due to the February 8, 1989 ruling in the case of California Common Cause v. California Fair Political Practices Commission, Los Angeles County Superior Court, Case No. C709383, in which the court ruled that Regulations 18536(b)(2) and 18536.1 were invalid. A final order in the case is still pending.

A subsequent court ruling has made further revision to this advice letter necessary. In Service Employees International Union, AFL-CIO, et al. v. California Fair Political Practices Commission, United States District Court, Eastern District of California, Case No. CIVS-89-0433, LKK-JFM (hereafter, "SEIU case"), the court granted plaintiff's motion for a preliminary injunction to enjoin enforcement of certain aspects of Sections

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; Regulation 18329(c)(3).)

85306, 85200-85202, 85304 and 85301. A date for the hearing on the merits has yet to be set.

Please be aware that the issues raised in this letter present significant policy questions and therefore will be provided to the Commission for consideration in the future. We will inform you if the Commission directs us to change our advice. In the meantime, we have provided a conservative and cautious interpretation of the Act.

#### QUESTIONS

1. Are the contribution limits of the San Jose Municipal Code superseded by the contribution limits set forth in the Act?

2. Are San Jose's officeholder committees permitted under the Proposition 73 amendments to the Act, and how are the funds in existing officeholder committee accounts treated?

3. May an official currently holding an elective office form an officeholder committee to defray the costs of holding his or her current elective office?

#### CONCLUSIONS

1. Since the contribution limits set forth in the San Jose Municipal Code are at or below the contribution limits of the Act, they are not superseded by the Act.

2. An elected official may not have a campaign committee and officeholder committee for the same election. San Jose's officeholder committees must be combined into the official's single controlled committee for that election.

The San Jose officeholder committee accounts contain only funds collected prior to January 1, 1989. Section 85306 prohibits candidates from using campaign contributions received prior to January 1, 1989 to support or oppose any candidate for elective office on or after that date. However, due to a recent ruling in the SEIU case, funds raised prior to January 1, 1989 that are in compliance with the contribution limits of the Act may be used for future elections. Funds raised prior to January 1, 1989 that are in excess of the contribution limits of the Act may be used for any lawful purpose other than to support or oppose a candidate for elective office.<sup>3/</sup>

3. A candidate currently holding office may continue to use his or her campaign committee and campaign bank account to raise

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<sup>3/</sup> Please be aware that this interpretation is subject to change once Service Employees International Union, AFL-CIO, et al. v. California Fair Political Practices Commission has been decided on the merits.

funds for defraying current officeholder expenses. If the officeholder has already terminated his or her campaign committee and campaign bank account, he or she may establish a new committee and account to raise funds for defraying current officeholder expenses. In no case, however, may there be more than one bank account for that election.

#### FACTS

The San Jose Municipal Code permits elected officeholders to establish and control both a campaign committee and an officeholder committee. The mayor and each city councilmember may have only one officeholder committee. The officeholder committees are separate and distinct from the elected official's campaign committee. The officeholder committees may not contribute or transfer anything of value to the candidate's campaign committee.

Moreover, it is not uncommon for an elected officeholder in San Jose to maintain both a campaign committee and an officeholder committee simultaneously for the same term of office. There is no requirement in the San Jose Municipal Code that a campaign committee be terminated once the candidate is elected to office or prior to the formation of an officeholder account.

The San Jose Municipal Code also sets out campaign contribution limits applicable to mayoral and city council elections. Under the municipal code, persons may contribute up to \$500 per election to a candidate for mayor and if the candidate is successful, the person may contribute an additional \$500 to the candidate's officeholder committee for that term of office. Similarly, persons may contribute up to \$250 per election to a candidate for city council and \$250 per term to the candidate's officeholder committee. San Jose's mayoral and city council election is held in June. Where a runoff election is necessary, it is held in November.

#### ANALYSIS

##### San Jose's Contribution Limits

The Proposition 73 amendments to the Act provide that contributions to candidates for elective office must comply with the contribution limits set forth in Sections 85301, 85303 and 85305. Contributions from a person to a candidate are limited to \$1,000 each fiscal year.<sup>4/</sup> (Section 85301.) Contributions from a political committee to a candidate are limited to \$2,500 each fiscal year, and contributions from a broad based political committee or political party to a candidate are limited to \$5,000 per fiscal year. (Section 85303.)

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<sup>4/</sup> The fiscal year is July 1 through June 30. (Section 85102(a).)

However, Section 85101 provides:

(a) Nothing in this chapter shall affect the validity of a campaign contribution limitation in effect on the operative date of this chapter which was enacted by a local governmental agency and imposes lower contribution limitations.

(b) Nothing in this chapter shall prohibit a local governmental agency from imposing lower campaign contribution limitations for candidates for elective office in its jurisdiction.

Thus, the local law must be examined on a provision-by-provision basis to determine whether its provisions conflict with contribution limits of the Act. Where the provisions of local law do conflict, the local law will be superseded. (Riddle Advice Letter, No. A-88-409, copy enclosed.)

San Jose's Municipal Code provides that a person may contribute up to \$500 to a candidate for mayor in each primary, general or special election.<sup>5/</sup> The primary election is held the first Tuesday of June, and if a runoff election is necessary, the runoff is held in November. Thus, under the San Jose Municipal Code, a mayoral candidate may receive no more than \$500 in campaign contributions from a contributor in a fiscal year.

Should a mayoral candidate be successful, the same contributor may contribute a maximum of \$500 to the candidate for officeholder expenses for that term of office.<sup>6/</sup> Therefore, if a mayoral candidate receives a \$500 campaign contribution from a person in May, wins the election in early June and then receives a \$500 officeholder contribution from the same contributor in mid-June, he has received the maximum amount possible under the San Jose Municipal Code from a single contributor in a fiscal year--\$1,000. This does not conflict with the applicable contribution limit of the Act.<sup>7/</sup> (Section 85301.)

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<sup>5/</sup> City council candidates are limited to \$250 per election.

<sup>6/</sup> Again, a city council candidate is limited to \$250 per term in officeholder contributions.

<sup>7/</sup> While the Act does provide different limits for political committees and broad based political committees, the limits are all greater than the San Jose Municipal Code limit of \$1,000. (Section 85302.) San Jose treats political committees as persons for the purposes of the contribution limits of the municipal code and does not recognize broad based political committees.

