



# CITY OF HAYWARD AGENDA REPORT

AGENDA DATE 1/20/98

AGENDA ITEM \_\_\_\_\_

WORK SESSION ITEM WS#3

To: Mayor and City Council

From: City Attorney

Subject: **PROPOSITION 208 UPDATE: THE IMPACT OF CALIFORNIA PROLIFE COUNCIL POLITICAL ACTION COMMITTEE V. JAN SCULLY**

## **Recommendation:**

It is recommended that the City Council review and comment upon the following information.

## **Background:**

On January 5, 1998, the Eastern District of the California United States District Court published an opinion as to the constitutionality of Proposition 208, the campaign finance reform initiative that was passed by the voters in November 1996. The court found those portions of Proposition 208 that impose contribution limits to political campaigns unconstitutional, holding that they violate the federal constitution's first amendment right to free speech.

The court issued a preliminary restraining order enjoining the FPPC from enforcing any of the provisions of Proposition 208, and ordered the FPPC to seek review in the California Supreme Court for a determination as to whether those portions of Proposition 208 not dealing with contribution limits are severable, and therefore subject to reformation.

Due to this development, the City's recently adopted campaign expenditure limit ordinance (HMC § 2-13.00) is no longer valid and enforceable. (A copy of the ordinance is attached for your convenience.) The City's ordinance was adopted pursuant to an enabling provision in Proposition 208, which was struck down by the *Scully* decision.

## **Discussion:**

At this point in time, the City could proceed in one of several ways. It could simply suspend operation of the ordinance and take no further action while the *Scully* case is pending. Defendants in the matter have indicated they will appeal the District Court's decision, and ask for an order allowing enforcement of Proposition 208 pending the outcome. A decision on whether or not the court's order will be stayed should be made relatively soon.

While the court in *Scully* found Proposition 208's contribution limits unconstitutional, it did so because it found they were too low and would interfere with a person's ability to campaign in California. Campaign limits in and of themselves may not be unconstitutional, even though they are subject to strict scrutiny. Government Code section 81013 authorizes cities to adopt their own campaign regulations so long as they do not interfere with the general provisions of the Political Reform Act. The City could conduct a study to determine whether campaign contribution limits would serve a compelling interest for the City of Hayward, and if so, what limit would be appropriate. Based upon this information, the City could adopt a new ordinance.

The City could also consider adopting an entirely voluntary campaign program, in which a candidate agrees to both contribution and expenditure limits, or simply expenditure limits, with a proviso that a decision to accept these limits would be disclosed on the ballot in some manner. It should be noted, however, that under the *Scully* court's reasoning any such program might be subject to challenge. If Council wishes to pursue this option, staff should be directed to prepare a draft ordinance or program for Council's consideration.

Finally, although the court expressly found the contribution limit aspect of Proposition 208 unconstitutional, it enjoined enforcement of all of its provisions. It should be noted that requirements as to how to dispose of certain funds, officeholder accounts, and all the other strictures of Proposition 208 are currently invalid. How the FPPC will react to this development, and how it will interpret and enforce campaign regulations is entirely unclear at this point. We will be contacting the FPPC before Tuesday's worksession to ascertain what position they are taking with respect to enforcement at this time.

### **Conclusion**

As of this writing, Proposition 208 is not enforceable. Whether any or all of its provisions ultimately will be upheld is unknown at this time. Meanwhile, the City's campaign expenditure limits ordinance, in its current form, is invalid. Council should direct staff to either suspend the ordinance pending the outcome of the litigation, or to consider and recommend other permissible forms of campaign regulation.

### **Recommended by:**



Michael O'Toole, City Attorney

### **Approved by:**



Jesús Armas, City Manager

AN ORDINANCE AMENDING CHAPTER 2 OF THE  
HAYWARD MUNICIPAL CODE BY ADDING SECTION 13  
THERE TO, ESTABLISHING A VOLUNTARY CAMPAIGN  
EXPENDITURE LIMIT FOR ELECTIONS TO CITY OFFICES

WHEREAS, monetary contributions to political campaigns are a legitimate form of participation in the political process, but the financial strength of individuals or organizations should not permit them to exercise a controlling influence on the election of candidate; and

WHEREAS, the rapidly increasing costs of political campaigns have forced many candidates to raise larger and larger percentages of money from interest groups with a specific financial stake in matters before state and local government; and

WHEREAS, the California Political Reform Act of 1996, enacted by the voters as Proposition 208 on November 5, 1996, permits cities to establish voluntary expenditure limits for candidates for elective office and the controlled committees of such candidates. Pursuant to California Government Code, section 85400(c), effective January 1, 1997, such a local voluntary expenditure limit may be established by the City Council in any amount not to exceed a total amount of one dollar (\$1.00) per resident of the jurisdiction.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF HAYWARD DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Chapter 2 of the Hayward Municipal Code is hereby amended by adding Article 13 thereto, to read in full as follows:

"ARTICLE 13

"SEC. 2-13.00. VOLUNTARY EXPENDITURE LIMITS FOR CAMPAIGNS FOR CITY ELECTIVE OFFICES.

- "(a) Pursuant to Government Code, section 85400(c), a voluntary expenditure limit of \$50,000 is hereby established for each election to City elective office. As used in this section, the term "City elective office" shall mean the offices of Members of the City Council and Mayor.
- "(b) Prior to accepting any contribution for a campaign, each candidate for City elective office shall file with the Fair Political Practices Commission a statement

of acceptance or rejection of the voluntary expenditure limit established herein with regard to that campaign. Each candidate shall send a copy of the statement to the City Clerk and to each candidate running for the same office.

- “(c) No candidate for City elective office who accepts the voluntary expenditure limit established herein and no controlled campaign committee of such a candidate shall make campaign expenditures cumulatively in excess of the voluntary expenditure limit established herein.
- “(d) Each candidate for City elective office who rejects the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in Government Code Section 85301, as that section may be amended from time to time.
- “(e) Each candidate for City elective office who accepts the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in Government Code, section 85402, and not the contribution limit set forth in Government Code, section 85301, as either section may be amended from time to time.
- “(f) Except as provided herein, the provisions of the California Political Reform Acts of 1974 and 1996, Government Code, sections 81000 et seq. (collectively "the Acts"), and applicable regulations adopted pursuant thereto, as the same may be amended from time to time, shall govern the interpretation and application of this section.
- “(g) The penalties and remedies for violations of this section shall be those set forth in the Act.”

**Section 2.** In the event any section or portion of this ordinance shall be determined invalid or unconstitutional, such section or portion shall be deemed severable and all other sections or portions hereof shall remain in full force and effect.

**Section 3.** In accordance with the provisions of Section 620, subdivision (a), of the City Charter, this ordinance shall become effective upon adoption.

INTRODUCED at a regular meeting of the City Council of the City of  
Hayward, held the 25th day of November, 1997, by Council Member Ward.

ADOPTED at a regular meeting of the City Council of the City of Hayward

held the 9th day of December, 1997, by the following votes of members of said City Council.

**AYES:** COUNCIL MEMBERS: Jimenez, Hilson, Rodriquez, Ward, Hulteen, Henson  
MAYOR: Cooper  
**NOES:** COUNCIL MEMBERS: None

**ABSTAIN:** COUNCIL MEMBERS: None

**ABSENT:** COUNCIL MEMBERS: None

**APPROVED:** Roberta Cooper  
Mayor of the City of Hayward

**DATE:** Dec. 23, 1997

**ATTEST:** Angelina Reyes  
City Clerk of the City of Hayward

**APPROVED AS TO FORM:**

M. O. [Signature]

City Attorney of the City of Hayward