

Memo

To: Commissioners
From: Polly Grow and Wayne Barnett
Date: October 1, 2012
Re: Draft Law Changes for 2012

To reflect recent changes in State law, we recommend the following changes to City law:

1. Replace references to RCW Chapter 42.17 with references to RCW Chapter 42.17A. State Elections law was recodified effective this year.
2. Like the State, reduce the threshold for mandatory electronic filing from \$10,000 to \$5,000.
3. Reconcile Sponsor Identification requirements with State law, and eliminate the requirement that Sponsor Identification must be clearly spoken in television and video advertisements.

In addition, we recommend the following minor changes to City law:

1. Remove outdated references left in when the law was last amended.
2. Eliminate the \$5,000 contribution limit for ballot issue committees during the 21 days preceding an election, ruled unconstitutional in *Family PAC v. McKenna*. *Note that although the decision did not address the constitutionality of the \$5,000 limit on a candidate's contributions to his or her own committee, the PDC is recommending that the State eliminate this provision of the law for candidate contributions as well.*

Current Code Section	Text to be changed	Comment
<p>SMC 2.04.010 Definitions.</p> <p>“Candidate”</p>	<p>“Candidate” means any individual who seeks election to the office of Mayor, member of the City Council, or City Attorney of the City, whether or not successfully. An individual shall be deemed to seek election when he or she first:</p> <ul style="list-style-type: none"> a. Solicits or receives contributions; or b. Makes expenditures or reserves space or facilities with intent to promote his or her candidacy for office; or c. Announces publicly or files for office; or d. Purchases commercial advertising space or broadcast time to promote his or her candidacy; or e. Makes expenditures or solicits or receives contributions to explore the possibility of seeking election to City office; or f. Gives his or her consent to another person to take on behalf of the individual any of the actions in subsections 8a or 8b, 8d or 8e of this section. 	<p>Remove “8.”</p>
<p>SMC 2.04.010 Definitions.</p> <p>“Public Disclosure Commission”</p>	<p>"Public Disclosure Commission (PDC)" means the Public Disclosure Commission established by RCW 42.17.350 <u>RCW 42.17A.100</u>.</p>	<p>Update References to RCW 42.17A effective 1/1/2012.</p>
<p>SMC 2.04.010 Definitions.</p>	<p>As used in this chapter, the singular shall include the plural and conversely, and any gender, any other, as the context requires.</p> <p>"Commission" means the Seattle Ethics and Elections Commission established by Section <u>3.70.010</u>. <i>[Move to spot btw “Commercial advertiser” and “Continuing Political Committee.”]</i></p> <p>"Officer of a political committee" means the following persons: the treasurer, any person designated by the committee as an officer on the statement of organization filed with the City Clerk, and any person who alone or in conjunction with other persons makes contribution, expenditure, strategic or policy decisions on behalf of the committee. <i>[Move to spot btw “Knowledge” and “Person.”]</i></p>	<p>Rearrange definitions to put these definitions in alphabetical order. Put singular/plural disclaimer at the end of the section, and consider redrafting proviso to read: “When not inconsistent with the context, words in the present tense shall include the future tense, words in the masculine gender shall include the feminine and neuter genders, words in the singular shall include the plural, and plural words shall include the singular.”</p>