Under the San Jose Municipal Code, any contribution from the same contributor during the same fiscal year for a special election is treated as a contribution for a separate election. Thus, the contributor may contribute an additional \$500 to a candidate for mayor in a special election.<sup>8/</sup> This is consistent with the Act's treatment of special elections. Under the Act a contributor may contribute \$1,000 to a candidate in a special election in addition to the basic contribution limits in Sections 85301, 85302 and 85303. (Section 85305.)

Since San Jose's contribution limits are as strict as the Act's limits in regard to mayoral elections and stricter in regard to city council elections, the San Jose contribution limits control San Jose's city council and mayoral elections. (Section 85101.)

#### San Jose's Officeholder Committees

Section 85201 provides that all contributions or loans made to a candidate, or to the candidate's controlled committee shall be deposited in a single campaign bank account. The Commission has interpreted this to mean that a candidate for elective office may have only one campaign bank account, and one controlled committee for each campaign bank account. (Regulation 18521, copy enclosed.)

The San Jose Municipal Code permits a candidate for mayor or city council to establish and control an officeholder committee which is separate and distinct from the candidate's campaign committee. This officeholder committee and the candidate's campaign committee exist simultaneously, each committee having a separate committee bank account for the candidate. There is no requirement that a campaign committee for a given election be closed prior to an officeholder account being opened. Thus, under the San Jose Municipal Code, it is not uncommon for an elected officeholder to have both an officeholder committee and a campaign committee for the same term of office.

This conflicts with the Act's requirement that a candidate for elective office have only one campaign bank account, and one controlled committee for each campaign bank account. (Regulation 18521.) The officeholder committees currently existing under the San Jose Municipal Code must be terminated or combined with the candidate's single controlled committee that was formed for the same election. The expenses associated with holding the office sought, which were previously paid for with funds in the officeholder committee, must now be paid through the single campaign bank account as provided in Section 85202(b). (Riddle Advice Letter, No. A-88-409.)

The San Jose officeholder committee accounts contain only funds collected prior to January 1, 1989. Section 85306 prohibits

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<sup>8/</sup> City council candidates are limited to \$250 per election.

candidates from using campaign contributions received prior to January 1, 1989 to support or oppose any candidate for elective office on or after that date. However, in the SEIU case, the United States District Court enjoined the enforcement of Section 85306 as to funds raised prior to January 1, 1989 that were in compliance with the contribution limits of the Act.

Thus, funds in the officeholder accounts that are in compliance with the contribution limits of the Act may be used for future elections. Funds raised prior to January 1, 1989 that are in excess of the contribution limits of the Act may be used for any lawful purpose other than to support or oppose a candidate for elective office.

This requirement does not, however, invalidate San Jose's system of separate contribution limits for campaign and officeholder contributions. This is because the total amount contributed by a person to a candidate during the fiscal year does not exceed the applicable limit under the Act.

#### Officeholder Accounts

Section 85202(b) provides:

(b) All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate to the specific office for which the candidate has stated pursuant to section 85200, that he or she intends to seek or expenses associated with holding that office.

(Section 85202(b). Emphasis added.)

This section permits funds that remain in a campaign committee account after an official is elected to office to be used by the official to defray the costs of holding that office. In addition, the candidate may continue to raise money for the purpose of defraying the costs of the election campaign and the costs of holding his or her current term of office. (Section 85202.)

Where an officeholder has already terminated his campaign committee for election to that term of office, the officeholder may establish a campaign bank account for the purpose of collecting funds to defray the costs of the election campaign for the

current term of office and the costs of holding that term of office.<sup>9/</sup> (Section 85201; Regulation 18520, copy enclosed, and Regulation 18521.)

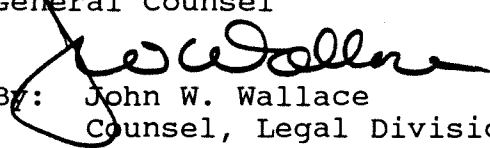
Before any contributions can be solicited, received or deposited in the bank account, however, the officeholder must file a candidate intention statement. (Section 85200; Regulation 18520.) The candidate intention statement shall state that the funds to be collected are to be used to defray expenses associated with the last election and current term of office, and identify the year the election was held. The candidate's current officeholder committee and officeholder committee bank account under the San Jose Municipal Code may be used for that purpose provided they are so designated on the candidate's intention statement and campaign bank account statement (Forms 501 and 502, copies enclosed). However, the candidate may have no other controlled committees or campaign bank accounts for that election. (Riddle Advice Letter, No. I-89-016, copy enclosed.)

Please keep in mind that under the Act all contributions received by the official's various controlled committees from a single contributor must be cumulated to determine when the contributor has reached the contribution limits of the Act. (Section 85102(a); Regulation 18520.)

I trust that this answers your questions. If you have any further questions regarding this matter, please feel free to contact this office at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

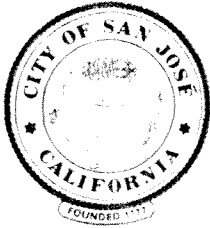
  
By: John W. Wallace  
Counsel, Legal Division

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Enclosures

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<sup>9/</sup> In future years it will not be necessary for officeholders to file a separate statement of intent and create a separate bank account solely for officeholder expenses. The statement of intent filed for election to that term of office, and the corresponding campaign bank account, cover fundraising for expenses of candidacy and subsequent officeholder expenses during the term of office.



**CITY OF SAN JOSÉ, CALIFORNIA  
OFFICE OF THE CITY ATTORNEY**

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(408) 277-4454

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JOAN R. GALLO  
City Attorney

November 30, 1988

DIANE GRIFFITHS  
General Counsel  
FAIR POLITICAL PRACTICES COMMISSION  
428 J Street, Suite 800  
Sacramento, CA 95814

RE: Request for Written Advice (Gov. Code § 83114(b))  
City of San Jose

Dear Ms. Griffiths:

As the City Attorney for the City of San Jose, I am requesting written advice pursuant to Government Code Section 83114(b) regarding Proposition 73's impact on officeholder committees.

Facts

San Jose Municipal Code Sections 2.21.100 et seq. (Ordinance attached) place limitations on contributions to an elected City official's officeholder committee which are separate from the limitations the City places on campaign contributions. An officeholder committee is defined by the Code as

a committee which solicits and/or expends funds on behalf of a councilmember or mayor to be used for noncampaign officeholder expenses and constituent services, including but not limited to, newsletter expenses, subscribing to publications, hiring staff, taking constituents to dinner to discuss City business, and defraying the cost of trips made in connection with the discharge of official duties.

