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DEPARTMENT OF
ADMINISTRATIVE SERVICES
BUDGET AND POLICY REVIEW

CITY OF SACRAMENTO
CALIFORNIA

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November 30, 1999

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*Staff to report back in
90 days with analysis of
recommendations*

City Council
Sacramento, California

Honorable Members in Session:

**SUBJECT: Campaign Reform Committee's Recommendations on Campaign
Finance Reform.**

LOCATION AND COUNCIL DISTRICT: Citywide

RECOMMENDATION: This report is for City Council discussion and further direction
to staff from the City Council.

CONTACT PERSON: Aaron B. Chong, Budget and Policy Review, 264-5832

FOR COUNCIL MEETING OF: December 7, 1999

SUMMARY:

The Sacramento Campaign Finance Reform Committee is proposing five campaign
reform recommendations for consideration by the City Council. They are:

- (1) the re-establishment of campaign contribution limits for local elections;
- (2) the establishment of public financing for local elections;
- (3) the registration and regulation of city lobbyists;
- (4) the establishment of additional disclosure requirements for those engaged in
independent expenditures affecting elections; and
- (5) recommendations on implementing electronic reporting in local campaigns and
elections.

The discussion of the five proposed recommendations are included in Attachment I.

The City Attorney's office has prepared an analysis of recommendations by the committee for enactment of a Campaign Reform Ordinance, which is included as Attachment II.

Depending on the City Council's direction, staff will report back on the financial costs of the proposed recommendations.

COMMITTEE/COMMISSION ACTION:

The Sacramento Campaign Reform Committee met on August 2, 1999 and adopted the proposed recommendations outlined in the Attachment I for presentation to the City Council.

BACKGROUND:

The Sacramento Campaign Reform Committee was created by ordinance on February 9, 1999. The creation of the committee followed earlier deliberations by the City Council and the Law and Legislation Committee dating back to 1997. The Law and Legislation Committee and the full City Council considered the campaign reform issue following a series of events connected with the passage of Proposition 208, a 1996 statewide ballot proposition which established campaign limits of \$100 per council candidate and \$250 per mayoral candidate per election. The limits of Proposition 208 conflicted with the \$550 per council candidate and \$800 per mayoral candidate per election limits then in place for elections in the City of Sacramento.

Following the passage of Proposition 208 in November 1996, the City Council repealed contribution limits. Proposition 208 contained several provisions aimed at campaign finance reform. In December 1997, a federal district court struck down Proposition 208 holding that contribution limits were unconstitutional. Since the limitations were integral to the proposition, the court held that all of the provisions of Proposition 208 were invalid. Thus the City currently has no contribution limits for local elections nor other campaign finance measures in place.

The committee met for the first time on March 17, 1999, and held public hearings on April 21, May 19, June 30, July 14, and August 2, 1999. At its final meeting on August 2, 1999, the committee adopted several recommendations to present to staff and the City Council.

FINANCIAL CONSIDERATIONS:

Each of the proposed recommendations will incur a cost. Depending on the direction provided by City Council on the proposed recommendations, staff will return with financial consideration analyses.

ENVIRONMENTAL CONSIDERATIONS:

There are no environmental considerations associated with this report.

POLICY CONSIDERATIONS:

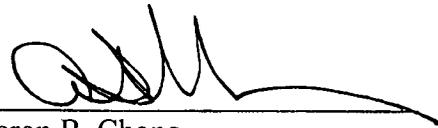
This Council must consider whether and to what extent campaign finance reform legislation should be enacted in the City of Sacramento.

As discussed in Attachment II from the City Attorney, there are court cases pending before the U.S. Supreme Court and the California Supreme Court, which involves issues on campaign contribution and disclosure requirements. Decisions in these cases are anticipated within six to twelve months.

ESBD CONSIDERATIONS:

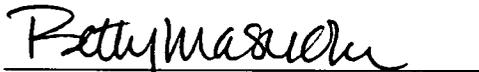
There are no ESBD considerations associated with this report.

