

REPORT TO THE CITY COUNCIL



DATE: October 3, 2017

TITLE: Ordinance Amending Section 2.20.125 ("Disclosure of Campaign Contributions") of the Desert Hot Springs Municipal Code

Sponsored by: Scott Matas, Mayor

Prepared by: Jennifer Mizrahi, City Attorney

RECOMMENDATION

Introduce and read by title only, "An Ordinance of the City Council of the City of Desert Hot Springs, California, Amending Section 2.20.125 ("Disclosure of Campaign Contributions") of Chapter 2.20 ("Code of Ethics for City Officials") of Title 2 ("Administration and Personnel") of the Desert Hot Springs Municipal Code" ("DHSMC").

BACKGROUND

Desert Hot Springs Municipal Code ("DHSMC") Section 2.20.125 currently requires City officials and employees to publicly disclose all direct and indirect campaign contributions of over \$250 received within the prior 48 months from any person, entity, or applicant appearing at a public meeting in which the City official or employee is participating for a decision of the presiding body affecting the financial interests of said person, entity or applicant, and requires the affected City official or employee to recuse himself or herself from voting on such matters.

After DHSMC Section 2.20.125 was originally enacted in 2014, its scope was expanded in 2016. The 2016 amendment increased the applicable time frame for contributions subject to the disclosure and recusal requirements of the section from 24 months to 48 months, and also added, to the scope of the campaign contributions subject to the disclosure and recusal requirements of the section, indirect contributions made to candidates via political action committees and other similar organizations formed for the purpose of raising and spending money to elect or defeat candidates.

DISCUSSION

Although DHSMC Section 2.20.125, as amended in 2016, is intended to promote the ethical principles set forth in DHSMC Chapter 2.20 and to reduce the possibility of corruption or the appearance thereof in City government, it suffers from certain practical issues that make compliance with its provisions difficult for those who are subject to them, and that make enforcement of its provisions by any governing body impractical, if not impossible. That said, the City engaged an attorney to independently review the code section. Accordingly, the proposed changes attempt to address her concerns.

Firstly, and most importantly, Section 2.20.125 as currently worded can result in issues relating to the fact that City officials may sometimes receive campaign contributions which fall within the purview of DHSMC Section 2.20.125, but which said officials may not necessarily be aware of. It is common for political action committees, or other similar organizations formed for the purpose of raising and spending money to elect or defeat candidates (hereinafter "Committees"), to solicit monetary contributions from many different people who support the political purpose that the Committee is intended to serve. Committees do not always support just one political candidate; instead, they often support one larger political issue, and may make contributions to many different candidates and other recipients in order to further that purpose. Contributions received by Committees are generally pooled into one all-purpose fund, and all expenditures are made from that fund. Because of the often large number of different donors to a Committee, the pooling of funds in the Committee's bank account, and the many recipients of contributions

from the Committee, it is often impossible to trace specific contributions from an original donor through the Committee fund to any particular candidate. Therefore, even though Committees are required to keep detailed records and make detailed reports of contributions received and expenditures made, candidates who receive contributions from Committees often have no way of knowing whether a given person may be the original source of all or a portion of a contribution they received via a committee. Therefore, it can be impossible for such candidates, once elected as City officials, to know when it is necessary to recuse themselves from the proceedings of a City meeting under DHSMC Section 2.20.125. It also renders it impossible for the City or any other enforcement agency to identify and enforce violations of this provision.

The proposed ordinance would eliminate these issues by requiring that all contributions must be willfully and knowingly received by the City official in order to be subject to the disclosure and recusal requirements of DHSMC Section 2.20.125.

Secondly, DHSMC Section 2.20.125, as currently worded, creates the possibility of applicants to the City successfully engaging in bad faith tactics to manipulate the votes of City governing bodies on matters affecting the applicants by donating small amounts to the political campaigns of a given City official, thereby forcing said City official to recuse himself or herself from voting on matters affecting the applicants.

The proposed ordinance would eliminate this possibility by increasing the amount of contributions sufficient to trigger the disclosure and recusal requirements from \$250 to \$5,000, and by reducing the time frame in which such donations must be received from 48 months to 24 months prior to the date of the meeting at issue.

The proposed changes would therefore mitigate the risk of City officials and employees receiving contributions which they may not have consented to or which they may not be aware they have received, and would ensure that applicants to the City are unable to utilize bad faith donation tactics to manipulate votes of the City's governing bodies.

FISCAL IMPACT

None.

EXHIBIT

- 1) Ordinance Amending Section 2.20.125 ("Disclosure of Campaign Contributions") of the Desert Hot Springs Municipal Code.