Contributions are limited to an aggregate amount which may be given to each officeholder committee during the officeholder's term of office. Contributors may not give more than \$250 to a councilmember's or \$500 to the mayor's officeholder committee.

DIANE GRIFFITHS  
November 30, 1988  
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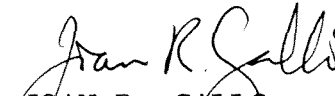
The ordinance prohibits the official from having more than one officeholder committee in existence at any time. Officeholder committees may not contribute anything of value to any political campaign. In addition, the committee may not solicit, accept or expend anything of value from the first day of January of the year in which the officeholder runs for election until he or she has been re-elected or defeated.

### Questions

1. Presuming that in the aggregate the contributions permitted under San Jose's campaign and officeholder committee contribution limitations do not exceed Proposition 73's limitations, may an officeholder have a separate committee which exists solely to handle officeholder expenses?
2. If the officeholder may only have a single committee, is it permissible for the officeholder to utilize two bank accounts?
3. If separate officeholder committees are no longer permitted under Proposition 73, are the funds held by these committees "contributions" subject to the new carry-over regulations (2 Cal. Code of Regulations §§ 18536 et seq.)?
4. If officeholder funds are considered "contributions" under Proposition 73, may the City prohibit the carry-over of these funds for use in campaigning?

Thank you in advance for your assistance in this matter.

Yours truly,

  
JOAN R. GALLO  
City Attorney

JRG:MAM:mjw

**2.20.050 Nomination papers—Number not limited.**

Notwithstanding the provisions of Section 22837 of the Elections Code of the state, more than one nomination paper may be circulated and filed for a candidate. (Prior code § 2919.14.)

**Chapter 2.21****MUNICIPAL ELECTION CAMPAIGN CONTRIBUTION CONTROL****Parts:**

- 1 Campaign Contributions
- 2 Officeholder and Friends' Committee

**Part 1****CAMPAIGN CONTRIBUTION****Sections:**

- 2.21.010 Intent and purpose.
- 2.21.020 Definitions.
- 2.21.030 Contribution limitations to city council candidates.
- 2.21.040 Contribution limitations to mayoral candidates.
- 2.21.042 Contribution limitations to independent committees.
- 2.21.044 Contributions and expenditures by independent committees.
- 2.21.050 Anonymous contributions.
- 2.21.052 Contributions through other persons prohibited.
- 2.21.054 Certain contributions by business entities prohibited.
- 2.21.060 Excess contributions.
- 2.21.070 Statements.
- 2.21.072 Late contributions.
- 2.21.075 Duties of the city clerk.
- 2.21.080 Violations and penalties.
- 2.21.090 Construction with Political Reform Act.

**2.21.010 Intent and purpose.**

It is the intent of the city council of the city of San Jose in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures. (Ords. 20132, 20338, 21504, 22549.)

**2.21.020 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the following meanings:

- A. "Business entity": Any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.
- B. "Candidate": An individual who:
  1. Is listed on the ballot; or
  2. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective city office; or
  3. Receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time.

4. "Candidate" also includes any city officeholder who is subject to a recall election.
- C. "Committee": Any person who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters in a municipal election for or against the nomination or election of one or more candidates if:
1. Contributions received total five hundred dollars or more in any calendar year; or
  2. Independent expenditures total five hundred dollars or more in a calendar year; or
  3. Contributions made to or at the behest of candidates and committees total five thousand dollars or more in a calendar year.
- D. "Contribution": Any payment, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, made for the purpose of influencing any municipal election, unless it is clear from the surrounding circumstances that it is not made for political purposes.
- An expenditure benefiting a candidate or committee made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.
- "Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.
- "Contribution" does not include volunteer personal services; payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her; or independent expenditures made by independent committees.
- E. "Controlled committee": A committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent or any other committee such candidate controls has a significant influence on the actions or decisions of the committee.
- F. "Election": Any general, municipal, special municipal or recall election.
- G. "Independent committee": All committees other than controlled committees.
- H. "Independent expenditure": An expenditure which is not made with the cooperation or the prior consent of, or in consultation with, or at the request of a candidate or any agent or an authorized or controlled committee of such candidate.
- I. "Late contribution": Any contribution including a loan which totals in the aggregate two hundred fifty dollars or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate before the date of the election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election.
- J. "Person": An individual, business entity, foundation, political, religious or so-

cial organization, committee or association, or nonprofit corporation.

- K. "Political Reform Act": Government Code Section 81000 et seq. as amended. (Ords. 20132, 20338, 21504, 22549.)

**2.21.030 Contribution limitations to city council candidates.**

- A. No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of and/or opposition to the nomination or election of a candidate for city council which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate in a single election to exceed two hundred fifty dollars.
- B. Each primary, general or special election is considered separate and distinct for the purposes of this section.

(Ords. 20132, 20338, 20626, 22549.)

**2.21.040 Contribution limitations to mayoral candidates.**

- A. No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of and/or opposition to the nomination or election of a candidate for mayor which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate in a single election to exceed five hundred dollars.
- B. Each primary, general or special election is considered separate and distinct for the purposes of this section.

(Ords. 20132, 20338, 20626, 22549.)

**2.21.042 Contribution limitations to independent committees.**

- A. No person shall make nor shall any person accept any contribution, gift, subscrip-

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tion, loan, advance, deposit, pledge or promise of money or anything of value to or on behalf of an independent committee expending funds or making contributions in aid of and/or opposition to the nomination or election of a candidate for city council or mayor which will cause the total amount contributed by such person to such independent committee in a single election to exceed five hundred dollars.

- B. Each primary, general or special election is considered separate and distinct for the purposes of this section.
- C. Independent committees contributing to election campaigns in addition to city of San Jose council or mayoral election campaigns shall segregate contributions received and contributions or expenditures made for the purpose of influencing such San Jose elections from all other contributions or expenditures. Where an independent committee has segregated such contributions and expenditures for such city elections, contributors to that committee may contribute more than five hundred dollars so long as no portion of the contribution in excess of five hundred dollars is used to influence San Jose council or mayoral elections.
- D. This section is not intended to prohibit or regulate contributions to independent committees to the extent such contributions are used on behalf of or in opposition to candidates for offices other than mayoral or council offices of the city of San Jose.

(Ords. 21504, 22549.)

