



## AGENDA REPORT

**Meeting Date:** January 26, 2016  
**Item Number:** F-1  
**To:** Honorable Mayor & City Council  
**From:** David M. Snow, Interim City Attorney  
Maricela Marroquin, Assistant City Attorney  
**Subject:** BEVERLY HILLS MUNICIPAL CODE AMENDMENTS TO  
ESTABLISH CERTAIN CAMPAIGN REGULATIONS  
APPLICABLE TO CITY COUNCIL AND CITY TREASURER  
ELECTIONS  
**Attachment:** 1. Draft Ordinance

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### INTRODUCTION

Concerns have been raised regarding the distribution of campaign literature throughout the City and the general lack of civility in the recent School Board elections. The City Council directed the City Attorney's office to review possible amendments to the City's local election regulations regarding campaign disclosures and advertising. The City Attorney's office has prepared a draft ordinance authorizing certain regulations for the City Council's consideration.

### DISCUSSION

#### A. Local Election Regulations

The Political Reform Act ("PRA") provides that "[n]othing in this title prevents the Legislature or any other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title." See Government Code section 81013.<sup>1</sup> Section 81013 addresses generally the authority of local agencies to impose obligations beyond those set forth in the PRA, provided those regulations do not conflict with the requirements established by the PRA.

A local government agency is defined under the PRA as "a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the

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<sup>1</sup> All further statutory references are to the Government Code unless otherwise noted.

Meeting Date: January 26, 2016

foregoing.” Section 82041. The City is therefore permitted to adopt local regulations so long as those regulations do not conflict with the regulations set forth in the PRA. A school district is likewise permitted to adopt its own local regulations that do not conflict with the PRA.

## **B. Draft Ordinance**

The ordinance contemplates a number of revisions to Chapter 8 of Title 1 of the City's Municipal Code.

The ordinance would add the definitions for campaign literature and vendor to Section 1-8-2 of the Municipal Code. “Campaign literature” is defined as “any printed or copied flyer, pamphlet, brochure, door hanger, advertisement, sign or other written communication that is paid for by a candidate or committee, which directly or indirectly attempts to influence the action of the voters for or against the election of any candidate or candidates.” “Vendor” is defined as any business that prints, distributes, or creates campaign literature for any local election.”

These definitions are used in the three new regulations included in the draft ordinance. The first regulation would prohibit more than 200 pieces of campaign literature from being distributed door-to-door, unless the campaign literature contains identifying information. The ordinance would also prohibit a vendor from receiving an expenditure in the amount of \$100 or more in cash from any candidate or committee. Lastly, the ordinance would require use of actual names of persons or committees when disclosure of the entity distributing campaign literature is required by state or local law.

The ordinance would amend the remedies section (formerly Section 1-8-7, renumbered as Section 1-8-10) of the Municipal Code to provide that any violation of the prohibition regarding the door-to-door deliveries of campaign materials and the requirement to utilize actual names of persons or committees distributing campaign literature is a misdemeanor punishable by a fine not to exceed \$1,000 or by imprisonment in the County jail for a period not to exceed six months. Violations of the limitation on vendors accepting cash payments in excess of \$100 would be subject to civil remedies.

The City Council requested the City Attorney's office draft an ordinance that included regulations to ensure that local elections will be the expression of the will of an undeceived, well-informed public. The City Council also expressed a desire to ensure that candidates and their committees are transparent in their campaign advertisements. The integrity of elections, essential to the very preservation of a free society, is a matter of great concern to the City and its residents.

### **1. Prohibition on anonymous distribution of campaign literature that is delivered door-to-door**

The draft ordinance would impose the same requirements that are imposed on “mass mailings” on campaign literature that is distributed door-to-door. Mass mailing is defined as “over two hundred substantially similar pieces of mail, but does not include a form letter or other mail which is sent in response to an unsolicited request, letter or inquiry.” Section 82041.5. See also Cal. Code of Regs. section 18435(a) (a “mass mailing” has been made when over two hundred substantially similar pieces of mail have been sent within a calendar month.”) The California Fair Political Practices Commission (“FPPC”) has opined that door-to-door delivery of campaign literature is not considered a “mass mailing” and is not subject to the sender identification requirements identified in Section

Meeting Date: January 26, 2016

84305. See Sher Advice Letter, File No. A-96-036 (March 6, 1996). The proposed limitation is intended to fill this gap and subject candidate or committee paid for door-to-door distributions to the same rules as mass mailings.

