

ORDINANCE NO. 1887

**AN ORDINANCE OF THE CITY OF SAN RAFAEL ADDING
NEW CHAPTER 1.16 TO THE SAN RAFAEL MUNICIPAL
CODE ENACTING DISCLOSURE AND REPORTING
REGULATIONS FOR INDEPENDENT EXPENDITURES IN
CITY ELECTIONS**

THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 1.

WHEREAS, integrity in the political process is of paramount importance in City elections;
and

WHEREAS, in prior City elections, various communications funded by independent expenditures have, at times, been perceived to contain misleading information and voters have not always been aware of who supports or opposes a campaign message; and

WHEREAS, increased disclosure requirements for independent expenditures in City elections will promote transparency of independent expenditures so that voters are provided information on contributors, contributions and expenditures in a timely manner; and

WHEREAS, under applicable State law, including the cases of Stanson v. Mott (1976) 17 Cal.3d 206; and Vargas v. City of Salinas (2009) 46 Cal.4th 1, and California Government Code section 54964, ballot measure or candidate advocacy by a City, its officials or employees, or agents, or the expenditure of public funds or resources by City officials, employees or consultants to support or oppose a ballot measure or candidate, are prohibited;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES ORDAIN AS FOLLOWS:

DIVISION 2.

Chapter 1.16 is hereby added to the San Rafael Municipal Code as follows:

Chapter 1.16. Disclosure and Reporting Requirements for Independent Expenditures.

Section 1.16.010. Purpose.

The purpose of this Chapter is to promote transparency of independent expenditures so that voters are provided information on contributors, contributions and expenditures in a timely manner.

Section 1.16.020. Intent.

This Chapter is intended to supplement the Political Reform Act of 1974 (Title 9, Sections 81000 et seq., of the California Government Code). Unless a word or term is specifically defined in this Chapter, or the contrary is stated or clearly appears from the context, words and terms used herein shall have the same meaning as defined or used in the Political Reform Act of 1974, as supplemented by the Regulations of the Fair Political Practices Commission (hereafter “FPPC”) as set forth in Title 2, Division 6 of the California Code of Regulations, as the same may be, from time to time, amended.

Section 1.16.030. Definitions.

The following definitions shall be used for the purposes of interpreting the provisions of this Chapter:

A. “City candidate” means any person who is a candidate for an elective City office as defined in section F below.

B. “City Clerk” means the City Clerk of the City of San Rafael.

C. “City measure” means any local measure placed on the ballot by the City of San Rafael in an election which is governed by the Elections Code.

D. “City election” means any primary, general, runoff, special or recall election for an elective City office or a City measure.

E. “Committee” means any person or combination of persons who directly or indirectly does any of the following:

1. Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year.

2. Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or

3. Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees. A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214 of the Political Reform Act.

F. “Elective City office” means the office of Mayor, City Councilmember, City Clerk, or City Attorney of the City of San Rafael, or Trustee of the San Rafael Board of Education.

G. “Elective City officer” means any member of the City Council, the Mayor, the City Clerk, or the City Attorney of the City of San Rafael, or any Trustee of the San Rafael Board of Education, whether appointed or elected.

H. “Independent expenditure” means, for purposes of this chapter, either 1) an expenditure made by any person or committee in connection with a communication which expressly advocates the election or defeat of a clearly identified City candidate, but which is not made to or at the behest of that candidate or a committee controlled by that candidate; or 2) an expenditure made by any person or committee in connection with a communication which expressly advocates the passage or defeat of a clearly identified City measure, but which is not made at the behest of or reported as a contribution to a committee supporting or opposing that measure.

I. “Person” means any natural person, firm, joint venture, joint stock company, partnership, association, club, company, corporation, business trust, organization, or the manager, lessee, agent, servant, officer or employee of any of them, or any other entity which is recognized by law as the subject of rights or duties.

J. “Primarily formed committee” means a committee pursuant to subdivision (a) of Section 82013 of the Political Reform Act which is formed or exists primarily to support or oppose any of the following:

1. A single candidate.
2. A single measure.
3. A group of specific candidates being voted upon in the same city, county, or multi-county election.
4. Two or more measures being voted upon in the same city, county, multi-county, or state election.

Section 1.16.040. Reporting of Independent Expenditures.

Requirements for the disclosure and reporting of independent expenditures shall be as follows:

A. During the last ninety (90) days prior to the date of any City election, when any person or committee has made independent expenditures that cumulatively total \$1,000 or more, that person or committee shall report such independent expenditures as provided in this section.

B. One report required under this section shall be made by the filing with the City Clerk of a completed and signed FPPC form 496 (Independent Expenditure Report) to which is attached a copy of any communication funded by the independent expenditure. The report shall be filed with the City Clerk by personal delivery, guaranteed overnight mail, fax or e-mail within twenty-four (24) hours, or by noon of the next City business day whichever is earlier, after the independent expenditures have been made. For purposes of this chapter, an independent expenditure has been made when a payment is made in connection with the development, production, or dissemination of the communication, or when the communication is disseminated to the public, whichever is earlier. A new FPPC form 496, with a copy of the funded communication,

shall be filed with the City Clerk each time the person or committee makes additional independent expenditures that cumulatively reach the \$1,000 threshold.