<p>SMC 2.04.150 Intent of chapter -- Interpretation -- Construction.</p>	<p>7. That it is desirable to have legislation at the municipal level complementary to the concept of disclosure established in Initiative 276 (RCW Chapter 42.17 <u>(Recodified in 2012 as RCW 42.17A)</u>);</p>	<p>Update Reference to RCW 42.17A.</p>
<p>SMC 2.04.155 Electronic filing required -- Exemption.</p>	<p>A. Each candidate or political committee that expects to receive or receives \$10,000 <u>\$5,000</u> or more in aggregate contributions during the applicable period must file all reports required by this chapter with the City Clerk by electronic transmission of the required information. All political committees that (1) are neither ballot proposition nor candidate political committees, and (2) expect to make contributions or expect to make expenditures, including independent expenditures of \$5,000 or more, in the aggregate during the applicable period, to or for the benefit of candidates or candidate political committees or to or for the benefit of ballot proposition political committees must file all reports required by this chapter with the City Clerk by electronic transmission. The electronic format of the filing and the method of transmission shall meet requirements designated in rules adopted by the Commission. In addition, each political committee that files electronically with the PDC must file electronically with the City Clerk.</p>	<p>1. Reduce reporting threshold for e-filers to \$5,000. Corresponds with PDC threshold for e-filing.</p>
<p>SMC 2.04.180 Contributions by written instrument or credit card -- Deposit of contributions in designated account.</p>	<p>A. No person may make a contribution of more than Fifty five <u>Sixty</u> Dollars (\$5560), other than an in-kind contribution, except by a written instrument containing the name of the contributor and the name of the payee except that candidates and political committees may, consistent with rules adopted by the Commission, receive contributions by credit card, if the contributor's identity is verified as required for compliance with SMC Section 2.04.260. (RCW 42.17.740(1).) <u>RCW 42.17A.475</u></p>	<p>Update to reflect inflation-adjusted amount.</p>
<p>SMC 2.04.265 Special Report of late contributions... Certain ate contributions prohibited.</p>	<p>B. It is a violation of this chapter for any person <u>(identified in SMC 2.04.370 (D.1.a))</u> to make or for any candidate or political <u>candidate</u> committee to accept from any one (1) person <u>(identified in SMC 2.04.370 (D.1.a))</u> contributions reportable under this chapter in the aggregate exceeding \$5,000 within the 21 days before a primary, general, or special election in which the candidate or ballot</p>	<p>Ruled unconstitutional by 9th Circuit in <i>Family PAC v. McKenna</i>.</p>

	<p>proposition appears on the ballot.</p>	
<p>SMC 2.04.270 Independent expenditures; contributions to out-of-state committees -- Reports.</p>	<p>C. A person with the expectation of making an independent expenditure or expenditures by disseminating an advertising message or messages that the person reasonably expects to be received, read, viewed or heard by 1,000 or more individuals in a single calendar year shall, within two business days after the initial dissemination of the advertisement, deliver a copy of each such advertisement to the offices of the Commission, along with a statement disclosing the method of dissemination of the advertisement and an estimate of the expected quantity of the advertising. This requirement applies only to all independent expenditures that are required to be reported, i.e., an individual spending \$100 or more of his or her own funds and anyone spending any amount of the funds of others. This disclosure does not substitute for the disclosure requirements of other sections of this chapter. (Ref. RCW 42.17.550 <u>42.17A.305</u>.)</p>	<p>Update Reference to 42.17A</p>
<p>SMC. 2.04.290 Identification of contributions and communications.</p>	<p>B. 1. All audio and video broadcast political advertising, whether relating to candidates or ballot propositions, shall include <u>the words “paid for by” or “sponsored by” followed by the sponsor's name</u>. All other political advertising, whether relating to candidates or ballot propositions, must state "paid for by" or "sponsored by," followed by the sponsor's name and address. Political advertising paid for by someone other than an agent of the committee that benefits from the advertising, i.e., in kind contributions, must state "paid for by..." followed by the name and address of the person who paid for the advertising, and "sponsored by" followed by the name and address of the committee(s) that will benefit from the advertising. The use of an assumed name shall be unlawful.</p> <p>2. In addition to the materials required by subsection B1 of this section, all political advertising undertaken as an independent expenditure by a person or entity, other than a bona fide political party as defined in RCW 42.17.020(5)<u>42.17A.005(6)</u> must include the following statement on <u>as part of the communication</u>: "NOTICE</p>	<p>Update references to 42.17A</p> <p>Harmonize requirements for Sponsor Identification language on Independent Expenditures with State law <u>(RCW 42.17A.320)</u>.</p> <p>Remove requirement that all sponsor identifications on visual ads must be spoken. (See RCW for language ideas).</p> <p>Remove requirement that Independent Expenditures include “sponsored by” in addition to “paid for by”</p>