**2.21.044 Contributions and expenditures by independent committees.**

- A. Independent committees are "persons" for purposes of the contribution limitations to city council and mayoral candidates (Section 2.21.030 and Section 2.21.040). Any expenditure by an independent committee in aid of or in opposition to a council or mayoral candidate which

is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to limitation. For purposes of this chapter, "independent expenditure" shall be defined as set forth in Section 2.21.020 and as amplified in the regulations of the Federal Election Commission at 11 CFR Section 109.2.

- B. Each independent committee making contributions or independent expenditures in a council or mayoral election which does not participate in elections other than for city offices shall file the reporting statements required by Section 2.21.070. For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

(Ords. 21504, 22549.)

**2.21.050 Anonymous contributions.**

- A. No person shall make nor shall any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of or opposition to a candidacy.
- B. All anonymous contributions shall be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 20132, 20338, 22549.)

**2.21.052 Contributions through other persons prohibited.**

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

- A. A contribution by a business entity more than fifty percent of which is owned by the person. Any contribution by a business entity more than fifty percent of

which is owned by such business entity is also attributable to said person.

- B. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.
- C. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

(Ord. 22549.)

**2.21.054 Certain contributions by business entities prohibited.**

In applying the limitations set forth in this chapter to the contributions of business entities, the following additional rules shall apply:

- A. Where two or more business entities have any owners, shareholders or partners in common and the total percentage of ownership by all such shareholders or partners in common is more than fifty percent of each such business entity, the total contributions by all such business entities shall not exceed the applicable campaign limitation.
- B. Where one business entity owns more than fifty percent of one or more other business entities, the total contributions of all such business entities shall not exceed the applicable campaign limitation.

(Ord. 22549.)

**2.21.060 Excess contributions.**

No person shall be found in violation of Section 2.21.030 or 2.21.040 of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed by said sections, provided that:

- A. The excess contribution was made, solicited or accepted at a time when the per-

son was not a candidate for the elective city office subject to the limitation, and within thirty days of his or her becoming a candidate either:

1. The amount of contribution in excess of the prescribed limitation was refunded to the donor; or
  2. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.
- B. Such excess contribution was made, solicited or accepted at a time when the person was a candidate for the elective city office subject to the limitation, and as soon as reasonably possible and in no event more than thirty days after his or her discovery of the excess contribution either:
1. The amount of contribution in excess of the prescribed limitation was refunded to the donor, or
  2. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 20132, 20338, 22549.)

#### **2.21.070 Statements.**

- A. Each candidate and each committee, except committees whose sole purpose is to support or oppose a ballot measure, shall file, as a public record with the city clerk, four cumulative itemized reports showing the total amounts of contributions received and expenditures made. The required statements may be completed on campaign statement forms required to be filed by the Political Reform Act so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee treasurer that the candidate or committee has neither accepted nor solicited any campaign contribution

in excess of the limitations of Section 2.21.030, 2.21.040 or 2.21.042.

- B. The first and second statements shall be filed at the times prescribed for preelection statements by the Political Reform Act. The third preelection statement shall be filed not later than five days prior to election day at twelve noon of that day. The statement shall cover the period closing seven days prior to election day.
- C. For the general and primary election, this third preelection statement is due at twelve noon of the Thursday preceding the election for the period ending on the Tuesday prior to the election.
- D. The fourth statement shall be filed at the time required for the postelection statement by the Political Reform Act.  
(Ords. 20132, 20338, 21504, 22549.)

#### **2.21.072 Late contributions.**

- A. Each candidate or committee that makes or receives a late contribution shall report the late contribution to the city clerk. The candidate or committee that makes the late contribution shall report his or her full name and street address and the full name and street address of the person to whom the late contribution has been made, and the date and amount of the late contribution. The recipient of the late contribution shall report his or her full name and street address, and the date and amount of the late contribution. The recipient shall also report the full name of the contributor, his or her street address, occupation and the name of his or her employer or if self-employed, the name of the business.
- B. A late contribution shall be reported by mailgram, telegram or personal delivery within twenty-four hours of the time it is made in the case of the candidate or committee that makes the contribution and within twenty-four hours of the time it is received in the case of the recipient. A late contribution shall be reported on subsequent campaign statements without re-

gard to reports filed pursuant to this section.

- C. A late contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated or deposited and is returned to the contributor within twenty-four hours of its receipt.
- D. A report filed pursuant to this section shall be in addition to any other campaign statement required to be filed by this chapter.

(Ords. 21504, 22549.)

#### 2.21.075 Duties of the city clerk.

- A. A city clerk shall, upon receipt of the third preelection statements, five days prior to the election, prepare a report to be published in the morning San Jose Mercury News. The report shall contain the total contributions and expenditures for each of the candidates and for each independent committee. The clerk shall cause the report to be published two days prior to the election.
- B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk shall notify the city attorney.

(Ords. 21504, 22549.)

#### 2.21.080 Violations and penalties.

- A. Civil penalty enforcement. At the direction of the city council, the city attorney, or such independent counsel as the city council may appoint where circumstances make representation by the city attorney contrary to legal ethics, shall bring a civil action to enforce the provisions of this chapter and may seek damages for violations of this chapter as specified in subsections B and C hereunder.

In determining whether such a civil action will be brought, the following factors shall be considered:

- 1. Whether or not the violation was willful; and

- 2. Whether the violation was pervasive enough to indicate a pattern of disregard for this chapter; and
- 3. Whether corrective actions were taken in accordance with the provisions of this chapter.

- B. Effect of violations—Candidates. If, after his or her election, a candidate has a judgment entered against him for violation of the provisions of this chapter, said candidate shall pay damages to city in the amount of five thousand dollars or the value of any contribution or contributions rendered in violation of this chapter, whichever is greater, as the penalty for the first violation of this chapter. If said candidate, subsequent to said first violation, is adjudged to have violated the provisions of this chapter during any succeeding primary, general, or special election to any elective city office, the election to office of such candidate shall be void, and such office shall become vacant immediately thereupon. In such event, the vacancy shall be filled in accordance with the procedures as set forth in the city charter.

- C. Effect of violations—Other persons. Any person, other than a candidate elected to city office, who has a judgment entered against him or her for violation of the provisions of this chapter, shall pay damages to the city in the amount of five thousand dollars, or the value of any contribution or contributions rendered in violation of the provisions of this chapter, whichever is greater.

- D. Effect of failure to file late contribution report. Subsections B and C notwithstanding, a candidate or committee failing to file a late contribution report pursuant to Section 2.21.072 shall be required to pay a penalty in an amount equal to the unreported contribution, but not less than one thousand dollars. If the candidate is elected to the office sought, the provisions

of Subsection B other than the monetary penalty shall apply.  
(Ords. 20132, 20338, 20870, 21504, 22549.)

