



CITY OF LODI  
COUNCIL COMMUNICATION

TM

**AGENDA TITLE:** Adopt Resolution Approving Regulations Pertaining to the Candidates' Statements for the November 2, 2004 General Municipal Election

**MEETING DATE:** June 16, 2004

**PREPARED BY:** D. Stephen Schwabauer, Interim City Attorney

---

**RECOMMENDED ACTION:** That Council Adopt Resolution Approving Regulations Pertaining to the Candidates' Statements for the November 2, 2004 General Municipal Election.

**BACKGROUND INFORMATION**

- I. Issues:
  - A. Whether using public money to pay for candidates statements violates Government Code Section 85300's prohibition against the use of public money to run for political office?
  - B. May a standing council change existing policy on whether the City pays the charge without a conflict of interest?
- II. Short Answers?
  - A. No
  - B. Yes but the better practice may be to follow the salary Adjustment Procedure of making the change effective for the first election after one of the council members has faced an election.
- III. Analysis:
  - A. Candidates Statements:

GC 85300 provides that "No public officer shall expend and no candidate shall accept any public moneys for the purpose of seeking elective office." As you know the Elections code also allows candidates to prepare candidate statements to be included in the sample ballot. Elections Code section 13307 provides that the City may require candidates to pay the cost (in our case about \$1295) in advance but seems to imply that the cost need not be charged to the candidates. Section 13307 reads in part as follows:

(c) The local agency may estimate the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the federal Voting Rights Act of 1965, as amended. The local agency may require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voter's pamphlet. In the event the estimated payment is

---

APPROVED:

  
H. Dixon Flynn, City Manager

required, the receipt for the payment shall include a written notice that the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly, the elections official is not bound by the estimate and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment, the elections official may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the elections official shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election. . . .

(e) Before the nominating period opens, the local agency for that election shall determine whether a charge shall be levied against that candidate for the candidate's statement sent to each voter. This decision shall not be revoked or modified after the seventh day prior to the opening of the nominating period. A written statement of the regulations with respect to charges for handling, packaging, and mailing shall be provided to each candidate or his or her representative at the time he or she picks up the nomination papers.

Although not binding on a court, the question has been addressed persuasively by the Attorney General in the Thompson Opinion Letter, 2002, 85 Ops. Cal. Atty. Gen. 49. Therein, the Attorney General's Office concluded that "school districts and community college districts may pay for printing, handling, translating, and mailing trustee candidate statements contained in the voter's pamphlet, notwithstanding the language of Government Code Section 85300. The Fair Political Practices Commission reached the same conclusion in the Jex Opinion Letter, 2001 Advice Letter A-00-271.

Accordingly, a City may legally pay the expense.

B. Policy Change by Existing Council.

In general, a council should not make changes that will affect it financially in its current term. For example, a council cannot raise its salary in its current term. (Government Code § 36516.5) The Government Code does however allow a council to change its salary effective the first term in which one council member will have faced an election. (Id.) Following the same analysis above however, one could argue that Elections Code Section 13307 which requires the council to make the determination every election cycle also controls. Nevertheless, if Council is inclined to change existing practice, I do believe the better practice is to follow the same procedure set forth to change a council salary. First, it allows time for potential candidates to adjust their campaign fundraising efforts to achieve what has previously been a City funded expense and second it cures any perception of a conflict of interest. Accordingly, I recommend that if Council makes a change that it make it effective for the first election after November 2004.

A Resolution will be prepared consistent with Council direction following the meeting.

**FUNDING:** Dependent upon Council action.

Respectfully submitted,



D. Stephen Schwabauer  
Interim City Attorney

RESOLUTION NO. 2004-124

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA,  
ADOPTING REGULATIONS FOR CANDIDATES FOR ELECTIVE OFFICE  
PERTAINING TO CANDIDATES STATEMENTS SUBMITTED TO THE VOTERS  
AT AN ELECTION TO BE HELD ON TUESDAY, NOVEMBER 2, 2004

---

WHEREAS, §13307 of the Elections Code of the State of California provides that the governing body of any local agency adopt regulations pertaining to materials prepared by any candidate for a municipal election, including costs of the candidates statement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI, CALIFORNIA, DOES HEREBY RESOLVE, DECLARE, DETERMINE, AND ORDER AS FOLLOWS:

SECTION 1. GENERAL PROVISIONS. That pursuant to §13307 of the Elections Code of the State of California, each candidate for elective office to be voted for at an Election to be held in the City of Lodi on November 2, 2004, may prepare a candidate's statement on an appropriate form provided by the City Clerk. The statement may include the name, age, and occupation of the candidate and a brief description of no more than 200 words of the candidate's education and qualifications expressed by the candidate himself or herself. The statement shall not include party affiliation of the candidate, nor membership or activity in partisan political organizations. The statement shall be filed in the office of the City Clerk at the time the candidate's nomination papers are filed. The statement may be withdrawn, but not changed, during the period for filing nomination papers and until 5:00 p.m. of the next working day after the close of the nomination period.

SECTION 2. FOREIGN LANGUAGE POLICY. Pursuant to the Federal Voting Rights Act, as amended, the City Clerk shall have all candidates statements translated into Spanish.

SECTION 3. PAYMENT. The candidate shall be required to pay for the cost of printing the candidates statement in English and Spanish in the voters' pamphlet.

The City Clerk shall estimate the total cost of printing, handling, translating, and mailing the candidate's statements filed pursuant to this section, including costs incurred as a result of complying with the Voting Rights Act of 1965 (as amended), and require each candidate filing a statement to pay in advance to the local agency his or her estimated pro rata share as a condition of having his or her statement included in the voters' pamphlet. In the event the estimated payment is required, the estimate is just an approximation of the actual cost that varies from one election to another election and may be significantly more or less than the estimate, depending on the actual number of candidates filing statements. Accordingly, the clerk is not bound by the estimate and may, on a pro rata basis, bill the candidate for additional actual expense or refund any excess paid depending on the final actual cost. In the event of underpayment, the clerk may require the candidate to pay the balance of the cost incurred. In the event of overpayment, the clerk shall prorate the excess amount among the candidates and refund the excess amount paid within 30 days of the election.

SECTION 4. ADDITIONAL MATERIALS. No candidate will be permitted to include additional materials in the sample ballot package.

SECTION 5. That the City Clerk shall provide each candidate or the candidate's representative a copy of this resolution at the time nominating petitions are issued.

SECTION 6. That all previous resolutions establishing Council policy on payment for candidates statements are repealed.

SECTION 7. That this resolution shall apply only to the election to be held on November 2, 2004, and shall then be repealed.

SECTION 8. That the City Clerk shall certify to the passage and adoption of this resolution and enter it into the book of original resolutions.

Dated: June 16, 2004

---

I hereby certify that Resolution No. 2004-124 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 16, 2004, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hitchcock, Howard, and Land

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mayor Hansen

ABSTAIN: COUNCIL MEMBERS – None



Susan J. Blackston  
City Clerk

1-2

**Jennifer Perrin**

---

**From:** Susan Blackston  
**Sent:** Tuesday, June 15, 2004 8:36 AM  
**To:** 'carol'  
**Cc:** City Council; Dixon Flynn; Steve Schwabauer  
**Subject:** RE: Council needs to show consistency in "words spoken and deeds".

Dear Carol Cash:

This reply is to confirm that your message was received by the City Clerk's Office and each member of the City Council. In addition, by copy of this e-mail, we have forwarded your message to the following departments for informational purposes:

1) City Manager, and 2) City Attorney.

Thank you for expressing your views.

/s/ Susan J. Blackston, City Clerk

-----Original Message-----

**From:** carol [mailto:kettols@lodinet.com]  
**Sent:** Monday, June 14, 2004 10:33 PM  
**To:** Susan Blackston; Susan Hitchcock; Emily Howard; Keith Land; John Beckman; Larry Hansen  
**Subject:** Council needs to show consistency in "words spoken and deeds".