C. In addition to the report required under subsection B of this section, whenever the Political Reform Act requires the filing of a completed and signed FPPC form 465 in any jurisdiction within the State of California, if the disclosures required in that filing include any independent expenditures (as defined in Section 1.16.030(H)) then, on the same day as, and in addition to, any other filing of that form 465 pursuant to the Political Reform Act, the form 465 shall also be filed with the City Clerk.

D. Whenever a report is filed with the City Clerk pursuant to subsections B and/or C of this section, a copy of the filing shall also be delivered within the same twenty-four (24) hours to 1) the Marin Independent Journal; and 2) all other City candidates for the elective City office that is the subject of the independent expenditures, or to all primarily formed committees supporting or opposing the City measure that is the subject of the independent expenditures. The delivery required hereunder shall be made either by personal delivery, guaranteed overnight mail, fax or e-mail. The report filed with the City Clerk shall include a proof of the service of copies required by this section. The proof of service shall comply with the requirements of Code of Civil Procedure Section 1013a.

E. The City Clerk shall post each report and attached communication filed pursuant to this chapter on the City's website on the same City business day as received or as soon thereafter as possible.

Section 1.16.050. Additional Requirements for Campaign Communications Funded By Independent Expenditures.

A. Campaign communications pertaining to a City candidate or an elective City office and funded by an independent expenditure shall contain a specific statement, on any material published, displayed or broadcast, that the communication was not authorized by a candidate, or a committee controlled by a candidate. Campaign communications pertaining to a City measure and funded by an independent expenditure shall contain a specific statement, on any material published, displayed or broadcast, that the communication was not authorized by any primarily formed committee supporting or opposing that measure.

B. Campaign communications funded by an independent expenditure shall disclose the identity of the person or committee making the independent expenditure, and the name, city and state of residence of each contributor of cumulative contributions totaling \$2,000 or more to the person or committee making the independent expenditure, listed in order of the size of their cumulative contributions, with the largest contributor listed first. If a listed contributor is a committee, the campaign communication shall also disclose the identity of the treasurer of the donor committee. For purposes of this section the term "cumulative contributions" shall be defined as provided in Government Code section 84502. The communication shall further include the following statement: "Additional information regarding the contributors of \$100 or more to this communication can be found at www.cityofsanrafael.org/government/city_clerk/elections.html."

C. Any person or committee making an independent expenditure or any person acting in concert with that person or committee shall be prohibited from creating or using a business entity, a noncandidate-controlled committee, or a nonsponsored committee to avoid, or that results in the avoidance of, the disclosure of any individual, industry, business entity, controlled committee, or sponsored committee as a funding source.

D. The disclosures required by this section shall be presented in a clear and conspicuous manner so as to give the reader, observer or listener adequate notice as follows:

1. For printed campaign communications that measure no more than 864 square inches (e.g. twenty-four 24 inches by 36 inches), all disclosure statements required by this section shall be printed using a typeface that is easily legible to an average reader or viewer, but in not less than 10 point type, in contrasting color to the background on which it appears. For printed campaign communications larger than 864 square inches, all disclosure statements shall constitute at least five percent of the height of the material and be printed in contrasting color.

2. For video broadcasts including television, satellite, internet, telephone and cable campaign communications, the information shall be both written and spoken either at the beginning or at the end of the communication, except that if the disclosure statement is written for at least five seconds of a broadcast of thirty seconds or less or ten seconds of a sixty second broadcast, a spoken disclosure statement is not required. The written disclosure statement shall be of sufficient size to be readily legible to an average viewer and air for not less than five seconds.

3. For audio, telephone call or radio advertisement campaign communications, the disclosures shall be spoken in a clearly audible manner at the same speed and volume as the rest of the telephone call or radio advertisement at the beginning of the communication.

E. For purposes of this chapter, “campaign communication” includes any of the following campaign related items:

1. More than 200 substantially similar pieces of campaign literature distributed within a calendar month, including but not limited to mailers, flyers, facsimiles, pamphlets, door hangers, e-mails, campaign buttons 10 inches in diameter or larger, and bumper stickers 60 square inches or larger.

2. Posters, yard or street signs, billboards, and similar items.

3. Television, cable, satellite and radio broadcasts.

4. Newspaper, magazine, internet website banners and similar advertisements.

5. 200 or more substantially similar live or recorded telephone calls made within a calendar month.

F. For purposes of this chapter, “campaign communication” does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, skywriting or other items on

which the statement required by this section can not be reasonably printed or displayed in an easily legible typeface; communications paid for by a newspaper, radio station, television station or other recognized news medium on its own behalf; and communications from an organization to its members other than a communication from a political party to its members.

Section 1.16.060. Violations; Penalties.