The PRA establishes the following disclosure requirements for mass mailings:

“(a) Except as provided in subdivision (b), no candidate or committee shall send a mass mailing unless the name, street address, and city of the candidate or committee are shown on the outside of each piece of mail in the mass mailing and on at least one of the inserts included within each piece of mail of the mailing in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the organization's address is a matter of public record with the Secretary of State.

(b) If the sender of the mass mailing is a single candidate or committee, the name, street address, and city of the candidate or committee need only be shown on the outside of each piece of mail.

(c) If the sender of a mass mailing is a controlled committee, the name of the person controlling the committee shall be included in addition to the information required by subdivision (a).”

Section 84305.

The draft ordinance would require that door-to-door deliveries of campaign literature have the same disclosure requirements as mass mailings. The regulation does not prohibit all anonymous speech, but instead focuses narrowly on imposition of the same regulations that already apply mass mailings on campaign literature that is distributed door-to-door by or on behalf of a candidate or committee. The regulation would not preclude protected anonymous speech from the general public and other groups or individuals who are not a candidate or a committee. The regulation would also allow a candidate or committee to anonymously distribute door-to-door less than 200 pieces of campaign literature in any calendar month.

The City has a compelling interest in ensuring that the electorate has information regarding the source of political campaign funds so as to enable the voters to better evaluate candidates for public office. Voters have a vital interest in learning the views of those who seek to govern them because only through learning these views can the voter intelligently decide for whom to vote. Requiring a candidate or committee to provide identifying information on campaign advertising materials permits confrontation and makes it easier for candidates to refute negative campaign materials. Identification allows the public to be informed about the source of the campaign materials, thereby assisting them in the assessment of the weight such materials should be given.

## 2. Regulation of vendors receiving \$100 or more in cash

The draft ordinance would prohibit vendors from accepting any expenditure (as defined in California Code of Regulations section 18225) on campaign literature or distribution thereof of \$100 or more in cash from candidates or committees. The PRA already prohibits candidates and committees from making expenditures of \$100 or more in cash. Section 84300(b). The PRA does not, however, impose any restrictions on a vendor accepting cash payments in an amount of \$100 or more under the same circumstances. The proposed ordinance closes this gap and imposes the same restriction on the receipt of cash that the PRA imposes on the payment of cash. The regulation is narrowly

Meeting Date: January 26, 2016

tailored because the City is not restricting a vendor from receiving all forms of payment, only payments in cash of \$100 or more, that are made by a candidate or committee, and that are made for campaign literature that, pursuant to California Code of Regulation section 18225, expressly advocates for the election or defeat of a candidate or ballot measure. This regulation does not inhibit speech because a candidate or committee is already prohibited under state law from making an expenditure of \$100 or more in cash.

The City has a compelling interest in preventing the illegal expenditure of campaign funds and preventing fraud in the election process. It is more likely that a candidate or committee will make cash payments for advertising that is deceptive or libelous because the candidate or committee is trying to remain anonymous. Moreover, the regulation would not preclude protected anonymous speech from the general public and other groups or individuals who are not a candidate or committee. Those individuals and groups who are not candidates or committees, and who therefore are no subject to the PRA, would still be allowed to engage in anonymous speech.

### 3. Requirement to Use of Actual Names on Campaign Literature

The draft ordinance would require a person or committee to use actual names when required to include identification information on campaign literature. Committee identification information is regulated by the PRA. Section 84102 requires a committee to disclose its name, street address, telephone number, and sponsor names (if any) on its Statement of Organization on file with the Secretary of State. California Code of Regulation Section 18402(c) provides that whenever the identification of a committee is required by law, the identification shall include the full name of the committee as required in the Statement of Organization. There are also a multitude of identification requirements contained in California Code of Regulations section 18402 regarding how various committees including controlled committees, committees controlled by more than one candidate, and sponsored committees, must identify themselves.

There are a also number of statutes that prohibit a candidate or committee from engaging in false or misleading advertising. For instance, Penal Code section 115.2 makes it a crime to "publish or cause be published, with actual knowledge, and intent to deceive, any campaign advertisement containing false or fraudulent depictions, or false or fraudulent representations, of official public documents or purported official public documents." Elections Code section 18350 makes it a crime for a candidate to pretend or imply that he or she is the incumbent of a public office or that he or she has been acting in the capacity of a public officer when that is not the case. Elections Code section 20007 prohibits candidates and committees from representing that they have the support of committee or organization that includes as part of its name the name or any variation upon the name of a qualified political party with which the candidate is not affiliated, together with the words "county committee," "central committee," "county," or any other term that might tend to mislead the voters into believing that the candidate has the support of that party's county central committee or state central committee, when that is not the case. Section 34501.5 makes it a crime for any person who uses or allows to be used any city seal in any campaign literature or mass mailing, with the intent to deceive voters.

