



CITY COUNCIL AGENDA REPORT

DATE: JUNE 23, 2020

FILE I.D.: FPP035

SECTION: PUBLIC HEARINGS

DEPT.: ADMIN. SVCS.

ITEM NO.: A

PREPARER: A. PHILLIPS

SUBJECT: SECOND READING — CONSIDER ADOPTION OF ORDINANCE NO. 20-990 AMENDING CERTAIN SECTIONS OF CHAPTER 2.12 OF THE MONTCLAIR MUNICIPAL CODE AUTHORIZING AN ELECTRONIC FILING OPTION FOR CERTAIN DOCUMENTS REQUIRED TO BE FILED BY ELECTED OFFICERS, CANDIDATES, COMMITTEES, AND OTHER PERSONS OR ENTITIES IN RELATION TO GENERAL MUNICIPAL ELECTIONS IN THE CITY OF MONTCLAIR AND MAKING OTHER AMENDMENTS AND CORRECTIONS TO THE CODE IN RELATION THERETO

REASON FOR CONSIDERATION: The City Council is requested to consider conducting the second reading of Ordinance No. 20-990 amending certain sections of Chapter 2.12 of the Montclair Municipal Code (MMC) authorizing an electronic filing option for certain documents required to be filed by elected officers, candidates, committees, and other persons or entities in relation to general municipal elections in the City of Montclair and making other amendments and corrections to the Code in relation thereto; and adoption of said Ordinance.

The City Clerk is the filing officer for Fair Political Practices Commission (FPPC) disclosure documents as required by the Political Reform Act including Statements of Economic Interests and Campaign Disclosure Forms. California Government Code Section 84615 provides that a legislative body of a local government agency may adopt an ordinance that allows or requires an elected officer, candidate, committee, or other person required to file statements, reports, or other documents required by Chapter 4 of the Political Reform Act to file these documents online or electronically with the City Clerk, provided the system used meets certain Secretary of State requirements. The Ordinance also would correct errors and inconsistencies with state laws that exist in the Code related to the City's elections.

The required public notice for this hearing was provided.

The Ordinance was initially presented to the City Council for first reading on June 1, 2020 requiring electronic filing for committees that reach the \$2,000 fundraising and expenditure limit; however, the City Council expressed that it would like electronic filing to be optional rather than mandatory for committees that exceed the \$2,000 threshold. Consequently, the first reading was not conducted on June 1st and the hearing was rescheduled and held on June 15th for first reading of the revised Ordinance.

Ordinances may be adopted at regular or adjourned regular meetings occurring at least 5 days after the first reading has been conducted. The first reading was conducted as scheduled on June 15th, and second reading was set for the adjourned regular meeting of June 23rd. If adopted on June 23rd, the electronic filing system could be used beginning July 23rd for campaign statements that are due July 31st.

BACKGROUND: In preparation for the upcoming election, and with the current COVID-19 pandemic and public health emergency orders in effect, the City has made a concerted effort to reduce the amount of face-to-face contact with staff typically required for candidate and campaign filing processes while also streamlining election filing processes. On May 18, 2020, the City Council approved Agreement No. 20-36 with NetFile, a vendor approved by the Secretary of State to provide an online electronic filing system for FPPC campaign disclosure statements and forms that are required by certain City staff, elected and appointed officials, and political campaign committees. While Statements of Economic Interest (commonly known as the Form 700) can be accepted as soon as the system is up and running, the acceptance of Campaign Disclosure Forms (the 400 series of forms related to election campaign funding) electronically requires adoption of an ordinance by the City Council.

While reviewing the MMC to determine where to add the new provisions, some errors were discovered in Section 2.12.020 related to the date of the General Municipal Election and references to a now-repealed section of the Government Code. The corrections to be made to this section are as follows:

1. Section 2.12.020 (A) Municipal Election. — Correction.

In 1991, in accordance with the City's transition from holding stand-alone elections to consolidating with the County of San Bernardino, the City Council adopted Ordinance No. 91-703 to align the date of the City of Montclair's General Municipal Election with the Statewide General Election.

Upon recodification of the MMC in 1999, the existing language in the Code was to be updated to reflect the correct election date in the Code. The original outdated language, incorrectly stating Montclair's General Municipal Elections are held the "second Tuesday in April," was changed to "the second Tuesday in November" when it should have instead been corrected to "the first Tuesday after the first Monday in November;" and

2. Section 2.12.020 (D) Expenditure Ceiling. — Repeal.

Ordinance No. 97-773 enacting this section was adopted by the City Council on October 6, 1997 in response to voters' passage of California Proposition 208 ("Prop 208," the Campaign Contributions and Spending Limits Initiative) at the November 5, 1996 statewide election, which would have done all of the following:

- a. Limited the amount of campaign contributions that an individual or group could make to a candidate for state and local elective offices;
- b. Prohibited lobbyists from making contributions;
- c. Established voluntary campaign spending limits;
- d. Limited when campaign fund-raising may occur; and
- e. Established penalties for violations of the measures and increased penalties for existing campaign law violations.

