



**TOWN OF LOS GATOS
COUNCIL AGENDA REPORT**

MEETING DATE: 09/07/2021

ITEM NO: 11

DATE: September 1, 2021
TO: Mayor and Town Council
FROM: Robert Schultz, Town Attorney
SUBJECT: Provide Direction to Town Staff Regarding Establishing Contribution Limits for Candidates for Town Council.

RECOMMENDATION:

Provide direction to Town staff to do one of the following:

1. Do nothing and default to contribution limits for candidates for Town office established by State law; or
2. Prepare an ordinance or resolution for the Council's consideration establishing contribution limits for candidates for Town office.

BACKGROUND:

Effective on January 1, 2021, Assembly Bill ("AB") 571 established contribution limits for candidates for Town office. Under AB 571, candidates for Town office will be subject to a four thousand seven hundred-dollar (\$4,700) contribution limit from a single source per election. AB 571 does not limit contributions from committees, to oppose a recall against a local official, or to contributions of a candidate's personal funds to his or her own campaign. The Fair Political Practices Commission (the "FPPC") will periodically adjust this limit to account for inflation.

AB 571 establishes default contribution limits. The Town can establish contribution limits by ordinance or resolution that differ from the contribution limits established by AB 571. If the Town establishes its own contribution limits, candidates for Town office will not be subject to the contribution limits established by AB 571. The Town may also take no action and allow the State's limits to apply by operation of law. If no action is taken at this time, AB 571 does not preclude the Town from setting its own contribution limits (higher or lower) in the future.

Reviewed by: Town Manager and Assistant Town Manager

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BACKGROUND (continued):

Additionally, violations of AB 571 are punishable as a misdemeanor and subject to specified penalties, enforced by the FPPC. Cities and towns adopting their own contribution limit must also set, administer, and enforce penalties themselves. Choosing the State's campaign contribution limits would relieve the Town of the possible burden of additional administrative work as the Town would defer all enforcement and administration to the FPPC.

DISCUSSION:

AB 571 was adopted based on several findings, including (1) most cities and counties in California do not have independently imposed limitations on contributions to candidates for elective office in those jurisdictions; (2) in cities and counties without campaign contribution limitations, candidates for elective office receive 40 percent or more of their total campaign funds from a single contributor; (3) where people can make unlimited contributions to a candidate for elective city or county office, there is a "risk and the perception that elected officials in those jurisdictions are beholden to their contributors and will act in the best interest of those contributors at the expense of the people"; and finally, the State has a Statewide interest in "preventing actual corruption and the appearance of corruption at all levels of government."

Given the effects of AB 571, Town staff seeks direction from the Town Council regarding whether the Town should establish its own contribution limits. The Town Council has two (2) options:

1. Do Nothing. If the Town Council takes no action, pursuant to AB 571 candidates for Town office will be subject to a four thousand seven hundred-dollar (\$4,700) contribution limit.
 - a) By defaulting to AB 571, candidates for Town office will also face (2) additional limitations on contributions: (1) AB 571 limits transfers of campaign funds from one controlled committee to another controlled committee of the same candidate; and (2) AB 571 limits loans to a candidate's campaign.
 - b) AB 571, however, provides three (3) exemptions from contribution limits: (1) candidates facing a recall can establish a committee to oppose the recall and can accept contributions in excess of the contribution limits established by AB 571; (2) candidates may accept contributions after an election to pay off debts from the election; and (3) candidates can carry over contributions from one election to pay for expenses for a subsequent election for the same office.
 - c) If the Town defaults to the contribution limits established by AB 571, the FPPC will enforce the contribution limits. Violation of these contribution limits will be

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DISCUSSION (continued):

subject to the penalty provisions of the Political Reform Act. Violations of the contribution limits will be punishable as misdemeanors.

2. Set Own Contribution Limits. If the Town Council does not wish the Town to be subject to AB 571 contribution limits, the Town council can adopt its own contribution limits and can establish limits higher or lower than the FPPC limits. If the Town Council decides to go down that route, Town staff will prepare an ordinance and resolution for the Town Council consideration.

- a) By establishing contribution limits, candidates for Town office will not be subject to state limitations on contributions. However, the exemptions from the contribution limits described above will not apply. In addition, the Town Council must establish penalties for violations of the contribution limits and bear the cost of the enforcement. The FPPC will not enforce the Town's contribution limits. Penalties for violating the Town's contribution limits can include civil penalties, fines, or criminal charges. In establishing contribution limits, the Town must ensure that it complies with the First Amendment. Accordingly, the Town must ensure that contribution limits are not too low as to prevent candidates for Town office from conducting an effective campaign.

CONCLUSION:

The Town Council's options are:

1. Do nothing and accept the contribution limits established by AB 571, or
2. Direct Town Staff to prepare an ordinance and resolution establishing contribution limits for candidates for Town office.

COORDINATION:

This report was coordinated with the Town Manager's Office.

FISCAL IMPACT:

There will be no fiscal impact to the Town if the Town elects to default to the state's contribution limits. The Town will bear enforcement costs if it establishes different contribution limits.

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ENVIRONMENTAL ASSESSMENT:

This is not a project defined under CEQA, and no further action is required.