



CITY OF KIRKLAND
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MEMORANDUM

To: David Ramsay, City Manager
From: Robin S. Jenkinson, City Attorney
Date: March 31, 2009
Subject: Campaign Contribution Limits/Proposed Ordinance

At the March 3, 2009, Council Meeting, staff was asked to return with the draft ordinance which had previously been prepared to establish campaign contribution limits for City Council elections. The City Council had previously expressed interest in campaign contribution limitations, but wanted to provide adequate time to carefully develop a proposal. Legal staff worked with Council Member Dave Asher in looking at the models in the two local jurisdictions with such limitations, Seattle and King County, and adapting them to Kirkland.

Background

When the subject of campaign contribution limitations was last before the City Council, staff was encouraged to examine how such a program might be implemented without incurring significant administrative costs and requiring staff oversight. After examining the programs in Seattle and King County, the attached proposed ordinance, making certain adjustments to those programs, was prepared. Adjustments to the Seattle and King County models include: focusing on candidates rather than the contributors; relying on campaign filings already required by the Washington State Public Disclosure Commission (PDC); and utilizing the City's Hearing Examiner system. With these adjustments, the proposed ordinance creates a more modest, but potentially effective program.

Limits on the Acceptance of Campaign Contributions

One respect, in which the proposed ordinance differs from either the Seattle or King County campaign contribution programs, is that the limitations are placed on the candidate, not on contributor(s). Seattle and King County limit the amount that may be contributed to candidates. This is a subtle, but important difference and goes to the issue of enforcement. Under the proposed ordinance, a candidate for the City Council could not accept or receive a campaign contribution from any person (individual, business, or corporation) in excess of the contribution limit.

The contribution limit in the ordinance is pegged to that established by the PDC for King County office candidates. The 2009 limit is \$800. At the beginning of each even-numbered calendar year, the PDC is to adjust these limits based on changes in economic conditions. To see the current contribution limit set by the PDC, visit the PDC website: www.pdc.wa.gov/, click on the link to "Filer Resources," select "State Contribution Limits" under "2009 Elections" (on the right-hand lower corner of the page). This means it would not be necessary for the City Council or

staff to revisit the contribution limits or to amend the Kirkland Municipal Code (KMC) Chapter where these would be adopted by reference, Chapter 3.12.

There are exceptions to the contributions dollar limit for: contributions from a candidate's own resources; the value of volunteer services; and, with some limitations, surplus funds. The contribution limit on the amount that a City Council candidate may accept or receive is based upon an "election cycle." For purposes of the proposed ordinance, an election cycle is defined as:

. . . the combination of the general or special election and the primary election for the office in question and begins on the date an individual becomes a candidate for such office. . . and ends on the date that a candidate files his or her final report pursuant to RCW 42.17.080(2).

Apart from a few terms which are specially defined, the proposed ordinance relies largely on the relevant definitions found in state law and on the interpretations of these definitions provided by rule or order by the PDC.

Enforcement

Another way in which the proposed ordinance varies from the King County and Seattle models is the vehicle for enforcement. In Seattle, candidates must file campaign disclosure reporting with the PDC and the Seattle City Clerk. The Seattle Ethics and Elections Commission is responsible for enforcing the City's Elections Code. In King County, candidates for Executive, Assessor, Sheriff and County Council file duplicate copies of what their campaigns file with the PDC with the King County Elections Division. When a candidate exceeds the campaign contribution limit, the campaign coordinator in the Records, Elections and Licensing Services Division notifies the campaign treasurer by telephone of the overage. If a campaign fails to comply with the limits after notification, a certified letter is sent. If the campaign still does not comply, the matter is referred to the Prosecuting Attorney's Office.

The proposed ordinance does not require any separate filing of campaign contribution forms with the City. Interested persons could monitor whether any contribution amounts accepted by candidates for the Kirkland City Council exceeded the limits set by KMC Chapter 3.12, by checking the PDC website. If a candidate accepts a contribution which exceeds the limits; an individual may file a sworn complaint with the City Clerk for referral to the City of Kirkland Hearing Examiner.

