

MEETING RECOMMENDATIONS



DATE: June 28, 1995
DEPARTMENT: Legal
AUTHOR: Anita Sheldon
TITLE: City Recorder
TYPE OF ITEM: Legislative

SUMMARY RECOMMENDATIONS: Pass and adopt an ordinance amending Section 3-1-16 and adopting new sections of the Park City Municipal Code to clarify reporting of campaign expenses and to comply with new state disclosure law.

DESCRIPTION:

A. Topic: Ordinance amending Title 3, Chapter 1 of the Park City Municipal Code.

B. Background: In December, 1991, the City Council passed and adopted Ordinance 91-22, a portion of which dealt with campaign finance reporting, which is codified in the Park City Municipal Code as Section 3-1-16. That ordinance is not as clear or as comprehensive as it could be and deserves technical and substantive review prior to the 1995 campaign season.

C. Analysis: In February, 1995 the legislature passed HB47 requiring third class cities (with populations in excess of 10,000) to adopt an ordinance establishing specific campaign finance disclosure requirements by August 1, 1995. While Park City is not regulated by the new legislation, and had already adopted a campaign finance disclosure ordinance, our ordinance does not meet what appear to be reasonable requirements of this new legislation. Under the statute, larger cities must define "contributions" and "expenditures" in their campaign disclosure laws. This seems to be a reasonable addition to our ordinance, especially in light of the controversy associated with in kind and anonymous campaign contributions during the last County election. Section 3-1-16 of the Park City Municipal Code requires a report of individual campaign contributions of \$100 or more. That standard is somewhat lower than the requirement in the state ethics code, and HB47, which requires reporting of donations of \$50 or more.

Additionally, during the 1993 campaign, it came to light that the multiple disclosure reports required by current Section 3-1-16, seemed unnecessary and possibly redundant. It made more sense to file a campaign finance disclosure report before each election and a final report after the

general election (or after the primary if the candidate is eliminated in the primary). Current Section 3-1-16 was also unclear on whether contributions of more than \$50 should be reported or if \$50 was the cut-off. Language has been added to clarify that the amount to be reported is \$50 or more.

Staff proposed a draft campaign finance ordinance for Council's July 6, 1995 meeting. Council held a public hearing, received public input, and vigorously discussed that draft. At Council's direction, staff has revised the draft ordinance to simplify certain provisions, to remove suggested language setting contribution and expenditure limitations and to add recitals to reflect Council's desire to cut excessive spending on municipal campaigns.

D. Department Review: Legal Department

ALTERNATIVES:

A. Consider the matter and direct staff regarding policy concerns addressed above. This is the recommended action.

B. Continue the Item: Several candidates have already announced their intention to run for City Council and have begun to campaign. Delay at this time would obviate the opportunity to regulate the 1995 election.

C. Direct staff to table the matter during this election season and address it later. Same as B above.

D. Do nothing. Same as B above.

SIGNIFICANT IMPACTS: This ordinance would add a great deal more clarity to the campaign disclosure rules and would create an obligation to disclose "in-kind" contributions in the same manner as monetary contributions. It would prohibit anonymous cash contributions in excess of \$50. Requirements for having candidates open a separate account to assist in tracking contributions and expenditures are also included.

CONSEQUENCES OF NOT TAKING THE RECOMMENDED ACTION: Less public disclosure of campaign finance information.

RECOMMENDATION: Pass and adopt the ordinance amending Section 3-1-16 of the Municipal Code of Park City, Utah, to clarify reporting of campaign contributions and expenditures.

