



City Council Agenda Item Staff Report

CITY OF SAN BRUNO

DATE: January 10, 2023

TO: Honorable Mayor and Members of the City Council

FROM: Trisha Ortiz, City Attorney

SUBJECT: Introduce, Read by Title Only, and Waive Further Reading of an Ordinance Adding Chapter 2.33 to the San Bruno Municipal Code Adopting Local Contribution Limits for City Council Elections

BACKGROUND: On March 29, 2022 the City Council held a study session to consider adopting local campaign finance regulations. At that meeting, the City Council reviewed the current contribution limits of neighboring cities in San Mateo County (see attached) and subsequently expressed the desire to adopt local limits for campaign contributions to candidates for City Council.

Pursuant to Assembly Bill 571 (Stats. 2019, Ch. 556, AB 571 Mullin), beginning January 1, 2021 a state campaign contribution limit applies by default to city candidates when the city has not already enacted a contribution limit on such candidates. Along with the new campaign contribution limit, AB 571 also applied to local candidates other related provisions that formerly applied only to state level candidates.

At the March 29, 2022 meeting, the City Council was informed that adopting local limits would override the State contribution limits under AB 571, which are currently set at \$4,900, and would also eliminate state law authority to carry over contributions from one election to pay expenses for a future election to the same office. Council was also informed of the need to establish penalties for violations, and the responsibility of the city to bear the cost of enforcement.

At the December 13, 2022 meeting, the City Council considered an ordinance to establish local limits for campaign contributions. Among other things, the proposed ordinance prohibited anonymous contributions in any amount. As part of its discussion, the City Council requested that staff return with an ordinance that does not impose requirements that are in addition to the existing requirements provided in the California Political Reform Act for a contribution in an amount less than \$100.

DISCUSSION: Contribution limits are intended to apply to the Mayor and all Councilmembers equally and use of the term "City Council" in this report includes both the Mayor and Councilmembers.

Adopting local limits allows cities to establish an appropriate limit for the jurisdiction that still provides candidates the opportunity to raise funds that are sufficient to engage in an effective campaign. Limits can lend to greater trust and integrity in the electoral process, encourage broad-based citizen involvement, and reduce actual corruption and the appearance of impropriety from large contributions.

In addition to the limitation on contributions in the amount of \$500, the draft Ordinance also includes limits and regulation of campaign funding in the following areas:

- Prohibiting anonymous contributions
- Written Solicitations by Candidates
- Periodic Review of Contribution Limits
- Filing of Campaign Statements in Electronic Format
- Penalties

Prohibiting Anonymous Contributions

Section 84304 of the Political Reform Act provides “No person shall make an anonymous contribution or contributions to a candidate, committee or any other person totaling one hundred dollars (\$100) or more in a calendar year. An anonymous contribution of one hundred dollars (\$100) or more shall not be kept by the intended recipient but instead shall be promptly paid to the Secretary of State for deposit in the General Fund of the state.”

In contrast, Paragraph B of Section 2.33.030 of the draft Ordinance prohibits contributions in any amount for which the contributor’s true identity is not provided at the time the contribution is made. The draft Ordinance does not add a reporting requirement for contributions under \$100. Rather, it provides an express requirement to track the source of all contributions. It should be noted that even under Section 84211 of the Political Reform Act, there is an implicit obligation to track contributions under \$100 to ensure that a candidate reports contributions from a person when the cumulative amount received from such person is \$100 or more.

However, Paragraph B. of Section 2.33.030 can be removed from the draft Ordinance prior to introduction in the event that the City Council determines it does not want to add an express requirement to track contributions under \$100.

Written Contribution Solicitations by Candidates

The draft Ordinance requires that a candidate or controlled committee of a candidate provide the written notice of the City’s campaign contribution limits on any written solicitation. The required language is as follows:

“NOTICE: The City of San Bruno municipal code limits the amount that a contributor may give to a candidate for the position of city councilmember. An individual contributor may not give more than \$500 to any individual candidate in connection with a single election. Please read the San Bruno City Code prior to contributing to my campaign.”

Periodic Review of Contribution Limits

Contribution limits do not increase annually by an index. Instead, the Ordinance provides that the contribution limits may be adjusted at any time and in the amounts that the City Council determines to be appropriate. Such an amendment would be made by adoption of an amending ordinance.

Filing of Campaign Statements in Electronic Format

The draft Ordinance requires electronic filing of campaign statements. The City currently uses a certified NetFile filing system for all City of San Bruno candidates. The NetFile system can also be used for filing and tracking of contribution limits. If the NetFile system is fully used, staff expects improved candidate reporting and compliance with campaign contribution rules.

Enforcement

Violations of the draft Ordinance may be prosecuted as an infraction punishable by a fine not to exceed \$250 per violation. Also, any person who knowingly or willfully violates the Ordinance is guilty of a misdemeanor punishable by up to six months in jail, and a fine of up to \$1,000 per violation. In the discretion of the City Attorney, the City may impose an appropriate administrative fine not to exceed three times the amount the person unlawfully contributed or received.

In addition, the City Attorney may bring a civil suit to seek an injunction or other appropriate relief, to halt violations of the draft Ordinance. The City Attorney also may refer any alleged violations of the Ordinance or State law to the attention of the District Attorney or the Fair Political Practices Commission.

Finally, the draft Ordinance provides for a private civil action against a candidate, committee or contributor to enjoin any violations of the Ordinance, under specified conditions.

If adopted, the ordinance would apply to campaign fundraising for the November election in 2024.

FISCAL IMPACT: The City does not anticipate a fiscal impact from routine administration of the Ordinance because such administrative functions would be performed by current staff in the City Clerk's office. However, like other municipal code enforcement matters, bringing enforcement actions for violations requires the use of City resources, which would include staff and attorney time and expenses. Staff cannot predict the fiscal impact of these enforcement actions. The draft Ordinance includes a private right of action, which allows a resident to bring an enforcement action at no expense to the City.

ENVIRONMENTAL IMPACT: There is no environmental impact. The action is not a project subject to CEQA. City Council's action is not considered a "project" per CEQA Guidelines and therefore no environmental analysis is required.

RECOMMENDATION: Introduce, read by title only, and waive further reading of an Ordinance Adding Chapter 2.33 to the San Bruno Municipal Code Adopting Local Contribution Limits.

ALTERNATIVES:

1. Introduce, read by title only, and waive further reading of an Ordinance Adding Chapter 2.33 to the San Bruno Municipal Code Adopting Local Contribution Limits, with Paragraph B of Section 2.33.030 deleted.

2. Take no action and continue to follow the State campaign contribution limits of \$4,900, which also provides exceptions on recall, paying off debt, and carrying over contributions.

ATTACHMENTS:

1. Limits Matrix for Cities in San Mateo County
2. Ordinance