The proposed ordinance outlines the required content of and process for filing a complaint. The Hearing Examiner has the authority to summarily dismiss a meritless or frivolous complaint. The Hearing Examiner may also dismiss the complaint if it is determined that a violation of contribution limit was inadvertent and minor and has been corrected to the satisfaction of the Hearing Examiner. If the Hearing Examiner determines that the complaint appears to have merit, there is a process for expedited review. Violations of KMC 3.12 would be subject to a civil penalty of up to three times the amount of the illegal contribution accepted.

Please let me know if you have any questions.

ORDINANCE NO. 4190

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LIMITATIONS ON CONTRIBUTIONS FOR CITY COUNCIL CAMPAIGNS AND CREATING A NEW CHAPTER 3.12 OF THE KIRKLAND MUNICIPAL CODE.

The City Council of the City of Kirkland do ordain as follows:

Section 1. The Kirkland City Council makes the following findings:

Findings in support of time limitation periods in Chapter 3.12 of the Kirkland Municipal Code: Information about complaints filed under this chapter and the resolution of those complaints is information that is relevant to the residents of Kirkland seeking to make informed votes. To help provide voters with this information, the Kirkland City Council finds that, when possible, complaints should be resolved before the final election for office. The time limitations in this chapter have been in some cases shortened to help resolve as many complaints as possible before the final election. The Kirkland City Council finds that this practice is similar to the state's practice, where many of the timelines in the elections statute are shortened. See, e.g., Task force Comments to RAP 5.2(d), available in 2A WASHINGTON PRACTICE, RAP 5.2, Time Allowed to File Notice (2008) (identifying elections statutes that provide for shortened appeal period).

Section 2. A new Chapter 3.12, "Limits on Campaign Contributions," is hereby added to Title 3 of the Kirkland Municipal code, to read as follows:

Chapter 3.12
LIMITS ON CAMPAIGN CONTRIBUTIONS

3.12.010 Definitions.

For purposes of this chapter, the definitions found in RCW 42.17.020 as currently enacted or as hereafter amended or recodified are hereby adopted by reference. In adopting these definitions by reference, the City also adopts the interpretation of these definitions published in Title 390-05 WAC or otherwise issued by the Washington State Public Disclosure Commission through Declaratory Orders, Policy Statements, and Commission Interpretations, except that:

(a) "Election cycle" means the combination of the general or special election and the primary election for the office in question and

begins on the date an individual becomes a candidate for such office as defined in subsection (e) below and ends on the date that candidate files his or her final report pursuant to RCW 42.17.080(2).

(b) To “accept” or “receive” a contribution means the receipt of a contribution, deposit of funds with other campaign funds, and report of the contribution on required Public Disclosure Commission report(s). These terms do not apply to a situation in which a candidate receives a contribution and returns the contribution to the contributor within five business days of the date on which it is received by the candidate or political committee. This definition does not in anyway, affect the determination of the date a contribution is received, which is defined by Public Disclosure Commission policies.

(c) “Person” includes an individual, partnership, joint venture, public or private corporation, association, federal, state, or local governmental entity or agency however constituted, candidate, committee, political committee, political party, executive committee thereof, or any other organization or group of persons, however organized.

(d) “Public Disclosure Commission” means the Washington State Public Disclosure Commission, established under RCW 42.17.350, or its successor.

(e) “Candidate” means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first: (1) Receives contributions or makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office; (2) Announces publicly or files for office; (3) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or (4) Gives his or her consent to another person to take on behalf of the individual any of the actions in (1), (2) or (3) of this subsection. This is the definition of candidate in RCW 42.17.020 at the time of enactment of this ordinance. The City also adopts amended or recodified definitions of candidate along with interpretations of this definition published in Title 390-05 WAC or otherwise issued by the Public Disclosure Commission through Declaratory Orders, Policy Statements, and Commission Interpretations.

3.12.020 Application.

These limits shall apply to candidates in any primary, general or special election for the Kirkland City Council.