Prop 208 was only in place for a year before a federal judge declared it unconstitutional and suspended the measure in January of 1998. Supporters of Prop 208 appealed the decision.

The recodification document for the MMC, adopted by Ordinance No. 99-791 on June 21, 1999, acknowledges the fact that Section 2.12.020 (D) may require repeal pending the outcome of the appeal of the federal court's Prop 208 decision, which was ultimately denied with the findings of its unconstitutionality upheld; however, Section 2.12.020 (D) of the MMC was never removed. The language of Section 2.12.020 (D) of the MMC refers to "Chapter 5 of Title 9 of the Government Code," a section that no longer exists as part of the California Government Code due to the federal court's nullification of Prop 208.

With the adoption of the proposed Ordinance, the language of Subsection (A) would be corrected, and Subsection (D), as it currently exists in the Code, would be repealed in its entirety and the new provisions for electronic filing would replace it as the new Subsection (D).

FISCAL IMPACT: There would be no direct fiscal impact in relation to the City Council's adoption of Ordinance No. 20-990.

RECOMMENDATION: Staff recommends the City Council take the following actions:

1. Conduct the public hearing and second reading of Ordinance No. 20-990; and
2. Adopt Ordinance No. 20-990 amending certain sections of Chapter 2.12 of the Montclair Municipal Code authorizing an electronic filing option for certain documents required to be filed by elected officers, candidates, committees, and other persons or entities in relation to general municipal elections in the City of Montclair and making other amendments and corrections to the Code in relation thereto.

ORDINANCE NO. 20-990

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MONTCLAIR AMENDING CERTAIN SECTIONS OF CHAPTER 2.12 OF THE MONTCLAIR MUNICIPAL CODE AUTHORIZING AN ELECTRONIC FILING OPTION FOR CERTAIN DOCUMENTS REQUIRED TO BE FILED BY ELECTED OFFICERS, CANDIDATES, COMMITTEES, AND OTHER PERSONS OR ENTITIES IN RELATION TO GENERAL MUNICIPAL ELECTIONS IN THE CITY OF MONTCLAIR AND MAKING OTHER AMENDMENTS AND CORRECTIONS TO THE CODE IN RELATION THERETO

WHEREAS, California Government Code Section 84615 provides that a legislative body of a local government agency may adopt an ordinance that requires an elected officer, candidate, committee, or other person required to file statements, reports, or other documents required by Chapter 4 of the Political Reform Act to file such statements, reports, or other documents online or electronically with the City Clerk except for when such persons receive contributions totaling less than \$2,000 and make expenditures totaling less than \$2,000; and

WHEREAS, on May 18, 2020, the City entered into Agreement No. 20-36 with NetFile, a vendor approved by the California Secretary of State to provide an online electronic filing system ("System") for Fair Political Practices Commission Campaign Disclosure Statements and Statement of Economic Interests forms; and

WHEREAS, the System will operate securely and effectively and will not unduly burden filers—specifically, the System will:

1. Ensure the integrity of the data and include safeguards against efforts to tamper with, manipulate, alter, or subvert the data;
2. Only accept a filing in the standardized record format developed by the Secretary of State and compatible with the Secretary of State's system for receiving an online or electronic filing; and
3. Be available free of charge to filers and to the public for viewing filings; and

WHEREAS, the following additional errors have existed in the Montclair Municipal Code relating to elections and campaign responsibilities for some time and should be corrected:

1. Section 2.12.020 (A) Municipal Election. — Correction.

In 1991, in accordance with the City's transition from holding stand-alone elections to consolidating with the County of San Bernardino, the City Council adopted Ordinance No. 91-703 to align the date of the City of Montclair's General Municipal Election with the Statewide General Election.

Upon recodification of the Municipal Code in 1999, the existing language in the Code was to be updated to reflect the correct election date in the Code. The original outdated language, incorrectly stating Montclair's General Municipal Elections are held the "second Tuesday in April," was changed to "the second Tuesday in November" when it should have instead been corrected to "the first Tuesday after the first Monday in November;" and

2. Section 2.12.020 (D) Expenditure Ceiling. — Repeal.

Ordinance No. 97-773 enacting this section was adopted by the City Council on October 6, 1997 in response to the voters' passage of California Proposition 208 ("Prop 208," the Campaign Contributions and Spending Limits Initiative) at the November 5, 1996 statewide election, which would have done all of the following:

- a. Limited the amount of campaign contributions that an individual or group could make to a candidate for state and local elective offices;
- b. Prohibited lobbyists from making contributions;

- c. Established voluntary campaign spending limits;
- d. Limited when campaign fund-raising may occur; and
- e. Established penalties for violations of the measures and increased penalties for existing campaign law violations.