ORD. 95-__

AN ORDINANCE AMENDING SECTION 3-1-16 OF THE MUNICIPAL CODE OF PARK CITY, UTAH, TO CLARIFY REPORTING OF CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

WHEREAS, the City Council enacted Ordinance 91-22 which included Section 3-1-16 Campaign Expenses to be Reported; and

WHEREAS, the ordinance would be well-served by technical amendments to clarify the Council's intent; and

WHEREAS, in keeping with the spirit of open, honest, fair and equitable election campaigns sought to be promoted by the City Council, all candidates and candidate's election committees are requested and urged to limit total expenditures, including candidate's personal expenditures; and

WHEREAS, the Council has determined that increased campaign finance disclosure, at times relevant to the public's need for information about candidates for public office, is in the public interest,

NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:

SECTION 1. The following definitions shall be added to Section 3-1-2 of the Municipal Code of Park City, Utah:

(A) **BUSINESS ENTITY** - any business, proprietorship, firm, partnership, person in representative or fiduciary capacity, association, venture, trust or corporation.

(B) **CANDIDATE** - any person who:

- (1) Files a declaration of candidacy for an elected office of the City; or
- (2) Received contributions or made expenditures or consents to another person receiving contributions or making expenditures with a view to bringing about such person's nomination or election to such office; or
- (3) Causes on his behalf, any written material or advertisement to be printed, published, broadcast, distributed or disseminated which indicates an intention to seek such office.

(C) **CONTRIBUTION** -

- (1) any of the following, when done for political purposes:

(i) a gift, subscription, donation, unpaid or partially-unpaid loan, advance, or deposit of money or anything of value to, or on behalf of, a candidate (or a candidate's election committee)

(ii) an express, legally-enforceable contract, promise, or agreement to make a gift, subscription, donation, loan, advance, or deposit of money or anything of value to or on behalf of a candidate (or a candidate's election committee);

(iii) any transfer of funds from a political committee, a party committee, another candidate, an officeholder, or a campaign committee to a candidate (or a candidate's election committee);

(iv) compensation paid by any person or committee, other than the candidate (or the candidate's election committee), for personal services rendered for, but without charge to, the candidate or the candidate's election committee;

(v) goods or services provided at less than fair market value to, or for the benefit of, a candidate (or a candidate's election committee).

(2) For the purposes of this Chapter, contributions other than money or its equivalent shall be deemed to have a value equivalent to the fair market value of the contribution.

(3) "Contribution" does not include:

(i) services provided without compensation by an individual or individuals volunteering their time on behalf of a candidate (or a candidate's election committee);

(ii) money lent to a candidate or a candidate's election committee, at market rate, in the ordinary course of business.

(D) EXPENDITURE:

(1) any disbursement from receipts or from the separate bank account required in Section 3-1-16.

(2) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money or anything of value, made by or on behalf of a candidate (or the candidate's election committee) for political purposes;

(3) an express, legally-enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money or

anything of value, by or on behalf of a candidate (or the candidate's election committee) for political purposes;

(4) a transfer of funds between political or party committees and a candidate's election committee; or

(5) goods or services provided to or for the benefit of another candidate or another candidate's election committee for political purposes at less than fair market value.

(E) INTEREST - means direct or indirect pecuniary or material benefit accruing to a city officer or employee as a result of an official act or action by or with the City, except for such contracts or transactions which by their terms and by the substance of their provisions confer the opportunity and right to realize the accrual of similar benefits to all other persons and/or property similarly situated. For the purposes of this Chapter, a city officer or employee shall be deemed to have an interest in the affairs of:

(1) Any person related to him by blood or marriage in a degree closer than the fourth degree of consanguinity or affinity (determined by the civil law method), and a divorce or separation between spouses shall not be deemed to terminate any such relationship;

(2) Any person or business entity with whom a contractual relationship exists with the city officer or employee;

(3) Any business entity in which the city officer or employee is an officer, director, or member having a financial interest in, or employed by;

(4) Any business entity in which the stock of, or legal or beneficial ownership of, in excess of five percent (5%) of the total stock or total legal and beneficial ownership, is controlled or owned directly or indirectly by the city officer or employee.

(F) OFFICIAL ACT OR ACTION - any legislative, administrative, appointive or discretionary act of any officer or employee of the City or any agency, board, committee or commission thereof.

(G) POLITICAL PURPOSE - an act done with intent or in such a way as to influence or tend to influence, directly or indirectly, the election of a candidate or the disposition any issue on the ballot at a municipal election.

