



# Monterey County

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## Board Report

Legistar File Number: 17-0979

September 19, 2017

**Introduced:** 9/13/2017

**Current Status:** Agenda Ready

**Version:** 1

**Matter Type:** General Agenda Item

- a. Introduce, waive reading and set October 3, 2017 for adoption of an ordinance adding Chapter 1.11 to the Monterey County Code regulating disclosure requirements for political campaigns and contribution limits to County elective officeholders and elective office candidates.
- b. Provide direction to modify the proposed ordinance.

### RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Introduce, waive reading and set October 3, 2017 for adoption of an ordinance amending Chapter adding Chapter 1.11 to the Monterey County Code regulating disclosure requirements for political campaigns and contribution limits to County elective officeholders and elective office candidates.
- b. Provide direction to modify the proposed ordinance.

### SUMMARY:

In response to BOS Referral 2017.04, Campaign Finance Reform Ordinance, the County Counsel's Office drafted the attached proposed ordinance. It includes components of contribution limits as well as transparency oriented disclosure and filing requirements. This ordinance will compliment and expand on the disclosure electronic filing requirements of County Code Chapter 1.10.

### DISCUSSION:

State law, embodied in the Political Reform Act ("Act"), imposes certain restrictions and requirements on contributions and expenditures related to state and local campaigns. The Fair Political Practices Commission ("FPPC") adopted implementing regulations for the Act and has enforcement authority over many campaign finance issues. Most of the regulations are designed for state-wide offices and measures, but certain reporting requirements are imposed for all campaigns in the State, including local races. State law also allows counties to adopt additional restrictions and requirements by ordinance, provided the limits apply to county offices and do not conflict with state law. Such local ordinances must be filed with the FPPC. Many cities and counties have adopted similar ordinances.

There are two primary forms of campaign restrictions: those relating to contribution and expenditure limits and those relating to disclosure requirements. In addition, there are differences between direct contributions to candidates and candidate controlled committees, contributions to committees independent from candidates, and expenditures by entities not controlled by candidates.

Campaign contribution limits may help ensure that a few donors are not having undue and outsized

influence over an elected official. Additionally, limiting contributions may lead to candidates developing a broader base of support, and encourage increased civic engagement across economic strata. More importantly, contribution limits and disclosure requirements are a check on *quid pro quo* corruption in politics.

The U.S. Supreme Court ruled that limits can be an unconstitutional infringement on free speech. In 2010, the Court issued a decision in the case *Citizens United v. Federal Elections Commission*, 558 U.S. 310, which essentially held that a provision of the McCain-Feingold Campaign Finance Reform Act violated the First Amendment when it restricted the ability of a corporation (and associations/unions) to make independent campaign expenditures (e.g., buying advertising access) to support or oppose individual candidates in elections (as opposed to direct candidate contributions). While there are many issues raised in that decision, three of the most important are: (1) money may equal speech under the First Amendment; (2) the type of justification for limits on *contributions* to campaigns is limited to the avoidance of “*quid pro quo*” corruption (i.e. “dollars for political favors”); and (3) limits on independent campaign *expenditures* (that is, from persons or groups not controlled by a candidate) cannot be justified by the effort to avoid *quid pro quo* corruption. The Court considered provisions requiring disclosure and transparency related to campaign contributions/expenditures to be constitutional (not a burden on Free Speech) and generally left such requirements alone.

The *Citizens United* case and subsequent decisions have caused local jurisdictions to review and amend any pre-existing local campaign reform ordinances. The County has been able to benefit from these efforts in designing provisions that are geared for more transparency and actual limits where permitted. Currently, numerous cities and 22 counties in California have adopted local campaign limits.

The proposed contribution limits in this ordinance are to be not more than 2% of the County Median Household Income as updated by the United States Census Bureau’s American Community Survey 5-year Estimates with bi-annual reporting by the Registrar of Voters, effective January 1, 2018. The Board may propose alternative limits, applicability or disclosure requirements.

OTHER AGENCY INVOLVEMENT:

We consulted with the Registrar of Voters. If adopted, we will submit the ordinance to the FPPC.

FINANCING:

Crafting the forms and electronic campaign disclosure requirements could have more than minimal cost. That cost is unknown at this time. Enforcement costs are also unknown at this time.

BOARD OF SUPERVISORS STRATEGIC INITIATIVES:

- ☐ Economic Development
- ☒ Administration
- ☐ Health & Human Services
- ☐ Infrastructure
- ☐ Public Safety

The implementation of a campaign finance disclosure or reform ordinance would help implement proper administration of the County's election process.

Prepared by:

Approved by:

Charles J. McKee, County Counsel

Charles J. McKee, County Counsel

Attachments:

- A. Ordinance to add Chapter 1.11.