A. Violations. Any person who knowingly or willfully violates any provision of this Chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to five hundred dollars (\$500) may be imposed upon conviction for each violation. All other violations of this Chapter shall be deemed to be infractions and subject to the penalties set forth in Section 1.42.010 of this Code. Any violation of this Chapter shall also be deemed to be a public nuisance, and may be enforced by an action for injunction or civil penalties as provided in Section 1.42.020 of this Code or by imposition of administrative penalties in a sum not to exceed five hundred dollars (\$500) per violation. Except as otherwise specifically provided in this Chapter, all such remedies shall be alternative to or in addition to or in conjunction with, and not exclusive of, one another. The election of remedies shall be at the sole discretion of the City.

B. Notice of Violation; Right to Hearing.

1. Whenever the City Clerk shall determine that there is a prima facie showing of a violation of this chapter by an identifiable person or committee, the City Clerk may issue a Notice of Violation to that person or committee. The Notice of Violation shall advise that the City Clerk has determined there is probable cause to find that the identified person or committee has violated this chapter, and shall set forth a brief description of the facts constituting the violation. The Notice of Violation shall also disclose the amount of the penalty established for the violation of this chapter, and shall advise that the penalty shall be imposed by the City unless the notice recipient submits a written request for hearing to the City Clerk within seven (7) calendar days after the date of the Notice. The written request for hearing shall set forth all grounds upon which the person or committee requesting the hearing contends that this Chapter has not been violated or that the specified penalty should not be imposed by the City.

2. If no hearing is requested within the time provided herein, the City Clerk shall have the authority to impose the penalty specified in the Notice of Violation, and shall mail a Notice of Penalty to the violator. Such penalty shall be due and payable within thirty (30) days after the date of the Notice of Penalty.

3. Within two (2) business days after receipt of a written request for hearing under this section, the City Clerk, or his or her designee, shall mail to the accused violator and to the complainant(s), if any, a written Notice of Hearing setting forth the date and time of a hearing at which the accused violator and complainant(s) may present oral or written evidence concerning the alleged violation or the penalty proposed. Such hearing shall be set no earlier than five (5) business days after the date of the Notice of Hearing.

4. A hearing requested pursuant to this section shall be held by a hearing officer chosen from a panel of volunteers appointed by the City Attorney for such purpose pursuant

to guidelines to be established by resolution of the City Council. At such hearing, the hearing officer shall consider all the evidence presented by the City Clerk, the accused violator and the complainant(s), if any, concerning the alleged violation, and may consider any mitigating circumstances, including but not limited to efforts made to correct any violation. Upon conclusion of the hearing or within five (5) business days thereafter, the hearing officer shall issue a written decision setting forth findings as to whether the accused has violated this chapter, and imposing a specific penalty for any violations found. The decision of the hearing officer shall be final. Any person aggrieved by the decision of the hearing officer may obtain review of the decision by filing a notice of appeal with the Marin County Courts in accordance with the timelines and provisions set forth in California Government Code Section 53069.4.

C. Notwithstanding any other provision of this chapter, the City Clerk shall not be required to issue a Notice of Violation for any alleged violation of this chapter, nor shall the City in any instance be required to take any enforcement action pursuant to this Chapter.

D. In any case where the City Clerk determines that he or she may have a conflict of interest in the enforcement of this ordinance, the City Clerk may delegate such enforcement to independent counsel to be selected by the City Clerk in consultation with the City Attorney.

Section 1.16.060. Applicability to City.

The reporting requirements set forth in Sections 1.16.040 and 1.16.050 of this Chapter shall not apply to the City of San Rafael and its agents and employees while acting in the course and scope of their agency or employment with the City of San Rafael.

DIVISION 3.

If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Council hereby declares that it would have adopted the Ordinance and each section, subsection, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

DIVISION 4.

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the office of the City Clerk at least five (5) days prior to the Council meeting at which it is adopted.

This Ordinance shall be in full force and effect thirty (30) days after its final passage, and the summary of this Ordinance shall be published within fifteen (15) days after the adoption, together with the names of those Councilmembers voting for or against same, in the Marin Independent Journal, a newspaper of general circulation published and circulated in the City of San Rafael, County of Marin, State of California.

Within fifteen (15) days after adoption, the City Clerk shall also post in the office of the City Clerk, a certified copy of the full text of this Ordinance along with the names of those Councilmembers voting for or against the Ordinance.

ALBERT J. BORO, Mayor

ATTEST:

ESTHER C. BEIRNE, City Clerk

The foregoing Ordinance No.1887 was read and introduced at a Regular Meeting of the City Council of the City of San Rafael, held on the 16th day of August, 2010 and ordered passed to print by the following vote, to wit:

AYES: Councilmembers: Brockbank, Connolly, Heller, Levine & Mayor Boro

NOES: Councilmembers: None

ABSENT: Councilmembers: None

and will come up for adoption as an Ordinance of the City of San Rafael at a Regular Meeting of the Council to be held on the 7th day of September, 2010.

ESTHER C. BEIRNE, City Clerk