3.12.030 Contribution limits.

(a) No candidate for City Council shall accept or receive during the election cycle, campaign contributions totaling more than the contribution limit established by the Public Disclosure Commission for county office candidates in King County in the aggregate from any person.

(b) The per-election contribution limit established by the Public Disclosure Commission for county office candidates in King County shall be the election-cycle contribution limit on candidates for the Kirkland City Council.

(c) The limitations in this section shall not apply to:

(1) A candidate's contributions of his/her own resources to his/her own campaign;

(2) The value of volunteer services;

(3) Any publicly donated funds under provisions authorizing public funding of local campaigns; and

(4) Surplus funds, as defined in RCW 42.17.020(48), from a candidate's prior campaign and contributions received by a candidate in connection with a campaign for another office may be used by that candidate for the candidate's current campaign only to the extent that such funds are derived from contributions that were within the dollar limitations imposed by this chapter. If such funds are from a campaign not governed by this chapter, a candidate may use only so much of each contribution previously received as would have been allowable as a contribution under this chapter if it had applied to that campaign. The source of a candidate's surplus funds shall be determined to be derived from the most recent contributions received by such candidate or that candidate's political committee which in total equal the amount of the surplus funds.

(c) The limitations imposed by this section shall apply to all other contributions.

3.12.040 Adjustment of dollar amounts in chapter – adherence to Public Disclosure Commission established limits and schedule.

The amount of the contribution limit is adjusted to reflect periodic adjustments made by the Public Disclosure Commission for county office candidates in King County. The timing of the limitation changes shall take place as published by the Public Disclosure Commission and shall, from that time forward, form a new limit on contributions.

3.12.050 Complaint process.

(a) Any person who has knowledge of a violation of this chapter committed by any candidate or committee may file a complaint, in writing, under oath of the same with the City Clerk. Under oath means that the complaint includes a statement substantially as follows: "I declare under penalty of perjury of the laws of the State of Washington that the information in this complaint is true and correct," or that the complaint is subscribed and sworn to before a notary public or other official authorized to administer oaths. The complaint must set forth specific facts detailing the alleged violation, including: the amounts of the contributions accepted or received; the name of the candidate or committee receiving the contribution(s); and the name(s) and address(es) of the contributor(s), if known or reported; and the

names and telephone numbers of persons having knowledge of the alleged violation. The complaint must include the name, address, and telephone number of the person submitting the complaint.

(b) The City Clerk shall refer the complaint to the Hearing Examiner. The City Clerk shall also send a copy of the complaint to the candidate or committee named in the complaint as the alleged violator. Within five (5) calendar days of receiving the complaint, the Hearing Examiner shall make a determination that the complaint appears to have merit or is frivolous and without merit pursuant and communicate his or her decision in writing to the person who made the complaint, to the candidate or committee named in the complaint as the alleged violator, and to the City Clerk.

(1) The Hearing Examiner shall dismiss the complaint if the Hearing Examiner determines that all of the alleged facts, if true, do not constitute a violation; or

(2) The Hearing Examiner determines that there are no reasonable grounds to believe that a violation has occurred; or

(3) The Hearing Examiner determines that the violation was inadvertent and minor and has been largely corrected to the satisfaction of the Hearing Examiner.

(c) If the Hearing Examiner determines the complaint appears to have merit and the complaint relates to conduct during the pending election and is received at least 30 days before the final election for the office, the Hearing Examiner shall provide expedited review and a public hearing on the complaint shall be set not less than fifteen (15) days of the determination, absent a showing of good cause for a different date or a stipulation of the parties.

(1) In other instances, the public hearing shall be set within thirty (30) days of the determination.

(d) At least fifteen (15) days prior to the date set for hearing, the Hearing Examiner will notify, in writing, the person who made the complaint and candidate and/or committee complained against, of the public hearing which will be held to determine if a violation has occurred. The candidate and/or committee complained against shall have the right to file a written answer to the complaint and to appear at the hearing with or without legal counsel, submit testimony, be fully heard and to examine and cross-examine witnesses.