Respectfully submitted,



Aaron B. Chong,
Budget and Policy Review

RECOMMENDATION APPROVED:



Robert P. Thomas,
City Manager

NOVEMBER 30, 1999

Submitted by: **Dr. Robert Waste, Chair**
Campaign Reform Committee

**ADOPTED RECOMMENDATIONS FOR CITY COUNCIL
CITY OF SACRAMENTO
CAMPAIGN REFORM COMMITTEE**

Reform Committee History:

The Sacramento Campaign Reform Committee was created February 9, 1999 by Council action as the Sacramento Campaign Finance Ordinance adding Chapter 60.20 to title 60 of the Sacramento City Code, establishing the advisory committee. The creation of the Campaign Reform Committee followed earlier deliberations by the Law and Legislative Committee dating back to 1997-98. The Law and Legislative Committee and full City Council considered the campaign reform issue following a series of events connected with the passage of Proposition 208, a 1996 statewide ballot proposition which established campaign limits of \$100 per council candidate and \$250 per mayoral candidate per election; limits which conflicted with \$550 per council candidate and \$800 per mayoral candidate per election limits then in place for elections in the City of Sacramento. Following the passage of Prop 208 in November 1996, Council subsequently modified the campaign limits in the City of Sacramento to be consistent with those specified in Proposition 208. Portions of Proposition 208 were subsequently held invalid in January 1998 by a federal District Court and its provisions are not being enforced or followed. Thus, there are currently no contribution limits in place for local elections in the City of Sacramento other than special elections.

The Campaign Reform Committee met for the first time on March 17, 1999, and held public hearings on April 21, May 19, June 30, July 14, and August 2, 1999. At the final meeting on August 2, 1999, the Committee adopted several recommendations to present to city staff and the City Council. Those recommendations are explained in detail in the **Committee Recommendations** section, below.

Council Charge: The Sacramento Campaign Finance Ordinance charges the Reform Committee with considering five key areas of concern, and forwarding recommendations on these five topics to Council. These five areas are:

- (1) the re-establishment of campaign contribution limits for local elections;
- (2) the establishment of public financing for local elections;
- (3) the registration and regulation of city lobbyists;
- (4) the establishment of additional disclosure requirements for those engaging in independent expenditures affecting local elections; and
- (5) recommendations on implementing electronic reporting in local campaigns and elections.

Committee Membership:

The nine member Committee was comprised of one member selected by each Councilmember, and a Chair selected by the Mayor. The committee members were:

- Dr. Robert Waste, (Chair, appointed by Mayor Joe Serna, Jr.).
- Donna Williamson Chipps (appointed by Councilmember Heather Fargo)
- Robert Harris (appointed by Councilmember Steve Cohn)
- Jolyn Lopez (appointed by Councilmember Lauren Hammond)
- Dick Mayberry (appointed by Councilmember Rob Kerth)
- Craig Powell (appointed by Councilmember Robbie Waters)
- Sam Walton (appointed by Councilmember Bonnie Pannell)
- Dan Weitzman (appointed by then-Councilmember Darrell Steinberg)
- William Wong (appointed by Councilmember Jimmie Yee)

Committee Recommendations:

- (1) **Campaign Contribution Limits:** The Committee recommends re-establishing campaign contributions, setting the limits for contributions as follows:

For Mayoral Candidates: \$2,000 per individual per election; \$3,500 for small political committees affiliated with labor unions, advocacy groups or business groups; and \$10,000 for large groups with 100 or more members.

For Council Candidates: \$1,000 per individual per election; \$1,500 for small political committees affiliated with labor unions, advocacy groups or business groups; and \$5,000 for large groups with 100 or more members.

Political action committees, unions, advocacy groups or business groups which contributed ten (10%) or more of the allowable amount under the current campaign contribution guidelines would be deemed to be ineligible to conduct a separate independent expenditure campaign on behalf of that individual candidate's candidacy for council or mayor.

Contributions of \$500 or more must be reported within 24 hours electronically to the Office of the City Clerk, or other appropriate reporting body designated by Council or city ordinance.

- (2) **Public Financing for Local Elections:** The Committee recommends establishing public financing for local election in which council and mayoral candidates would receive public funding if the candidate personally collects a requisite number of signatures from registered voters within the City of Sacramento.

For Mayoral Candidates: \$10 per signature per election cycle, not to exceed \$150,000 if the candidate submits at least 4,000 valid signatures of registered voters residing in the City, and proportionately distributed across all of the existing Council Districts. Four council districts must be represented by a minimum number of signatures corresponding to five percent of the number of

votes cast in the district in the last election, and not more than 10 percent of the number of votes cast in the district in the last election. In addition, the candidate must agree in writing to a voluntary campaign finance cap in which he/she will spend no more than a total of \$100,000 in additional campaign funding in the entire election campaign cycle, including both the primary and run-off elections.