**2.21.090 Construction with Political Reform Act.**

Nothing in this chapter shall be construed as intended to reduce or eliminate any of the filing requirements imposed by the Political Reform Act. To the extent that this chapter imposes filing requirements additional to or different from those set forth in the Political Reform Act, such additional or different filing requirements shall be applied and interpreted so as to be consistent with the limitations imposed by Section 81009.5 of the Government Code. (Ord. 22549.)

**Part 2**

**OFFICEHOLDER AND FRIENDS' COMMITTEE**

**Sections:**

- 2.21.100 Intent and purpose.**
- 2.21.110 Additional definitions.**
- 2.21.120 Limitation on councilmembers' committee contributions.**
- 2.21.130 Limitation on mayoral officeholder's committee contributions.**
- 2.21.140 Excess contributions.**
- 2.21.150 Restrictions on committees and expenditures.**
- 2.21.190 Penalties for violation.**

**2.21.100 Intent and purpose.**

It is the intent of the city council of the city of San Jose in enacting this part to place limits on the amount individuals may contribute to officeholder and friends' committees for the purpose of preventing the perception by the public that contributors to those committees may exercise undue or improper influence over elected officials. (Ords. 21504, 22549.)

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**2.21.110 Additional definitions.**

In addition to the definitions in Section 2.21.020, for the purposes of this part, the following words and phrases shall have the following meanings:

- A. "Friends committee": An officeholder's committee.
- B. "Officeholder's committee": A committee which solicits and/or expends funds on behalf of a councilmember or mayor to be used for noncampaign officeholder expenses and constituent services, including but not limited to, newsletter expenses, subscribing to publications, hiring staff, taking constituents to dinner to discuss city business, and defraying the cost of trips made in connection with the discharge of official duties.
- C. "Term of office": "Term" is defined in Section 402 of the Charter of the city of San Jose. A full term begins on the first day of January after the election of a councilmember or mayor and continues for four years if not earlier terminated.  
(Ords. 21504, 22549.)

**2.21.120 Limitation on councilmembers' committee contributions.**

During the term of office of a councilmember, an officeholder's committee established for that councilmember shall not accept or solicit from a person more than two hundred fifty dollars in the aggregate. No person shall contribute more than two hundred fifty dollars in the aggregate to a councilmember officeholder's committee during that councilmember's term of office. (Ords. 21504, 22549.)

**2.21.130 Limitation on mayor officeholder's committee contributions.**

During the term of office of a mayor, an officeholder's committee established for that mayor shall not accept or solicit from a person more than five hundred dollars in the aggregate. No person shall contribute more than five hundred dollars in the aggregate to

a mayor's officeholder's committee during that mayor's term of office. (Ords. 21504, 22549.)

**2.21.140 Excess contributions.**

No person shall be found in violation of Section 2.21.120 or 2.21.130 of this chapter for having made or accepted any contribution in excess of the limits prescribed by said sections, provided that:

- A. The amount of contribution in excess of the prescribed limitations shall have been refunded to the donor within thirty days of receipt by the committee; or
- B. The amount of contribution in excess of the prescribed limits shall have been donated to the general fund of the city of San Jose within thirty days of receipt.

(Ords. 21504, 22549.)

**2.21.150 Restrictions on committees and expenditures.**

- A. Neither the mayor nor any councilmember shall have more than one officeholder's committee in existence at any time.
- B. Officeholders' committees shall neither contribute nor donate anything of value to any political campaign.
- C. On and after the first day of January of the year in which a mayor or councilmember runs for election, the mayor's or councilmember's officeholder's committee shall not solicit, accept or expend any money or other thing of value until said mayor or councilmember has been re-elected or defeated.
- D. Officeholders' committees shall not expend funds directly for salaries of councilmembers' or mayor's office personnel. However, funds may be donated by officeholders' committees to the city of San Jose and appropriated by the city council for office personnel, said funds to be expended pursuant to procedures and regulations established by the city manager from time to time.
- E. Every officeholder's committee shall file off-year officeholder statements.

(Ords. 21586, 22549.)

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**2.21.190 Penalties for violation.**

Penalties for violation are as set forth in Section 2.21.080 of this chapter. (Ords. 21504, 21586.)

**Chapter 2.28**

**UNCLAIMED AND SURPLUS PROPERTY**

**Parts:**

- 1 General Procedures
- 2 Bicycles Held by Police Department
- 3 Surplus City Property

**Part 1**

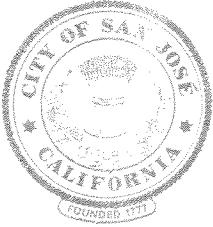
**GENERAL PROCEDURES**

**Sections:**

- 2.28.010 Property defined.
- 2.28.020 Items found on public property—Delivery to chief of police.
- 2.28.030 Owner notification—Storage costs.
- 2.28.040 Claiming property—Conditions and time limit.
- 2.28.050 Property transferred to director of general services when.
- 2.28.060 Disposition of property.
- 2.28.070 Costs of disposal.
- 2.28.080 Reports by director of general services.
- 2.28.090 Quick sale.

**2.28.010 Property defined.**

As used in this chapter the term "property" means personal property other than bicycles, motor vehicles and aircraft. (Prior code § 2918.1.)



**CITY OF SAN JOSÉ, CALIFORNIA**  
**OFFICE OF THE CITY ATTORNEY**

151 WEST MISSION STREET  
 SAN JOSE, CALIFORNIA 95110  
 (408) 277-4454

FPPC  
 Dec 5 2 18 PM '88

JOAN R. GALLO  
 City Attorney

November 30, 1988

DIANE GRIFFITHS  
 General Counsel  
 FAIR POLITICAL PRACTICES COMMISSION  
 428 J Street, Suite 800  
 Sacramento, CA 95814

RE: Request for Written Advice (Gov. Code § 83114(b))  
 City of San Jose

Dear Ms. Griffiths:

As the City Attorney for the City of San Jose, I am requesting written advice pursuant to Government Code Section 83114(b) regarding Proposition 73's impact on officeholder committees.

**Facts**

San Jose Municipal Code Sections 2.21.100 et seq. (Ordinance attached) place limitations on contributions to an elected City official's officeholder committee which are separate from the limitations the City places on campaign contributions. An officeholder committee is defined by the Code as

a committee which solicits and/or expends funds on behalf of a councilmember or mayor to be used for noncampaign officeholder expenses and constituent services, including but not limited to, newsletter expenses, subscribing to publications, hiring staff, taking constituents to dinner to discuss City business, and defraying the cost of trips made in connection with the discharge of official duties.

