Seattle Ethics and Elections Commission

Memo

To: Commission

From: Wayne Barnett

Date: July 6, 2012

Re: Credit Card Contributions

At the June meeting, the Commission directed staff to report back in July on whether the Commission's rules regarding credit card contributions require reexamination. (The existing rule is appended to this memorandum as Exhibit A.) The Commission asked staff to assess the risks associated with requiring campaigns to collect and retain less information.

When staff last researched this issue, the City's rules largely mirrored the State's guidance. In May of 2011, however, the State Public Disclosure Commission (PDC) amended its "Guidelines for Internet Contributions," eliminating its guidance that campaigns retain the following information: (i) transaction number, (ii) credit card type (Visa, MasterCard, American Express, etc.), (iii) last four numbers of credit card, and (iv) expiration date of credit card. (A blacklined version of the State's guidance is appended as Exhibit B.) The PDC characterized the new guidance as "reflect[ing] the changes that have occurred to the process of receiving contributions over the Internet in the 10 years since the interpretation was approved." No further information is available regarding the changes to the PDC's guidance.

Staff continues to believe that there are significant risks associated with eliminating the requirement that campaigns retain records that would make it possible to thoroughly investigate allegations of campaign improprieties. If staff suspected that an individual used someone else's credit card or a gift card to make an on-line contribution, and the campaign didn't retain the name on the card, any of the card numbers, the expiration date, or the authorization code, it is difficult to see how staff could investigate its suspicions. Staff also notes that not all jurisdictions have relaxed their requirements in recent years. Our preliminary research indicates that New York City and Los Angeles both require as much if not more information than Seattle does from campaigns that accept credit card contributions.

At the same time, staff acknowledges that at no time in memory has staff utilized the information collected under the current rules to conduct an investigation of campaign improprieties. The last concealment case resolved by the Commission involved cash transfers to straw contributors, who then wrote checks to campaigns. The lack of evidence that the information collected by campaigns is actually being used, coupled with the changes at the state level, mitigates in favor of changing the Commission's rules.

Recommendation

Staff recommends that the Commission:

1. Suspend until January 1, 2013, the enforcement of the rules requiring that campaigns retain: (i) the authorization code provided by the bank, (ii) the expiration date of the Credit/Debit Card, (iii) the Credit/Debit Card type (Visa, MasterCard, American Express, etc.), and (iv) the last four numbers of the Credit/Debit Card.

2. Suspend, until the rules can be amended, the requirement that campaign web pages require on-line contributors to affirm that "the contributor is not a foreign national who lacks permanent resident status in the United States," since that is not related to the City's Elections Code and so is outside the jurisdiction of the Commission.

3. Suspend the requirement that campaigns print hard copies of credit card transactions, so long as they preserve the records in a format from which they can be printed upon request.

4. Suspend the bar on using corporate credit/debit cards *for the limited purpose* of permitting those cards to be used to make contributions from the corporation holding the card.

Six months will give the Commission staff sufficient time to thoroughly investigate what similar agencies are doing across the country, and to investigate whether there are alternatives to the existing rules that would prove cost-effective for campaigns while still adequately safeguarding the public's interest in the enforcement of the City's campaign contribution limits. It will also give the staff sufficient time to investigate on-line contributions that are not even addressed in the existing rules, such as contributions from PayPal and similar sources.

By January of next year, the Commission will be fully briefed and in a position to take a well-informed position on potential changes to the rules governing credit card contributions.

G. Accepting and reporting contributions made by credit/debit card.

1. Contributors may not use corporate credit/debit cards to make campaign contributions. The campaign shall verify that the credit/debit card funds being contributed are the personal funds of the contributor and are not those of another by:

a. requiring the contributor to:

1. check a box on a website affirming that the contributor is using his or her own personal funds, or

2. sign a remittance envelope or a credit card slip authorizing the use of the contributor's credit/debit card for the contribution, and,

b. obtaining the bank's approval of the transaction based upon, at a minimum, characters from the credit/debit card number and expiration date.

If such verification cannot be obtained, the campaign shall not process the contribution.

2. A credit/debit card contribution obtained by telephone or in person is received when the credit/debit card information is given to the campaign official or the campaign's agent. Such credit/debit card information shall be submitted to the credit/debit card company within five business days of receipt by the campaign or the campaign's agent. A credit/debit card contribution made on the Internet is received on the date when a campaign official or the campaign's agent receives notice of the contribution. If the credit/debit card information is transmitted directly to the credit/debit card company when the cardholder posts the card number on the campaign web site, the campaign receives notice of the contribution when the campaign official or the campaign's agent receives the credit/debit card company's statement of the deposit of those funds. If the credit/debit card information is stored until the campaign retrieves it and submits it to the credit/debit card company, the campaign receives notice of the contribution when the campaign official or the campaign's agent retrieves the information. A campaign official or a campaign agent shall check the storage site at least once a week to retrieve such information and shall submit the information to the credit/debit card company no later than five business days from the date the cardholder posted the card number on the campaign web site.