For Council Candidates: \$10 per signature per election cycle, not to exceed \$10,000 if the candidate submits at least 500 valid signatures of registered voters residing in the Council District. The candidate must personally gather a minimum number of signatures corresponding to no less than five percent of the number of votes cast in the district in the last election, and not more than 10 percent of the number of voters in the district in the last election. In addition, the candidate must agree in writing to a voluntary campaign finance cap in which he/she will spend no more than a total of \$30,000 in additional campaign funding in the entire election campaign cycle.

The Committee Also Recommends that the City of Sacramento take affirmative steps to facilitate low or nominal cost methods for candidates to communicate with voters. Specifically the Committee recommends that:

- (1) the City seek a waiver of fees paid by qualified city council and mayoral candidates for the insertion of candidate statements in sample ballots;
 - (2) the City permit each qualified candidate to insert a one-page campaign statement in City utility bills mailed to homes in the applicable electoral district during an election;
 - (3) the City's web site include candidate statements posted by each candidate running in council or mayoral races or, alternatively, that the City's web site be modified to include "hot links" to candidate's web sites and/or the "smartvoter.org" web site maintained by the Sacramento chapter of the League of Women Voters.
- (3) **Registration and Regulation of Lobbyists:** The Committee recommends establishing registration and regulations on lobbyists as follows:

Lobbyist Registration: All lobbyists who appear before the City Council or the Planning Commission should be registered with the City Clerk's office (unless or until a city Ethics Commission is established)

A "lobbyist" shall mean any person or entity who contracts for economic consideration to appear before any City board, commission or the City Council, and who receives or becomes entitled to receive at least \$1,000 in economic consideration in any three consecutive calendar months in exchange for lobbyist services.

"Professional business and organization lobbyist" shall mean any business or organization any of whose employees or members, as a regular part of their

employment or duties, contacts officers of the City of Sacramento on behalf of that business or organization, provided: (a) the business or organization compensates its employees or members, at any amount, for their lobbyist services on its behalf, and; (b) the compensated employee(s) or member(s) have a total of at least 10 separate contacts with officers of the City within any two consecutive calendar months. Contacts made with an employee or member who merely indicates his or her affiliation or identification with the business or organization, but who does not represent the official position of the organization shall not be included in the calculation.

Lobbyist Reporting: All lobbyists shall register, re-register, and file quarterly reports.

- (1) Contract lobbyists shall report all contacts, who was contacted, the purpose of the contact, who has hired them, all campaign contributions they have given over \$100, and all compensation they receive and from whom.
- (2) Business and organization lobbyists shall report the total number of contacts, the issue(s) they are attempting to influence, a description of each local legislative action they have attempted to influence, the outcome of each action they have attempted to influence, the outcome of each action that they sought, and each campaign donation over \$100 they have given.

Public Disclosure: The City Clerk shall make these reports available on the Internet and shall provide a copy of filings to all newspapers of general circulation within the City.

Authority to Combine Lobbyist Reporting with the County of Sacramento: If the County of Sacramento institutes a lobbyist reporting ordinance identical to this, the City Clerk office or its successor agency in regulating lobbyist registration may institute joint reporting with the County.

- (4) **Regulation of Independent Expenditure Campaigns:** The Committee recommends establishing regulation of independent expenditure campaigns as follows:

Public Awareness: To increase public awareness of the source of campaign materials and to create a direct line of responsibility for questionable campaign materials so that they do not reflect negatively upon a candidate or measure that the committee is attempting to support:

- (1) All campaign material paid for and printed by an independent expenditure campaign committee shall, upon the face of the material, in at least 12 point typeface in contrasting color, clearly list the name of the committee, the names and titles, occupations, or business affiliations of the three

largest contributors to the committee, and the position of the committee, either in support or opposition, to a ballot measure or candidate.

- (2) All broadcast media and advertisements paid for or distributed by an independent expenditure committee shall clearly display the name of the committee, a web address for the committee, and list the names of the three largest donors to the committee.