Contributions are limited to an aggregate amount which may be given to each officeholder committee during the officeholder's term of office. Contributors may not give more than \$250 to a councilmember's or \$500 to the mayor's officeholder committee.

DIANE GRIFFITHS  
November 30, 1988  
Page 2

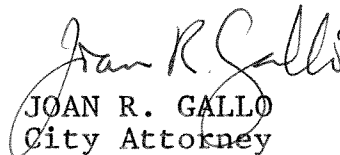
The ordinance prohibits the official from having more than one officeholder committee in existence at any time. Officeholder committees may not contribute anything of value to any political campaign. In addition, the committee may not solicit, accept or expend anything of value from the first day of January of the year in which the officeholder runs for election until he or she has been re-elected or defeated.

### Questions

1. Presuming that in the aggregate the contributions permitted under San Jose's campaign and officeholder committee contribution limitations do not exceed Proposition 73's limitations, may an officeholder have a separate committee which exists solely to handle officeholder expenses?
2. If the officeholder may only have a single committee, is it permissible for the officeholder to utilize two bank accounts?
3. If separate officeholder committees are no longer permitted under Proposition 73, are the funds held by these committees "contributions" subject to the new carry-over regulations (2 Cal. Code of Regulations §§ 18536 et seq.)?
4. If officeholder funds are considered "contributions" under Proposition 73, may the City prohibit the carry-over of these funds for use in campaigning?

Thank you in advance for your assistance in this matter.

Yours truly,

  
JOAN R. GALLO  
City Attorney

JRG:MAM:mjw

**2.20.050 Nomination papers—Number not limited.**

Notwithstanding the provisions of Section 22837 of the Elections Code of the state, more than one nomination paper may be circulated and filed for a candidate. (Prior code § 2919.14.)

**Chapter 2.21****MUNICIPAL ELECTION CAMPAIGN CONTRIBUTION CONTROL****Parts:**

- 1 Campaign Contributions
- 2 Officeholder and Friends' Committee

**Part 1****CAMPAIGN CONTRIBUTION****Sections:**

- 2.21.010 Intent and purpose.
- 2.21.020 Definitions.
- 2.21.030 Contribution limitations to city council candidates.
- 2.21.040 Contribution limitations to mayoral candidates.
- 2.21.042 Contribution limitations to independent committees.
- 2.21.044 Contributions and expenditures by independent committees.
- 2.21.050 Anonymous contributions.
- 2.21.052 Contributions through other persons prohibited.
- 2.21.054 Certain contributions by business entities prohibited.
- 2.21.060 Excess contributions.
- 2.21.070 Statements.
- 2.21.072 Late contributions.
- 2.21.075 Duties of the city clerk.
- 2.21.080 Violations and penalties.
- 2.21.090 Construction with Political Reform Act.

**2.21.010 Intent and purpose.**

It is the intent of the city council of the city of San Jose in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not necessary to, nor is it the city council's intent to impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures. (Ords. 20132, 20338, 21504, 22549.)

**2.21.020 Definitions.**

For the purpose of this chapter, the following words and phrases shall have the following meanings:

- A. "Business entity": Any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.
- B. "Candidate": An individual who:
  1. Is listed on the ballot; or
  2. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective city office; or
  3. Receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time.

4. "Candidate" also includes any city officeholder who is subject to a recall election.

C. "Committee": Any person who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters in a municipal election for or against the nomination or election of one or more candidates if:

1. Contributions received total five hundred dollars or more in any calendar year; or
2. Independent expenditures total five hundred dollars or more in a calendar year; or
3. Contributions made to or at the behest of candidates and committees total five thousand dollars or more in a calendar year.

D. "Contribution": Any payment, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, made for the purpose of influencing any municipal election, unless it is clear from the surrounding circumstances that it is not made for political purposes.

An expenditure benefiting a candidate or committee made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

"Contribution" includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person

for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.

"Contribution" does not include volunteer personal services; payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her; or independent expenditures made by independent committees.

E. "Controlled committee": A committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent or any other committee such candidate controls has a significant influence on the actions or decisions of the committee.

F. "Election": Any general, municipal, special municipal or recall election.

G. "Independent committee": All committees other than controlled committees.

H. "Independent expenditure": An expenditure which is not made with the cooperation or the prior consent of, or in consultation with, or at the request of a candidate or any agent or an authorized or controlled committee of such candidate.

I. "Late contribution": Any contribution including a loan which totals in the aggregate two hundred fifty dollars or more that is made to or received by a candidate, a controlled committee, or a committee formed or existing primarily to support or oppose a candidate before the date of the election at which the candidate is to be voted on but after the closing date of the last campaign statement required to be filed before the election.

J. "Person": An individual, business entity, foundation, political, religious or so-

cial organization, committee or association, or nonprofit corporation.

- K. "Political Reform Act": Government Code Section 81000 et seq. as amended. (Ords. 20132, 20338, 21504, 22549.)

**2.21.030 Contribution limitations to city council candidates.**

- A. No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of and/or opposition to the nomination or election of a candidate for city council which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate in a single election to exceed two hundred fifty dollars.
- B. Each primary, general or special election is considered separate and distinct for the purposes of this section. (Ords. 20132, 20338, 20626, 22549.)

**2.21.040 Contribution limitations to mayoral candidates.**

- A. No person, other than the candidate in aid of himself or herself, shall make nor shall any person solicit or accept any contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of and/or opposition to the nomination or election of a candidate for mayor which will cause the total amount contributed by such person to the candidate or any controlled committee of such candidate in a single election to exceed five hundred dollars.
- B. Each primary, general or special election is considered separate and distinct for the purposes of this section. (Ords. 20132, 20338, 20626, 22549.)

**2.21.042 Contribution limitations to independent committees.**

- A. No person shall make nor shall any person accept any contribution, gift, subscrip-

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- tion, loan, advance, deposit, pledge or promise of money or anything of value to or on behalf of an independent committee expending funds or making contributions in aid of and/or opposition to the nomination or election of a candidate for city council or mayor which will cause the total amount contributed by such person to such independent committee in a single election to exceed five hundred dollars.
- B. Each primary, general or special election is considered separate and distinct for the purposes of this section.
- C. Independent committees contributing to election campaigns in addition to city of San Jose council or mayoral election campaigns shall segregate contributions received and contributions or expenditures made for the purpose of influencing such San Jose elections from all other contributions or expenditures. Where an independent committee has segregated such contributions and expenditures for such city elections, contributors to that committee may contribute more than five hundred dollars so long as no portion of the contribution in excess of five hundred dollars is used to influence San Jose council or mayoral elections.
- D. This section is not intended to prohibit or regulate contributions to independent committees to the extent such contributions are used on behalf of or in opposition to candidates for offices other than mayoral or council offices of the city of San Jose. (Ords. 21504, 22549.)