*Dear City Governing Body - I appreciate the freedoms given to me to be able to address you; thank you for your time.*

*In reading the Sentinel Monday morning...I learned that our Council members in the history of Lodi have never paid fees, other than the \$25 mentioned, as a filing fee. Quite interesting. Back in easier times and when we didn't have so many issues, hardships and the current growth, it probably wasn't necessary, otherwise I would like to think our past mayors and council members would have brought this to the forefront then. Certainly we had some very wise citizens running our city, wouldn't you agree? We now face serious financial issues with various lawsuits, outrageous spending and mistakes made by those in "high places" in our city, pollution and contamination and apparently unnecessary frivolous initiatives brought on by "so-called" special interest groups that want the city to pay for their ideas. (Re: Refusal of the development of a Wal-Mart SuperCenter)*

*Then as you look at page 4 in Monday's Sentinel, Mr. Carl Troupe echoed my sentiments precisely.....why is it that the City of Lodi Residents have to finance what 2,825 people think they want (promoted by some Woodbridge residents by the way). . . what about the other 50,000 or 55,000 residents...? Why should there be an expense to any of us? **You need to make the decision to stop having the city foot the bill for issues that belong to individual processes and responsibilities, not have the entire community pay for everyone's "WHIMs". I say, "If you want to serve the community, then you need to pay the necessary fees/dues to do so. If you want to join a special club/group, pay the necessary fees/dues to belong. If you want to put a special initiative together for the voters to vote on, then by all means***

that individual or group should pay for it." **WHAT DO YOU SAY CITY COUNCIL MEMBERS?** So what will you do? How will you call it? I hope that you will say "yes" to a fee for City Council candidates. By paying the fee, it definitely will be less taxing on the finances of the City, & more meaningful to those candidates that actually get voted in. You would be taking that step to saying now is the time to start recovering unnecessary expenses. It was acceptable then not to pay a fee, but certainly no longer. We are in over our heads and need to start digging our way out by curbing what is spent, not just have our citizens suffer additional costs/taxes.

Why make the majority of the population of any city pay fees/dues of those individuals that want to take action, promote, initiate, circulate or propagandize anything that a small amount of the population is interested or involved in. It makes sense then for the Council to say that the stand to take is to implement this new procedure for the ease and consideration of the citizens of Lodi to adopt this plan for candidates to take care of their own election-related expenses, and no longer be the responsibility of the City of Lodi. If anyone is serious about this position and the future of Lodi, this probably would be a minor issue. It also makes sense and is consistent for the Council to insist that any present or future "special interest group" will finance their own interest, solely and completely without the assistance of the City Governing Body.

I realize I am joining two issues here, but I am seeing it as an example and an opportunity for you as a group that serves the needs of our town, an example to show the citizens that you leaders/servants at City Hall are doing your part by paying dues/fees. No one is so high and mighty over this town that they don't have to do their part or get someone else to pay their way. Let's be consistent and fair in ALL areas, not just some. You know we definitely have grown, the City has some big issues and MONEY is the big one. We need to monitor and manage our money better than before.

Groups/Individuals of people everywhere for any reason can pop up and expect our City and citizens to pay for their expenses. Let the New Council and all future Council members show that they have paid for what they want - to serve Lodi better by being a voice on the Council. Thank you, Carol Cash - Resident of the growing City of Lodi.

CITY COUNCIL

LARRY D. HANSEN, Mayor  
JOHN BECKMAN,  
Mayor Pro Tempore  
SUSAN HITCHCOCK  
EMILY HOWARD  
KEITH LAND

# CITY OF LODI

CITY HALL, 221 WEST PINE STREET  
P.O. BOX 3006  
LODI, CALIFORNIA 95241-1910  
(209) 333-6702  
FAX (209) 333-6807  
cityclrk@lodi.gov

H. DIXON FLYNN  
City Manager  
SUSAN J. BLACKSTON  
City Clerk  
D. STEPHEN SCHWABAUER  
Interim City Attorney

June 17, 2004

Deborah Hench  
Registrar of Voters  
P.O. Box 810  
Stockton, CA 95201

**RE: NOVEMBER 2, 2004, GENERAL MUNICIPAL ELECTION**

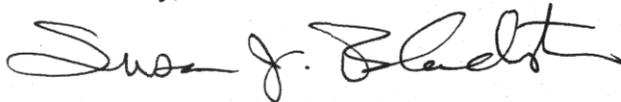
---

Attached please find a certified copy of the following resolution pertaining to the November 2, 2004, General Municipal Election, which was adopted by the Lodi City Council at its June 16, 2004, regular meeting:

- Resolution adopting regulations for candidates for elective office pertaining to candidates statements submitted to the voters at an election to be held on Tuesday, November 2, 2004.

Should you have any questions regarding this matter, please feel free to give me a call.

Sincerely,



Susan J. Blackston  
City Clerk

JMP

Enclosures

cc: San Joaquin County Board of Supervisors (+ encl.)