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MEMORANDUM OF LAW

DATE: May 28, 2013

TO: The Honorable Mayor and City Councilmembers

FROM: City Attorney

SUBJECT: Effective Date of Ordinances Amending the City's Campaign Laws

INTRODUCTION

The Committee on Rules and Economic Development has asked whether an ordinance amending the San Diego Municipal Code to set campaign contributions limits is an ordinance “relating to an election” that can be introduced and adopted on the same day.

QUESTION PRESENTED

Is an ordinance amending the San Diego Municipal Code to set campaign contributions limits an ordinance “relating to an election” that is effective on the day of introduction pursuant to San Diego Charter sections 275 and 295(d)?

SHORT ANSWER

No. The phrase “relating to an election” has been interpreted by the California Court of Appeal to be limited to acts which relate to the actual conduct of an election or which pertain to ministerial duties in connection with an election. Ordinances that relate to the calling or conduct of an election are not subject to referendum. An ordinance establishing campaign contribution limits does not directly relate to the conduct of an election. Instead, it is a legislative act for which the people have the power of referendum. Accordingly, an ordinance relating to campaign laws would be effective not less than thirty days after final passage of the ordinance by the City Council.

ANALYSIS

I. THE CALIFORNIA CONSTITUTION PROVIDES A BROAD POWER OF REFERENDUM.

In general, ordinances that become effective immediately are not subject to referendum. The initiative and referendum powers are set forth in the California Constitution and are based on the theory that “all power of government ultimately resides in the people . . . not as a right granted the people, but as a power reserved by them.” *Ortiz v. Board of Supervisors*, 107 Cal. App. 3d 866, 870 (1980).

Article II, section 9, subdivision (a), of the California Constitution guarantees the power of referendum, with certain exceptions. One of the exceptions is for statutes “calling elections”:

The referendum is the power of the electors to approve or reject statutes or parts of statutes except urgency statutes, *statutes calling elections*, and statutes providing for tax levies or appropriations for usual current expenses of the State. (Emphasis added.)

Cal. Const. art. II, § 9.

Similarly, California Government Code section 25123 provides that County ordinances take effect thirty days after their final passage, except the following ordinances, which take effect immediately: (a) those *calling or otherwise relating to an election*; (b) those specifically required by this code or by any other law to take immediate effect; (c) those fixing the amount of money to be raised by taxation, or the rate of taxes to be levied; (d) those for the immediate preservation of the public peace, health, or safety, which shall contain a declaration of the facts constituting the urgency, and shall be passed by a four-fifths vote of the board of supervisors; (e) those specifically relating to the adoption or implementation of a memorandum of understanding with an employee organization; and (f) those relating to salaries and other compensation of officers, other than elected officers, and employees. *Id.* (Emphasis added.)¹

The California Constitution uses the phrase “calling elections” while the California Government Code 25123(a) adds the phrase “relating to an election.” These phrases were discussed by a California appellate court in *Ortiz v. Board of Supervisors*, 107 Cal. App. 3d 866 (1980) when analyzing whether a redistricting ordinance could be considered “relating to an election” and, therefore, not subject to referendum. In *Ortiz*, the court stated:

¹ California Government Code section 25123 governs ordinances adopted by a county board of supervisors. Similar language is found in Government Code section 36937, which governs ordinances adopted by a city council. (*See*, Govt. Code § 36937(a), which provides that ordinances “relating to an election” take effect immediately.) The San Diego Charter appears to have combined the California Constitution and the Government Code phrasing by using “calling or relating to elections.”

A law “calling an election” is one of the exceptions to the referendum power under California Constitution article II, section 9, subdivision (a). A redistricting ordinance does not call an election. Nowhere do the constitutional provisions on the referendum use the term “relating to an election” as is found in Government Code section 25123. If “relating to an election” were construed to include a redistricting ordinance, it would result in a restriction of the referendum power reserved to the people.

Ortiz, 107 Cal. App. 3d at 872.

The Court stated that it must liberally construe the referendum power to promote the democratic process. *Id.* at 870. Moreover, “[i]f doubts can reasonably be resolved in favor of the use of this reserve power, courts will preserve it.” *Id.* at 871. Consequently, the Court narrowly interpreted the phrase “relating to an election” in Government Code section 25123(a) “to be limited to those acts which technically relate to the actual conduct of an election or which pertain to ministerial duties in connection with an election such as prescribing voting precincts or setting hours for voting.” *Id.* at 872. The Court further noted the Legislature cannot reduce the referendary power reserved to the people by enlarging or increasing the type of legislation which becomes effective immediately. *Id.* at 873.

II. ORDINANCES ESTABLISHING CAMPAIGN CONTRIBUTION LIMITS DO NOT “RELATE TO ELECTIONS” UNDER CHARTER SECTION 295.

The San Diego Charter provides that most ordinances may be passed by the Council only after twelve calendar days have elapsed from the day of their introduction. Charter § 275. Thereafter, ordinances are effective “not less than thirty calendar days” from the date of final passage. Charter § 295(d). The thirty days provide an opportunity for the people of the City to exercise the power of referendum. Charter § 23. Similar to the California Constitution, the Charter provides that certain ordinances may take effect without the thirty-day period for referendum. Charter § 295(d). Those ordinances are enumerated in the Charter as those making the annual tax levy, the annual appropriation ordinances, ordinances “calling or relating to elections,” and emergency measures. *Id.*

The City Council “calls” the primary, general, and special elections by ordinance. These ordinances set forth the purpose and date of the election, and are passed on the day of introduction. With respect to ordinances “relating to elections,” in 1997 this Office advised that amendments to the San Diego Municipal Code relating to referenda and recall elections may be introduced and adopted on the same day. *See*, 1997 City Att’y MOL 490 (ML-97-32; Nov. 21, 1997). The memorandum noted that while the phrase “relating to” is very broad, the Charter requires a “direct relationship or connection to elections, rather than a remote relationship or connection.” In particular, the memorandum concluded that ordinances related to referenda and recall are different than ordinances regarding campaign finance laws. That is, campaign finance ordinances do not directly relate to elections, but more directly relate to campaigns. *Id.*

Accordingly, the memorandum concluded that amendments to the Municipal Code relating to campaign finance are not effective immediately.²

This conclusion is consistent with the rationale in *Ortiz* which held that ordinances relating to elections are those which technically relate to the actual conduct of an election or which pertain to ministerial duties in connection with an election, such as prescribing voting precincts or setting hours for voting. To hold otherwise would impermissibly reduce the power of referendum guaranteed by the California Constitution.

CONCLUSION

The City Council will be considering an ordinance amending the Municipal Code regarding campaign contribution limits by political parties to City candidates. As discussed above, the ordinance does not relate to the actual conduct of an election. Instead, the ordinance relates to campaign finance laws, only indirectly related to elections. Accordingly, an ordinance amending the Municipal Code relating to campaign finance may be passed by the Council not less than twelve days after introduction. Thereafter, the ordinance is effective “not less than thirty calendar days” from final passage. This will preserve the power of referendum to the people as required by the California Constitution and the holding in *Ortiz*.

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By /s/ Catherine M. Bradley
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² In light of the rationale in *Ortiz*, a court could conclude that an ordinance amending the Municipal Code relating to initiatives, referenda, recall, and other election matters, may not take effect immediately (i.e., any doubts in favor of reserving the power of referendum should be resolved in favor of preserving that power). Accordingly, we recommend that ordinances amending the Municipal Code that relate to elections take effect not less than thirty days after final passage, unless the amendments clearly relate to the conduct of an election or ministerial duties in connection with an election.