(e) Hearings conducted by the Hearing Examiner shall be informal, meaning that the Hearing Examiner shall not be bound by the strict rules of evidence prevailing in courts of law or equity. The Hearing Examiner may call witnesses on his or her own motion and compel the production of books, records, papers, or other evidence needed by the parties. To that end, the Hearing Examiner shall issue subpoenas and subpoenas duces tecum on his or her own. All testimony shall be under oath administered by the Hearing Examiner. The Hearing Examiner may adjourn the hearing from time to time in order to allow for the orderly presentation of evidence. The Hearing Examiner shall prepare an official record of the hearing including all testimony, which

shall be recorded by mechanical or electronic device, and exhibits; provided that the Hearing Examiner shall not be required to transcribe such records unless presented with a request accompanied by payment of the cost of transcription.

(f) Not more than ten (10) calendar days after the conclusion of the hearing the Hearing Examiner shall, based upon a preponderance of the evidence, make and fully record in his or her permanent records, findings of fact, conclusions of law, determination of a recommended disposition, and order shall be forwarded by certified mail, or personal service, to the person who made the initial report, the candidate and/or committee complained against at the addresses as given by these persons to the Hearing Examiner, and the City Clerk.

3.12.060 Appeal from the imposition of a penalty.

(a) Any candidate and/or committee found, by final written order of the Hearing Examiner, to be in violation of this chapter may seek review of the Hearing Examiner's order and any other decision based upon that order in the following manner:

(1) Civil penalty ordered at least fifteen (15) days before the final election for office: If the Hearing Examiner orders a candidate and/or a committee to pay a civil penalty at least fifteen (15) days before the final election for office, the candidate and/or committee may seek a writ of review from the Superior Court pursuant to Chapter 7.16 RCW, within fourteen (14) days of the date of the Hearing Examiner's order.

(2) Civil penalty ordered in other instances: If the Hearing Examiner orders a candidate and/or a committee to pay a civil penalty in any other instances, the candidate and/or committee may seek a writ of review from the Superior Court pursuant to Chapter 7.16 RCW, within thirty (30) days of the Hearing Examiner's order.

3.12.070 Hearing Examiner Dismissal.

If the Hearing Examiner dismisses the complaint, the person who filed the complaint may seek a writ of review from the Superior Court pursuant to Chapter 7.16 RCW, within fourteen (14) days of the date of the Hearing Examiner's dismissal.

3.12.080 Penalties.

The violation or failure to comply with the provisions of this chapter shall constitute a civil violation for which a monetary fine of up to three (3) times the amount of the illegal contribution in violation KMC 3.12.030(1) may be imposed on the candidate and/or committee that accepted the contribution.

Section 3. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance, or the application of the provision to other persons or circumstances is not affected.

Section 4. This ordinance shall be in force and effect five days from and after its passage by the Kirkland City Council and publication pursuant to Section 1.08.017, Kirkland Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Passed by majority vote of the Kirkland City Council in open meeting this _____ day of _____, 2009.

Signed in authentication thereof this _____ day of _____, 2009.

MAYOR

Attest:

City Clerk

Approved as to Form:

City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4190

AN ORDINANCE OF THE CITY OF KIRKLAND RELATING TO LIMITATIONS ON CONTRIBUTIONS FOR CITY COUNCIL CAMPAIGNS AND CREATING A NEW CHAPTER 3.12 OF THE KIRKLAND MUNICIPAL CODE.

SECTION 1. Makes findings in support of KMC 3.12.060(A)(1).

SECTION 2. Establishes a new Chapter 3.12 of the Kirkland Municipal Code relating to Council limits on campaign contributions.

SECTION 3. Provides a severability clause for the ordinance.

SECTION 4. Authorizes publication of the ordinance by summary, which summary is approved by the City Council pursuant to Section 1.08.017 Kirkland Municipal Code and establishes the effective date as five days after publication of summary.

The full text of this Ordinance will be mailed without charge to any person upon request made to the City Clerk for the City of Kirkland. The Ordinance was passed by the Kirkland City Council at its meeting on the _____ day of _____, 2009.

I certify that the foregoing is a summary of Ordinance _____ approved by the Kirkland City Council for summary publication.

City Clerk