(5) **Implementing Electronic Reporting:** The Committee recommends that the City of Sacramento support the standards established by the California Online Disclosure Act, and recommends that the City make efforts to conform reporting formats and access to the Act as technology becomes available. Immediate actions recommended by the Committee include:

- (1) Establish City procedures and technology that would allow candidates and committees to upload quarterly campaign reports;
- (2) Require candidates and committees to upload campaign reports;
- (3) Require candidates and committees to upload a campaign report thirty (30) days from the date of the election;
- (4) Require candidates to upload reports of donations equal to or in excess of \$1,000 no later than 24 hours from the time of receipt of such donation(s).

The Committee recommends that the City take action to implement the technology and policies necessary to provide eventual public access to all contribution reports on the Internet by, for example, scanning pdf documents of all actual required campaign files and reports.

(6) **Implementing Campaign Finance Reform: A Recommended Timetable -** A majority of the Committee voted to reject recommendations that the Campaign Reform Committee Recommendations, if adopted, not be put into place until after being submitted to a vote of the electorate, and to also reject a recommendation that said recommendations not go into effect until after the next full cycle of council and mayoral elections.



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December 7, 1999

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MEMORANDUM

TO: City Council
Sacramento, California

FROM: Samuel L. Jackson, City Attorney
Richard E. Archibald, Senior Deputy City Attorney
Deborah R. Schulte, Deputy City Attorney *DRS*

Honorable Members in Session:

**SUBJECT: Analysis of Recommendations by the Campaign Reform Committee for
Enactment of a Campaign Reform Ordinance.**

SUMMARY

This report addresses legal issues presented by the recommendations of the Campaign Reform Committee. The Committee recommends establishment of campaign finance regulations as related to local campaigns and elections including campaign contribution limits, public financing, registration and regulation of city lobbyists, disclosure requirements for independent expenditures, and implementation of electronic reporting.

CONTACT PERSON: Richard E. Archibald, Senior Deputy City Attorney or Deborah R. Schulte, Deputy City Attorney.

BACKGROUND INFORMATION

The City of Sacramento has previously passed ordinances that limit campaign contributions but these ordinances were subsequently repealed after enactment of conflicting statewide Propositions. In 1988, Proposition 73 was enacted. The City thereafter repealed its contribution limits ordinance. Proposition 73 was subsequently declared unconstitutional by a federal court. In response to this, the City enacted a new contribution limits ordinance in 1992.

City Council
December 7, 1999

Re: **Analysis of Recommendations Of Campaign Reform Committee**

Page 2

This ordinance remained in effect until January 1997, when it was repealed following the passage of Proposition 208. Proposition 208 contained several provisions aimed at campaign finance reform. In December 1997, a federal district court struck down Proposition 208 holding that the contribution limitations were unconstitutional. Since the limitations provisions were integral to the proposition, the court held that all of the provisions of Proposition 208 were invalid. The City has not had contribution limits or other campaign finance measures in place since this time.

Since the district court's decision striking down Proposition 208, the case was appealed. The federal appellate court sent the case back to the district court instructing that the provisions not initially addressed by the court be ruled upon. On October 5, 1999, the U.S. Supreme Court heard arguments in *Nixon v. Shrink Missouri Government PAC* which challenges contribution limitations. The decision in *Shrink Missouri* is expected by next spring or summer. The district court considering issues in Proposition 208 has indicated it will wait until the U.S. Supreme Court decides *Shrink Missouri* before setting the case for trial and making a decision on the remaining provisions of Proposition 208.

ANALYSIS OF COMMITTEE RECOMMENDATIONS

Reestablishment of Campaign Contribution Limits for Local Elections:

The Committee recommends limiting contributions for mayoral and council candidates. Also recommended are prohibitions on independent expenditure campaigns by political action committees, unions, advocacy groups or business groups which contributed ten percent (10%) or more of the allowed amounts to mayoral or council candidates. The Committee did not suggest a definition of contribution; however, state law defines contributions to a candidate to include a payment or a loan. (Gov. Code secs. 82015, 84216.)

Campaign Contribution Limits:

Limits on campaign contributions made directly to a candidate or committee controlled by a candidate are closely scrutinized to ensure that the First Amendment rights of speech and association of the contributors or the candidates are not impermissibly limited. The reason such limitations are permissible is based on the need for government to protect the electoral process from corruption or the appearance of corruption. In order to protect First Amendment rights, contribution limits cannot be so strict as to prevent candidates and political committees from amassing the resources necessary for effective advocacy.