None of these regulations, however, specifically prohibit a candidate or committee from using a false name on campaign literature. The draft ordinance requires that persons and committees use actual names on campaign literature that is distributed in the City for any local election. The regulation requires that committees utilize the name as it appears on its Statement of Organization on file with the Secretary of State.

Meeting Date: January 26, 2016

The purpose of disclosure statutes is to allow for a well-informed electorate. This purpose is directly impaired if candidates or committees use names other than their own or the committee on campaign literature. If a person or committee utilizes some other name, the electorate would not know the true source of the campaign literature and could be deceived. This regulation is therefore narrowly tailored to only require use of actual names to ensure that campaign literature is not misleading, which serves the City's compelling interest in maintaining fair and honest campaigns in the City.

C. Additional Regulations

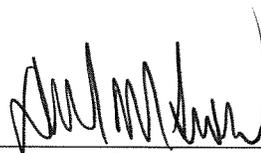
Regulations prohibiting elected officials from endorsing candidates, imposing City election regulations on other local agency elections, placing additional limitations on the number of yard signs that are posted, and requiring candidates to sign and adhere to rules of civility were also considered, however, these restrictions have not been incorporated into the draft ordinance due to enforceability concerns or because laws already exist that regulate the conduct.

**FISCAL IMPACT**

The City will incur costs associated with the enforcement of any ordinance that includes additional local election regulations. At this time, it is difficult to predict the specific amount the City would spend in investigating and enforcing violations of any additional local election regulations.

**RECOMMENDATION**

It is recommended that the City Council consider the potential local election campaign regulations and provide direction as appropriate.



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David M. Snow  
Interim City Attorney

# **Attachment 1**

[DRAFT] ORDINANCE NO. 16-O-\_\_\_\_  
AN ORDINANCE OF THE CITY OF BEVERLY HILLS  
AMENDING THE BEVERLY HILLS MUNICIPAL CODE TO  
ESTABLISH CERTAIN CAMPAIGN REGULATIONS  
APPLICABLE TO CITY COUNCIL AND CITY TREASURER  
ELECTIONS

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS  
FOLLOWS:

**Section 1.** Legislative Findings:

A. The City Council wants to ensure that local elections will be the expression of the will of an undeceived, well-informed public. The City Council also wants to ensure that candidates and their committees are transparent in their campaign advertisements.

B. The integrity of elections, essential to the very preservation of a free society, is a matter of great concern to the City and its residents. The City is enacting these regulations under the authority granted by Government Code section 81013 which allows a local agency to impose local election related regulations, in addition to those imposed by state law, provided the local regulations do not prevent a person from complying with Title 9 of the Government Code, Section 81000 *et seq.*, the Political Reform Act (“PRA”).

C. The PRA prohibits a candidate or committee from sending mass mailings (defined as over two hundred substantially similar pieces of mail, but not including form letters or other mail sent in response to an unsolicited request, letter or inquiry) unless the name, street address, and city of the candidate or committee are contained in the mass mailing, in no less than 6-point type, which shall be in a color or print which contrasts with the background so as to be easily legible. Government Code section 82041.5. The City is enacting a regulation requiring that campaign literature that is delivered door-to-door be subject to the same disclosure requirements as mass mailings. Requiring a candidate or committee to provide identifying information on campaign advertising helps to ensure open and transparent elections. The City Council finds that identification allows the public to be informed about the source of the campaign materials, thereby assisting them determining the weight the campaign materials should be afforded. Moreover, a candidate whose identity is known and who is seeking public office has a lesser interest in anonymity.

D. The PRA prohibits a candidate or committee from making an expenditure of \$100 or more in cash. Government Code section 84300(b). The City is enacting a regulation prohibiting a vendor from receiving \$100 or more in cash from a candidate or committee for campaign literature and/or distribution thereof. This regulation is narrowly focused on the receiving end of a transaction that is already regulated by the PRA. This regulation does not inhibit speech because, under state law, a candidate or committee is already prohibited from making an expenditure of \$100 or more in cash. The City is not restricting a vendor from receiving all forms of payment, only payments in cash that are \$100 or more that are made from candidates or committees, and that are made for campaign literature that, pursuant to California

Code of Regulation 18225, expressly advocates for the election or defeat of a candidate or ballot measure. The regulation is narrowly drawn to only prohibit the receipt of an expenditure that a candidate or committee would otherwise be prohibited from making in cash. The City has a compelling interest in preventing the illegal expenditure of campaign funds and preventing fraud in the election process.