Prop 208 was only in place for a year before a federal judge declared it unconstitutional and suspended the measure in January of 1998. Supporters of Prop 208 appealed the decision.

The recodification document for the Montclair Municipal Code, adopted by Ordinance No. 99-791 on June 21, 1999, acknowledges the fact that Section 2.12.020 (D) may require repeal pending the outcome of the appeal of the federal court's Prop 208 decision, which was ultimately denied; however, the section of the code was never removed. The language of Section 2.12.020 (D) in the Montclair Municipal Code refers to "Chapter 5 of Title 9 of the Government Code,"—a section that no longer exists as part of the California Government Code due to the federal court's nullification of Prop 208.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MONTCLAIR HEREBY ORDAINS AS FOLLOWS:

SECTION I. Section 2.12.020 of the Montclair Municipal Code is hereby amended to read as follows:

2.12.020 – General election – Elective officers, term, and electronic filing of campaign disclosure statements.

SECTION II. Section 2.12.020 (A) of the Montclair Municipal Code is hereby amended to read as follows:

A. Municipal election. A general municipal election shall be held on the first Tuesday after the first Monday in November of each even-numbered year and shall be consolidated with the statewide general election.

SECTION III. Section 2.12.020 (D) of the Montclair Municipal Code is hereby repealed and replaced as follows:

~~D. Expenditure Ceiling:~~

~~1. A voluntary expenditure ceiling of 25 cents per resident for each candidate at a Montclair municipal election at which candidates for Mayor or City Council are on the ballot is imposed.~~

~~2. Each candidate for the office of Mayor or City Council shall file a statement of acceptance or rejection of the voluntary expenditure ceiling before accepting any contributions.~~

~~3. Contribution limitations depend on whether or not the expenditure limit is accepted, and are pursuant to Chapter 5 of Title 9 of the Government Code.~~

D. Electronic filing of campaign disclosure statements.

1. Electronic statement filing option. Any elected officer, candidate, committee or other person or entity required to file statements, reports or other documents required by Government Code Section 84100 et seq. may file those statements, reports or other documents online or electronically with the City Clerk's electronic filing system.

2. Filing of copies electronically. In any instance in which an original statement, report or other document must be filed with the California Secretary of State and a copy of that statement, report or other document is required to be filed with the City Clerk, the filer may, but is not required to, file the copy online or electronically in the City Clerk's electronic filing system.

3. Opting in to electronic filing. Once an elected officer, candidate, committee, or other person or entity files a statement, report, or other document online or electronically pursuant to subsection (1), all future statements, reports, or other documents on behalf of that filer are required to be filed online or electronically in the City Clerk's electronic filing system, unless expressly permitted otherwise in writing by the City Clerk prior to the filing deadline.

4. If the City Clerk's electronic filing system is not capable of accepting a particular type of statement, report or other document, an elected officer, candidate, committee or other person shall file that document with the City Clerk in a paper format.

5. The date of filing for a statement, report, or other document that is filed online or electronically pursuant to this section shall be the day that it is received by the City Clerk's electronic filing system. The City Clerk's electronic filing system shall issue to a person who files a statement, report, or other document electronically an electronic confirmation that notifies the filer that the statement, report, or other document was received. The confirmation shall include the date and the time that the statement, report, or other document was received by the City Clerk's electronic filing system and the method by which the filer may view and print the data received by the City Clerk's electronic filing system.

SECTION IV. Severability. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of this Ordinance or any part thereof is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portion of this Ordinance or any part thereof. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, paragraphs, sentences, clauses, or phrases be declared unconstitutional.

SECTION V. Effective Date. This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION VI. Posting. The City Clerk shall certify to the passage of this Ordinance and cause the same to be posted pursuant to Government Code Section 36933.

APPROVED AND ADOPTED this XX day of XX, 2020.

Mayor

ATTEST:

City Clerk

I, Andrea M. Phillips, City Clerk of the City of Montclair, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 20-990 of said City, which was introduced at a regular meeting of the City Council held on the XX day of XX, 2020, and finally passed not less than five (5) days thereafter on the XX day of XX, 2020, by the following vote, to-wit:

AYES: XX
NOES: XX
ABSTAIN: XX
ABSENT: XX

Andrea M. Phillips
City Clerk