SECTION 2. The following is hereby added to Section 3.1 as Subsection 16 and the remaining sections will be renumbered accordingly:

3-1-16. SEPARATE BANK ACCOUNT REQUIRED. Each candidate (or candidate's election committee) shall deposit any monetary contribution received in one or more separate accounts in a financial institution. The account(s) must be dedicated only to the purpose of financing the campaign of the candidate. A candidate or a candidate's election

committee may not deposit or mingle any contributions received in a personal or business account.

SECTION 3. SECTION 3-1-16 OF THE MUNICIPAL CODE OF PARK CITY, UTAH, IS HEREBY RENUMBERED AS SECTION 3-1-17 AND AMENDED AS FOLLOWS:

3-1-17. CAMPAIGN CONTRIBUTIONS AND EXPENSES DUTIES TO BE REPORTED. Every candidate running for the office of Mayor or City Council shall file ~~two~~ a sworn election campaign expenditure ~~expense~~ statements, ~~one to be filed with the city recorder within 15 calendar days preceding the date of the primary election, and one to be filed with the city recorder within 15 calendar~~ no more than 15 nor less than eight days after preceding the date of the primary election. Those candidates eliminated in the Primary Election must file a final sworn election campaign contributions and expenditure ~~expense~~ statement within 15 days after the Primary Election.

Every candidate eligible for the office of Mayor or City Council in the general election shall file ~~two~~ sworn election campaign contributions and expenditure ~~expense~~ statements, ~~one to be filed with the city recorder within 15 calendar days preceding the date of the general municipal election, and one to be filed with the city recorder within 15~~ no more than 15 nor less than eight calendar days after preceding the date of the general municipal election.

All candidates in the General Election must file a final sworn election campaign contribution and expenditure statement within 15 days after the General Election.

Sworn contribution and expenditure ~~The disclosure~~ statements shall be submitted to the city recorder and shall be available to the public for review in the office of the city recorder. The sworn statements shall state election and campaign expenses, the names of persons making campaign contributions, and the carry-over total of the statement from the previous reporting period, as outlined below:

(A) A list of each contribution in excess of ~~One Hundred Dollars (\$100)~~ of Fifty Dollars (\$50.00) or more received by, or on behalf of, the candidate or his/her election ~~designated~~ campaign committee, the name and address of each contributor, and the date on which each such contribution was received.

(B) An aggregate total of all contributions less than of ~~One Hundred Dollars (\$100)~~ or less Fifty Dollars (\$50.00) received by, or on behalf of, a candidate or his/her election ~~designated~~ campaign committee.

(C) A list of expenditures made and obligations incurred as a part of the campaign effort, the name and address of every recipient to whom disbursement was made, and the purpose of the expenditure made or obligation incurred and the amount and date of payment. The disposition of any surplus ~~moneys~~ monies shall also be reported.

SECTION 4. THE FOLLOWING SHALL BE ADDED AS SECTION 3-1-18 AND THE BALANCE OF TITLE 3, SECTION 1 SHALL BE RENUMBERED ACCORDINGLY:

3-1-18. CONTRIBUTIONS TO CANDIDATES - LIMITATIONS

(A) No person shall make cash contributions, the total of which exceeds fifty dollars, during any one campaign, to any candidate or his or her authorized election campaign committee, with respect to any election for City office; however, there shall be no limit as to the amount contributed by a person or entity to an election committee or candidate if that contribution is made in the form of a personal or certified check or bank draft.

(B) The acceptance of anonymous contributions is prohibited. Any anonymous contributions received by a candidate or election committee shall be transmitted to the City Treasurer for deposit in the general fund.

SECTION 5. THIS ORDINANCE SHALL TAKE EFFECT UPON ITS PUBLICATION.

DATED this ____ day of _____, 1995.

PARK CITY MUNICIPAL CORPORATION

BRADLEY A. OLCH, MAYOR

ATTEST:

ANITA L. SHELDON, CITY RECORDER

APPROVED AS TO FORM:

JODI HOFFMAN, CITY ATTORNEY