E. The City is enacting a regulation prohibiting a candidate or committee from using a fake or false name on campaign advertisements. This regulation is intended to prevent false and misleading advertisements. The purpose of disclosure statutes is to allow for a well-informed electorate. This purpose is directly impaired if candidates or committees use fake names on campaign literature. The use of a fake name of campaign advertisements deceives the public and may lead to the dissemination of false information. This regulation is therefore narrowly tailored to only inhibit speech that is false and misleading which serves the City's compelling interest in maintaining fair and honest campaigns in the City.

F. It is not the City's intent through this ordinance to impede upon First Amendment rights or to inhibit the free expression of ideas. Therefore, the City is enacting local regulations that are narrowly tailored to serve the compelling government interest of preventing fraud, maintaining the integrity of the election process and ensuring the free will of a well informed public.

**Section 2.** The City Council hereby amends Section 1-8-2 (Definitions) of Chapter 8 of Title 1 of the Beverly Hills Municipal Code by adding the following two new definitions to the Municipal Code, in alphabetical order, with all other definitions in the section remaining unchanged.

“CAMPAIGN LITERATURE”: Any printed or copied flyer, pamphlet, brochure, door hanger, advertisement, sign or other written communication that is paid for by a candidate or committee, which directly or indirectly attempts to influence the action of the voters for or against any candidate or candidates.

“VENDOR”: Any person that prints, distributes, or creates campaign literature for any city council of city treasurer election.”

**Section 3.** The City Council hereby renumbers former Section 1-8-6 (Recordkeeping and Audits) of Chapter 8 of Title 1 of the Beverly Hills Municipal Code as Section 1-8-9, with no other changes or amendments thereto.

**Section 4.** The City Council hereby renumbers former Section 1-8-7 (Remedies) of Chapter 8 of Title 1 of the Beverly Hills Municipal Code as Section 1-8-10, and amends Subsection B as follows, with all other provisions of the section remaining without amendment:

“B. Misdemeanor Violations And Fines: Any person or candidate for elective office who knowingly or willfully violates any provision of section 1-8-3, 1-8-5, 1-8-6, 1-8-8, 1-8-9 of this chapter is guilty of a misdemeanor and upon conviction may be punished by a fine not exceeding one thousand dollars (\$1,000.00) or by imprisonment in the county jail for a period not

exceeding six (6) months, or by both such fine and imprisonment. Allegations that such violations have occurred may, in the discretion of the city attorney, be referred to the Los Angeles County district attorney for investigation and prosecution.

**Section 5.** The City Council hereby adds a new Section 1-8-6 of Chapter 8 of Title 1 of the Beverly Hills Municipal Code to read as follows:

**“1-8-6: DOOR-TO-DOOR DELIVERY OF CAMPAIGN LITERATURE:**

No candidate or committee shall distribute or cause to be distributed, by door-to-door delivery, more than 200 pieces of substantially similar pieces of campaign literature within a calendar month, unless the name, street address, and city of the candidate or committee are stated on each piece of campaign literature in no less than 6-point type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the candidate or committee’s address is a matter of public record with the Secretary of State.”

**Section 6.** The City Council hereby adds a new Section 1-8-7 of Chapter 8 of Title 1 of the Beverly Hills Municipal Code to read as follows:

**“1-8-7: REGULATIONS REGARDING VENDOR RECEIPT OF CAMPAIGN EXPENDITURES IN CASH:**

No vendor shall accept from a candidate or committee any expenditure of one hundred dollars (\$100) or more in cash (as defined by California Code of Regulations section 18225, and as may be amended from time to time) for any campaign literature.

**Section 7.** The City Council hereby adds a new Section 1-8-8 of Chapter 8 of Title 1 of the Beverly Hills Municipal Code to read as follows:

**“1-8-8: IDENTIFICATION INFORMATION ON CAMPAIGN LITERATURE:**

Every piece of campaign literature for a city council or city treasurer election that, pursuant to state or local law, requires identification of the person, persons, or organization that distributes it or causes it to be distributed shall identify the true names of the persons or organization responsible for distribution of the campaign literature. For purposes of this section, committees shall utilize the name as it appears on the Statement of Organization on file with the Secretary of State.”

**Section 8.** Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

**Section 9.** Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within

fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance, and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

**Section 10.** Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:

Effective:

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JULIAN A. GOLD, M.D.  
Mayor of the City of Beverly Hills,  
California

ATTEST:

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BYRON POPE (SEAL)  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
DAVID M. SNOW  
Interim City Attorney

\_\_\_\_\_  
MAHDI ALUZRI  
City Manager