**2.21.044 Contributions and expenditures by independent committees.**

- A. Independent committees are "persons" for purposes of the contribution limitations to city council and mayoral candidates (Section 2.21.030 and Section 2.21.040). Any expenditure by an independent committee in aid of or in opposition to a council or mayoral candidate which

is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to limitation. For purposes of this chapter, "independent expenditure" shall be defined as set forth in Section 2.21.020 and as amplified in the regulations of the Federal Election Commission at 11 CFR Section 109.2.

- B. Each independent committee making contributions or independent expenditures in a council or mayoral election which does not participate in elections other than for city offices shall file the reporting statements required by Section 2.21.070. For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

(Ords. 21504, 22549.)

#### **2.21.050 Anonymous contributions.**

- A. No person shall make nor shall any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value in aid of or opposition to a candidacy.
- B. All anonymous contributions shall be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 20132, 20338, 22549.)

#### **2.21.052 Contributions through other persons prohibited.**

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

- A. A contribution by a business entity more than fifty percent of which is owned by the person. Any contribution by a business entity more than fifty percent of

which is owned by such business entity is also attributable to said person.

- B. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.
- C. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

(Ord. 22549.)

#### **2.21.054 Certain contributions by business entities prohibited.**

In applying the limitations set forth in this chapter to the contributions of business entities, the following additional rules shall apply:

- A. Where two or more business entities have any owners, shareholders or partners in common and the total percentage of ownership by all such shareholders or partners in common is more than fifty percent of each such business entity, the total contributions by all such business entities shall not exceed the applicable campaign limitation.
- B. Where one business entity owns more than fifty percent of one or more other business entities, the total contributions of all such business entities shall not exceed the applicable campaign limitation.

(Ord. 22549.)

#### **2.21.060 Excess contributions.**

No person shall be found in violation of Section 2.21.030 or 2.21.040 of this chapter for having made, solicited or accepted any contribution in excess of the limits prescribed by said sections, provided that:

- A. The excess contribution was made, solicited or accepted at a time when the per-

son was not a candidate for the elective city office subject to the limitation, and within thirty days of his or her becoming a candidate either:

1. The amount of contribution in excess of the prescribed limitation was refunded to the donor; or
  2. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.
- B. Such excess contribution was made, solicited or accepted at a time when the person was a candidate for the elective city office subject to the limitation, and as soon as reasonably possible and in no event more than thirty days after his or her discovery of the excess contribution either:
1. The amount of contribution in excess of the prescribed limitation was refunded to the donor, or
  2. The amount of contribution in excess of the prescribed limitation was donated to the general fund of the city, earmarked to defray the costs of municipal elections.

(Ords. 20132, 20338, 22549.)

#### **2.21.070 Statements.**

- A. Each candidate and each committee, except committees whose sole purpose is to support or oppose a ballot measure, shall file, as a public record with the city clerk, four cumulative itemized reports showing the total amounts of contributions received and expenditures made. The required statements may be completed on campaign statement forms required to be filed by the Political Reform Act so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee treasurer that the candidate or committee has neither accepted nor solicited any campaign contribution

in excess of the limitations of Section 2.21.030, 2.21.040 or 2.21.042.

- B. The first and second statements shall be filed at the times prescribed for preelection statements by the Political Reform Act. The third preelection statement shall be filed not later than five days prior to election day at twelve noon of that day. The statement shall cover the period closing seven days prior to election day.
- C. For the general and primary election, this third preelection statement is due at twelve noon of the Thursday preceding the election for the period ending on the Tuesday prior to the election.
- D. The fourth statement shall be filed at the time required for the postelection statement by the Political Reform Act. (Ords. 20132, 20338, 21504, 22549.)

#### **2.21.072 Late contributions.**

- A. Each candidate or committee that makes or receives a late contribution shall report the late contribution to the city clerk. The candidate or committee that makes the late contribution shall report his or her full name and street address and the full name and street address of the person to whom the late contribution has been made, and the date and amount of the late contribution. The recipient of the late contribution shall report his or her full name and street address, and the date and amount of the late contribution. The recipient shall also report the full name of the contributor, his or her street address, occupation and the name of his or her employer or if self-employed, the name of the business.
- B. A late contribution shall be reported by mailgram, telegram or personal delivery within twenty-four hours of the time it is made in the case of the candidate or committee that makes the contribution and within twenty-four hours of the time it is received in the case of the recipient. A late contribution shall be reported on subsequent campaign statements without re-

- gard to reports filed pursuant to this section.
- C. A late contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated or deposited and is returned to the contributor within twenty-four hours of its receipt.
- D. A report filed pursuant to this section shall be in addition to any other campaign statement required to be filed by this chapter.

(Ords. 21504, 22549.)

### 2.21.075 Duties of the city clerk.

- A. A city clerk shall, upon receipt of the third preelection statements, five days prior to the election, prepare a report to be published in the morning San Jose Mercury News. The report shall contain the total contributions and expenditures for each of the candidates and for each independent committee. The clerk shall cause the report to be published two days prior to the election.
- B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk shall notify the city attorney.

(Ords. 21504, 22549.)

### 2.21.080 Violations and penalties.

- A. Civil penalty enforcement. At the direction of the city council, the city attorney, or such independent counsel as the city council may appoint where circumstances make representation by the city attorney contrary to legal ethics, shall bring a civil action to enforce the provisions of this chapter and may seek damages for violations of this chapter as specified in subsections B and C hereunder.