~~TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure is undertaken by a nonindividual, other than a bona fide political party as defined in RCW 42.17.020(5),~~

~~(a)"No candidate authorized this ad. It is paid for by (name, address, city, state)"; If the ad does not include a visual image, the following statement shall be clearly spoken: "No candidate authorized this ad. Paid for by (name, city state);"~~

~~(b)If the sponsor is a political committee, the statement: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions in excess of seven hundred dollars reportable under this chapter during the twelve month period before the date of the advertisement or communication; and~~

~~(c)If the sponsor is a political committee established, maintained, or controlled directly, or indirectly through the formation of one or more political committees, by an individual, corporation, union, association, or other entity, the full name of that individual or entity.~~

~~If the advertisement undertaken as an independent expenditure is undertaken by a nonindividual, other than a bona fide political party as defined in RCW 42.17.020(5), then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities who or which, during the 12-month period before the date of the advertisement, made to the sponsor of the advertisement the largest contributions in excess of \$700 reportable under this chapter.~~

~~3. The statements and listings of contributors required by subsections B1, and B2 and B4 of this section shall:~~

	<p>a. Appear on the first page or fold of the written communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written communication directed at more than one voter, such as a billboard or poster, whichever is larger;</p> <p>b. Not be subject to the half-tone or screening process;</p> <p>c. Be set apart from any other printed matter; and</p> <p>d. 1. Be clearly spoken on any broadcast advertisement <u>that does not include a visual image, or</u></p> <p>2. <u>If the advertisement includes a visual image, the statement must be clearly spoken or appear in print and be visible for at least four seconds, in letters greater than four percent of the visual screen height, and have a reasonable color contrast with the background.</u></p> <p>(4) Political advertising costing one thousand dollars or more supporting or opposing ballot measures sponsored by a political committee must include the information on the "Top Five Contributors" consistent with subsections (2)(b) and (3) of this section.</p>	
<p>SMC 2.04.340 Personal use of contributions -- When permitted.</p>	<p>C. As repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to Section 2.04.250. Contributions may not be used, however, to reimburse a candidate for loans made by the candidate to the candidate's own political committee or campaign in an amount totaling more than the amount provided in RCW 42.17.125(3) <u>42.17A.445(3)</u> and WAC 390-05-400;</p>	<p>Update references to 42.17A</p>
<p>SMC 2.04.375 Reporting and disposition of campaign funds after election.</p>	<p>B. The surplus funds, including each capital asset for which the candidate or political committee paid \$200 or more, or reported as an in-kind contribution with a value of \$200 or more, may be disposed of only in one or more of the following ways:</p>	<p>Update References to 42.17A</p>

	<p>6. Hold the cash surplus in the campaign depository or depositories designated in accordance with RCW 42.17.050 <u>42.17A.215</u> and in the case of capital assets hold them in the custody of the candidate or officer of the campaign committee for possible use in a future election campaign for the same office last sought by the candidate or for a future election campaign for a ballot proposition on the same topic, and report the transfer of such funds or assets as a disposition in accordance with Section 2.04.260 and RCW 42.17.090 <u>42.17A.240</u>. If the candidate subsequently announces or publicly files for office, or if a ballot proposition political committee is established for a future proposition on the same topic, information as appropriate shall be reported in accordance with Sections 2.04.170 through 2.04.260 and RCW 42.17.040 <u>42.17A.205</u> through 42.17.090 <u>42.17A.240</u>. If a subsequent office is not sought, or if a subsequent election campaign for a ballot proposition on the same topic does not occur, the surplus held shall be disposed of in accordance with the requirements of this chapter;</p>	
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