3. A candidate or political committee must treat the full amount of a contribution as the contributed amount, even though the candidate or political committee may receive a lesser amount because of transaction fees. If the bank deposit by the credit/debit card company is for the contribution amount less the transaction fee, the campaign shall report on the C-3 for that deposit, the total contribution for each contributor. The transaction fee shall be reported on the Schedule A of the appropriate C-4.

4. When a contribution is made by credit/debit card over the Internet, the electronic record of the transaction created and transmitted by the accountholder shall constitute a "written instrument." This record must be printed in hardcopy and preserved by the recipient candidate or political committee for five calendar years.

5. A committee must collect the following information regarding credit card contributions, in addition to the information that otherwise must be reported under the Elections Code:

a. Name on Card
b. Date Contribution Processed (submitted to the bank)
c. Authorization Code provided by the bank
d. Expiration Date of Credit/Debit Card
e. Credit/Debit Card Type (Visa, MasterCard, American Express, etc.)
f. Last Four Numbers of Credit/Debit Card

6. A web page on which credit/debit card contributions are solicited shall provide the following boxes for the contributor to check for self-screening and affirmation that: (a) the funds being contributed are the personal funds of the contributor and are not those of another, (b) the contributor is not a foreign national who lacks permanent resident status in the United States, (c) the contributor is making the contribution via the contributor's personal credit or debit card for which the contributor has a legal obligation to pay, and not through a corporate or business entity card or the card of another, and (d) the contributor is at least 18 years old. If the contribution exceeds $100, the web site must also require the contributor to list his or her occupation and the name, city and state of his or her employer.

DRAFT
PDC Interpretation

APPROVAL DATE:	June 29, 2000	NUMBER:	00-02
STATUS:	New June 29, 2000 Revised XXX, 2011	SUPERSEDES:	None
REFERENCES:	RCW 42.17.020(14) RCW 42.17.060 RCW 42.17.065 RCW 42.17.080 RCW 42.17.090	APPROVED BY:	The Commission

GUIDELINES FOR INTERNET CONTRIBUTIONS

Candidates and political committees are subject to the following guidelines when accepting and reporting contributions made ((~~through web-based application on~~)) over the Internet.

1. ((~~Only~~)) Individuals or political committees ((~~using~~)) must use their own credit or debit cards ((~~may~~)) to make contributions ((~~via web-based applications on~~)) over the Internet((~~; no corporate cards issued to~~)). Employees or officers of businesses, unions or other entities ((~~can be used~~)) may not use corporate cards issued in their name to make personal contributions. A corporation may make a contribution over the Internet using its corporate credit or debit card.

2. A contribution is considered made on the date the contributor sends the electronic confirmation authorizing the expenditure.

3. A contribution is received on the date when the candidate, treasurer, deputy treasurer, campaign manager, campaign chairperson or similarly situated campaign official receives notice of the contribution.

4. A candidate or political committee must treat the full amount of a donor's contribution as the contributed amount, even though the candidate or political committee may receive a lesser amount because of transaction fees. A notation explaining why the contributions reported do not equal with the bank deposit is to be kept as part of the candidate's or political committee's ((~~permanent record~~)) books of account.

5. All contributions must be deposited into the candidate's or political committee's bank account within five days of receipt by the candidate or political committee.

6. A separate Cash Receipts/Monetary Contributions report (PDC form C-3) for each bank deposit of contributions made ((~~through web-based applications is to~~)) over the Internet must be filed with the Commission((~~ and the County Auditor/Election Division~~)).

7. Transaction fees paid to vendors for web-based contribution services are to be reported on a Schedule A to the C-4 Report in compliance with chapter 42.17 RCW.

8. When a contribution is made by credit card of debit card over the Internet the term "written instrument" as used in RCW 42.17.740 includes any electronic record of the transaction created and transmitted by the cardholder. ((~~This~~)) These records must be ((~~printed in hardcopy and~~)) preserved by the recipient candidate or political committee for five calendar years in compliance with RCW 42.17.065(7) or .080(5).

9. For the purposes of RCW 42.17.065 and RCW 42.17.080, the following information concerning persons who contribute ((~~via~~)) over the Internet must be kept by candidates and political committees as part of the books of account and be available for audit and/or inspection of records.

   - Name of Contributor
   - Address of Contributor
   - Date Contribution Received
   - Amount Contributed
   - Employer/Occupation (If required by WAC 390-16-034)

   ((~~• Transaction Number~~
   ~~• Credit Card Type (Visa, MasterCard, American Express, Etc.)~~
   ~~• Last Four Numbers of Credit Card~~
   ~~• Expiration Date of Credit Card~~))

These guidelines are not a substitute for the provisions of chapters 42.17 RCW and 390 WAC. Rather, the guidelines are designed to assist filers in complying with their legal obligations. The law and rules are always controlling in the event of any conflict with or omission in the guidelines.