In determining whether such a civil action will be brought, the following factors shall be considered:

1. Whether or not the violation was willful; and

2. Whether the violation was pervasive enough to indicate a pattern of disregard for this chapter; and
  3. Whether corrective actions were taken in accordance with the provisions of this chapter.
- B. Effect of violations—Candidates. If, after his or her election, a candidate has a judgment entered against him for violation of the provisions of this chapter, said candidate shall pay damages to city in the amount of five thousand dollars or the value of any contribution or contributions rendered in violation of this chapter, whichever is greater, as the penalty for the first violation of this chapter. If said candidate, subsequent to said first violation, is adjudged to have violated the provisions of this chapter during any succeeding primary, general, or special election to any elective city office, the election to office of such candidate shall be void, and such office shall become vacant immediately thereupon. In such event, the vacancy shall be filled in accordance with the procedures as set forth in the city charter.
- C. Effect of violations—Other persons. Any person, other than a candidate elected to city office, who has a judgment entered against him or her for violation of the provisions of this chapter, shall pay damages to the city in the amount of five thousand dollars, or the value of any contribution or contributions rendered in violation of the provisions of this chapter, whichever is greater.
- D. Effect of failure to file late contribution report. Subsections B and C notwithstanding, a candidate or committee failing to file a late contribution report pursuant to Section 2.21.072 shall be required to pay a penalty in an amount equal to the unreported contribution, but not less than one thousand dollars. If the candidate is elected to the office sought, the provisions

of Subsection B other than the monetary penalty shall apply.  
(Ords. 20132, 20338, 20870, 21504, 22549.)

### **2.21.090 Construction with Political Reform Act.**

Nothing in this chapter shall be construed as intended to reduce or eliminate any of the filing requirements imposed by the Political Reform Act. To the extent that this chapter imposes filing requirements additional to or different from those set forth in the Political Reform Act, such additional or different filing requirements shall be applied and interpreted so as to be consistent with the limitations imposed by Section 81009.5 of the Government Code. (Ord. 22549.)

## **Part 2**

### **OFFICEHOLDER AND FRIENDS' COMMITTEE**

#### **Sections:**

- 2.21.100 Intent and purpose.**
- 2.21.110 Additional definitions.**
- 2.21.120 Limitation on councilmembers' committee contributions.**
- 2.21.130 Limitation on mayoral officeholder's committee contributions.**
- 2.21.140 Excess contributions.**
- 2.21.150 Restrictions on committees and expenditures.**
- 2.21.190 Penalties for violation.**

#### **2.21.100 Intent and purpose.**

It is the intent of the city council of the city of San Jose in enacting this part to place limits on the amount individuals may contribute to officeholder and friends' committees for the purpose of preventing the perception by the public that contributors to those committees may exercise undue or improper influence over elected officials. (Ords. 21504, 22549.)

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#### **2.21.110 Additional definitions.**

In addition to the definitions in Section 2.21.020, for the purposes of this part, the following words and phrases shall have the following meanings:

- A. "Friends committee": An officeholder's committee.
- B. "Officeholder's committee": A committee which solicits and/or expends funds on behalf of a councilmember or mayor to be used for noncampaign officeholder expenses and constituent services, including but not limited to, newsletter expenses, subscribing to publications, hiring staff, taking constituents to dinner to discuss city business, and defraying the cost of trips made in connection with the discharge of official duties.
- C. "Term of office": "Term" is defined in Section 402 of the Charter of the city of San Jose. A full term begins on the first day of January after the election of a councilmember or mayor and continues for four years if not earlier terminated.

(Ords. 21504, 22549.)

#### **2.21.120 Limitation on councilmembers' committee contributions.**

During the term of office of a councilmember, an officeholder's committee established for that councilmember shall not accept or solicit from a person more than two hundred fifty dollars in the aggregate. No person shall contribute more than two hundred fifty dollars in the aggregate to a councilmember officeholder's committee during that councilmember's term of office. (Ords. 21504, 22549.)

#### **2.21.130 Limitation on mayor officeholder's committee contributions.**

During the term of office of a mayor, an officeholder's committee established for that mayor shall not accept or solicit from a person more than five hundred dollars in the aggregate. No person shall contribute more than five hundred dollars in the aggregate to

a mayor's officeholder's committee during that mayor's term of office. (Ords. 21504, 22549.)

**2.21.140 Excess contributions.**

No person shall be found in violation of Section 2.21.120 or 2.21.130 of this chapter for having made or accepted any contribution in excess of the limits prescribed by said sections, provided that:

- A. The amount of contribution in excess of the prescribed limitations shall have been refunded to the donor within thirty days of receipt by the committee; or
- B. The amount of contribution in excess of the prescribed limits shall have been donated to the general fund of the city of San Jose within thirty days of receipt.

(Ords. 21504, 22549.)

**2.21.150 Restrictions on committees and expenditures.**

- A. Neither the mayor nor any councilmember shall have more than one officeholder's committee in existence at any time.
- B. Officeholders' committees shall neither contribute nor donate anything of value to any political campaign.
- C. On and after the first day of January of the year in which a mayor or councilmember runs for election, the mayor's or councilmember's officeholder's committee shall not solicit, accept or expend any money or other thing of value until said mayor or councilmember has been re-elected or defeated.
- D. Officeholders' committees shall not expend funds directly for salaries of councilmembers' or mayor's office personnel. However, funds may be donated by officeholders' committees to the city of San Jose and appropriated by the city council for office personnel, said funds to be expended pursuant to procedures and regulations established by the city manager from time to time.
- E. Every officeholder's committee shall file off-year officeholder statements.

(Ords. 21586, 22549.)

Supp. No. 6

**2.21.190 Penalties for violation.**

Penalties for violation are as set forth in Section 2.21.080 of this chapter. (Ords. 21504, 21586.)

**Chapter 2.28**

**UNCLAIMED AND SURPLUS PROPERTY**

**Parts:**

- 1 General Procedures
- 2 Bicycles Held by Police Department
- 3 Surplus City Property

**Part 1**

**GENERAL PROCEDURES**

**Sections:**

- 2.28.010 Property defined.
- 2.28.020 Items found on public property—Delivery to chief of police.
- 2.28.030 Owner notification—Storage costs.
- 2.28.040 Claiming property—Conditions and time limit.
- 2.28.050 Property transferred to director of general services when.
- 2.28.060 Disposition of property.
- 2.28.070 Costs of disposal.
- 2.28.080 Reports by director of general services.
- 2.28.090 Quick sale.

**2.28.010 Property defined.**

As used in this chapter the term "property" means personal property other than bicycles, motor vehicles and aircraft. (Prior code § 2918.1.)



# California Fair Political Practices Commission

December 7, 1988

Joan R. Gallo  
City Attorney  
151 West Mission Street  
San Jose, CA 95110

Re: 88-454

Dear Ms. Gallo:

Your letter requesting advice under the Political Reform Act was received on December 5, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*

Diane M. Griffiths  
General Counsel

*for*

DMG:plh