The Committee recommends for mayoral candidates limits of \$2,000 per individual per election, \$3,500 for small political committees affiliated with labor unions, advocacy groups or

City Council
December 7, 1999

Re: Analysis of Recommendations Of Campaign Reform Committee

Page 3

business groups, and \$10,000 for large groups with 100 or more members. The Committee recommends for council candidates limits of \$1,000 per individual per election, \$1,500 for small political committees affiliated with labor unions, advocacy or business groups, and \$5,000 for large groups with 100 or more members.

Determining whether campaign contribution limits will continue to be allowed is problematic in light of the *Shrink Missouri* case cited above. The main issue to be decided in that case is whether restrictions on contributions violate the right to free speech of contributors and candidates. Also to be decided is whether the public entity is required to prove "real harm" meaning that corruption actually exists to justify contribution limits. Legal analysts conflict on whether the Supreme Court will find that limits on campaign contributions will continue to be allowed so long as the limits imposed do not prevent candidates and political committees from amassing the resources necessary for effective advocacy. There is an indication that some justices believe that any limits on campaign contributions impermissibly infringe on First Amendment Rights. This may indicate a shift in philosophy where a public entity may be required to establish actual corruption in order for a court to uphold any level of contribution limits.

If one assumes that some limitation on campaign contributions will continue to be permitted, the limits proposed by the Committee fall within the permissible range. The limits proposed by the Committee exceed the limits imposed previously by the City and exceed limits imposed in other jurisdictions in California. These proposed limits do not appear to prevent the amassing of resources necessary for effective advocacy.

Limits on Independent Expenditures:

Current law holds that limits on expenditures by any individual or group which are made independently of a candidate constitute an illegal infringement of First Amendment rights. (*Colorado Repub. Campaign Comm. v. FEC* (1996) 518 U.S. 604 [135 L.Ed.2d 795; 116 S.Ct. 2309].) This finding is based on the absence of need to protect the electoral process from corruption or the appearance of corruption for expenditures made independently of a candidate. Thus, a provision limiting independent expenditures would be found unconstitutional.

Public Finance for Local Elections:

Spending limitations are constitutionally invalid unless conditioned on the candidate's acceptance of public funds. The Committee recommends the establishment of public funding for local elections conditioned on the candidate's voluntary acceptance of spending limitations. Thus, this recommendation presents no legal issues.

City Council
December 7, 1999

Re: **Analysis of Recommendations Of Campaign Reform Committee**

Page 4

Registration and Regulation of Lobbyists:

The proposal recommends regulation of lobbyists. The proposal would require that lobbyists register with the City Clerk and report contacts and campaign contributions. The City Clerk would be required to make the reports of lobbyists available on the Internet and provide copies to newspapers of general circulation.

Definition of Lobbyist:

The proposal defines lobbyist to include "any person or entity who contracts for economic consideration to appear before any City Board, commission or the City Council, and who receives or becomes entitled to receive at least \$1,000 in economic consideration in any three consecutive calendar months in exchange for lobbyist services." This proposed definition of "lobbyist" would likely need to be amended as applied to some instances where attorneys represent clients before the City board, commission or City Council in order to comport with current law.

Regulation of attorneys is governed by the State Bar Act which preempts local requirements as applied to attorneys. As applied, attorneys who appear before local boards, commissions or councils are not subject to registration and reporting requirements when the attorney's appearance constitutes engaging in the practice of law. When an appearance is for the purpose of representing a client in a hearing to reach a quasi-judicial decision on a matter involving factual and legal questions, this is considered engaging in the practice of law. Thus, when an attorney is representing an applicant or appellant in proceedings involving legislative entitlements or a property interest, the State Bar Act preempts local regulation. Examples of these proceedings include actions to zone property, enact or amend a community or general plan, or employment actions pursuant to the civil service rules. However, if an attorney is appearing at hearings for the purpose of opposing or supporting legislation, local regulation would be applicable.

Lobbyist Reporting:

This proposal would require that lobbyists register, file quarterly reports to include all contacts, the purpose of the contact, list who the lobbyist is working for, report all campaign contributions over \$100 and list the source and amount of compensation received. As well, business or organization lobbyists would be required to report contacts, list issues they are attempting to influence, the outcome of issues they have attempted to influence, the outcome of action they sought and all contributions over \$100.

This proposal is complex, would require the creation of an administrative system to develop and administer, and would require some investment in personnel. San Francisco and

City Council
December 7, 1999

Re: **Analysis of Recommendations Of Campaign Reform Committee**

Page 5

Los Angeles have enacted ordinances requiring lobbyist reporting and registration. It would be appropriate to review the ordinances enacted in other jurisdictions and report back with suggestions of an alternative streamlined process.

Regulation of Independent Expenditure Campaigns:

The Committee recommends regulating independent expenditure campaigns by requiring disclosure on all campaign material of the committee name, names, titles and occupations or business affiliations of the three largest contributors and the position of the committee to a ballot measure or candidate. The disclosure must be in at least 12 point typeface and in contrasting color. The Committee further recommends that for broadcast media and advertisements financed by or originating from a committee, the name of the committee, a web address for the committee, and a list of names of the three largest donors be clearly included in the advertisements.

Current law in the area of disclosures on campaign materials is unsettled. Current state statute requires disclosure by independent expenditure campaigns. The California Supreme Court reviewed the statutory disclosure requirement in 1994 and found them to be constitutional. Subsequently, the U.S. Supreme Court ruled that disclosure requirements unconstitutionally violate First Amendment rights. (*McIntyre v. Ohio Elections Comm'n* (1995) 514 U.S. 334.) A California appellate court thereafter held that the U.S. Supreme Court case overruled the California Supreme Court case and found the disclosure statute unconstitutional. The California Supreme Court has accepted review of this appellate decision which is now awaiting a date to be set for oral argument. (See, *Griset v. Fair Political Practices Commission*, S077219.)

Assessing whether the recommended disclosure requirements will be permissible is again problematic in light of the current posture of the *Griset* decision. Assuming the United States Supreme Court case will be followed by the California Supreme Court, disclosure requirements for campaign literature will not be allowed as unconstitutional.

However, if the California Supreme Court finds a valid justification to uphold current state law, local entities are allowed to enact disclosure provisions so long as the provisions are not in conflict with state requirements. The proposed recommendations would require additional information than is currently required under state law in several areas. Including a statement in the ordinance that the requirements are in addition to those imposed by state law would eliminate most possible conflicts between state law and the City ordinance. However, the requirement that independent committees maintain a web address may conflict with state law and raise constitutional concerns for equal protection and free speech.

The current recommendation would mandate that independent expenditure committees

City Council
December 7, 1999

Re: **Analysis of Recommendations Of Campaign Reform Committee**

Page 6

maintain a web address in order to comply with the disclosure requirement as related to broadcast media and advertisements. Should an independent expenditure committee wish to utilize broadcast media or advertisements but that independent expenditure committee does not maintain a web address, the committee would be in violation of the recommended regulation. Such a limitation would impede the committee's ability to engage in speech; and it would give those independent expenditure committee's who do maintain a web address an advantage over those who do not. Elimination of the requirement that a web address be displayed in the advertisement would alleviate these constitutional concerns.

Implementation of Electronic Reporting:

The Campaign Reform Committee refers to the California Online Disclosure Act (CODA) and recommends that the City establish procedures for candidates and committees to provide electronic disclosures. The CODA is administered by the Secretary of State and applies only to candidates and committees engaging in statewide campaigns beginning in the 2000 primary. CODA mandates that candidates and committees submit electronic disclosures when contributions, expenditures or loans made or received exceed \$50,000 in an election cycle or \$100,000.

The Committee recommends that candidates and committees engaged in local campaigns provide campaign reports to be disclosed electronically on the Internet. The Committee recommends quarterly disclosure and disclosure thirty days after an election. Further, contributions in excess of \$1,000 are recommended to be reported within 24 hours after receipt.

The recommendation to implement electronic reporting, like the recommendation for registration and regulation of lobbyists would require the establishment of an administrative system to develop, implement and operate the reporting program. The State appropriated \$1,100,000 to be spent over two years to develop the online disclosure system. The City could pattern an online reporting system after the program developed by the Secretary of State but would nonetheless require a commitment of financial and personnel resources.

DRS/cd