




**CITY OF TUCSON  
2011 PRIMARY AND GENERAL ELECTIONS  
CAMPAIGN FINANCE ADMINISTRATION**

**INFORMATION UPDATE 2011-03**

**TO:** Candidates, Political Parties and Political Committees  
**FROM:**   
Roger W. Randolph, City Clerk/Campaign Finance Administrator  
**DATE:** March 15, 2011

From time to time, this office distributes information regarding campaign finance and other election related issues that may be of interest to you. We encourage you to contact the City Clerk's Office with any questions you have regarding these issues.

**INDEPENDENT EXPENDITURES**

On January 21, 2010 the Supreme Court of the United States in Citizens United v. Federal Election Commission recognized new First Amendment rights for corporations and labor organizations. At the same time, the Court recognized that disclosure of who is speaking is a key component to this right. The Court also upheld the prohibition of corporate and labor organization contributions to candidates, while allowing political speech at arms' length via independent expenditures. Corporations and labor organizations cannot be prohibited from spending general treasury money to make independent expenditures to support or oppose candidates but can be required to disclose the expenditure.

Should a corporation or labor organization choose to make contributions directly to candidates, they must establish a separate segregated fund, establish a political action committee and comply with the provisions of A.R.S. §§ 16-913 and 16-921.

The enactment of Arizona House Bill 2788, codified as A.R.S. § 16-914.02, confirmed the ruling of Citizens United in dealing with corporations and labor organizations making independent expenditures.

On May 15, 2007, prior to either the decision of the Supreme Court or the Arizona legislative action, the Mayor and Council adopted Ordinance 10401, codified as Tucson Code Chapter 12, Article VIII, relating to the reporting of independent expenditures. The purpose of this code provision was to:

- Allow voters access to information about who supports or opposes candidates financially;

- Allow the City Clerk to more effectively distinguish independent expenditures from expenditures made by candidates or candidates' campaign committees; and
- Deter corruption and the appearance of corruption.

On March 8, 2011 the Mayor and Council adopted Ordinance 10885 making the following amendments to align the Tucson Code with the new requirements for independent expenditures under state law:

1. The cumulative total to require reporting is increased from \$500.00 to \$1,000.00.
2. The time for filing is standardized to “not later than one day after making the expenditure, excluding Saturdays, Sundays and other legal holidays”, and includes the entire Campaign Period.
3. Penalties for failure to file a required report are changed from \$100 per day not to exceed twice the amount of the expenditure, to “up to three times the total amount of the expenditure not reported.”
4. Remove the modification of reportable amounts which required an adjustment to the expenditure limit every two years based on the Consumer Price Index. In lieu of the modification the Tucson Code would continue to track state law.
5. Corporations, Limited Liability Companies and labor organizations making independent expenditures relating to City of Tucson candidates must comply with the provisions A.R.S. § 16-914.02.

The changes are written to standardize reporting of independent expenditures and do not supersede or conflict with any state law regarding the reporting of independent expenditures in City elections.

Should you have any questions regarding the information contained in this update, please contact me or Suzanne Mesich, Assistant City Clerk, at 791-4213 or E-mail [cityclerk@tucsonaz.gov](mailto:cityclerk@tucsonaz.gov).

Attachments: Ordinance 10885

ADOPTED BY THE  
MAYOR AND COUNCIL

March 8, 2011

ORDINANCE NO. 10885

RELATING TO ELECTIONS; AMENDING THE TUCSON CODE CHAPTER 12, SECTION 12-110; REPORTING OF INDEPENDENT EXPENDITURES; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA AS FOLLOWS:

SECTION 1. The Tucson Code, Chapter 12, Section 12-110, is amended to read as follows:

**Sec. 12-110. Supplemental reporting of independent expenditures in city limits.**

(a) *Statement of purposes.* This section's purposes are to:

(1) Allow voters access to information about who supports or opposes candidates financially;

(2) Allow the City Clerk to more effectively distinguish independent expenditures from expenditures made by candidates or candidates' campaign committees; and

(3) Deter corruption and the appearance of corruption.

This section is intended to supplement, and not supersede or conflict with, any state law regarding the reporting of independent expenditures in city elections.

Corporations, limited liability companies and labor organizations making independent expenditures relating to the City of Tucson candidates must comply with the provisions of A.R.S. section 16-914.02.



(b) *Original report.* Any person who makes independent expenditures related to a particular city office cumulatively exceeding one thousand dollars (\$1000.00) during a campaign period, shall file reports with the City Clerk in accordance with subsection (e) so indicating, identifying the office and the candidate or group of candidates whose election or defeat is being advocated, and stating whether the person is advocating election or advocating defeat.

(c) *Supplemental report.* Any person who has previously reached the dollar amount specified in subsection (b) for filing an original report shall file a supplemental report in accordance with subsections (b) and (e) each time previously unreported independent expenditures specified by subsection (b) exceed one thousand dollars (\$1,000.00).

(d) *Exception for independent expenditures previously reported.* Subsections (b) and (c) shall not apply to any independent expenditure already reported by the person making the independent expenditure pursuant to the requirements of A.R.S. sections 16-913 and 16-915, and the amount of that already reported independent expenditure shall not be used in calculating the trigger amounts for original and supplemental reports set forth in subsections (b) and (c).

(e) *Time of filing.* Any person who must file an original report pursuant to subsection (b), or who must file a supplemental report for previously unreported amounts pursuant to subsection (c), shall file the report with the City Clerk not later than one day after making the expenditure, excluding Saturdays, Sundays and other legal holidays.

(f) *Additional notification.* In addition to the reporting required in subsections (b) and (c), individuals and political committees must also comply with A.R.S. section 16-917 and any successor statutes.

(g) *Contents of report.* Any report by a person under this section shall, in addition to providing all other required information, identify any persons who have contributed five hundred dollars (\$500.00) or more to the committee.

(h) *Penalty for failure to file required report.* Any person who fails to file a report, or provide information, required by this section shall be subject to a civil penalty of up to three times the total amount of independent expenditures not reported. In the case of a political committee, the civil penalty may be assessed against the political committee's chairperson, its treasurer, or both. All civil penalties paid under this subsection shall be deposited in the election campaign account established under Tucson Charter Chapter XVI, Subchapter B, Section 6.

(i) *Determining whether expenditure is for communication that expressly advocates the election or defeat of a clearly identified candidate.* In determining whether an expenditure should have been reported pursuant to subsections (b) and (c), the City Clerk shall consider whether the expenditure was for a communication that expressly advocates the election or defeat of a clearly identified candidate and was not made with prior consent, cooperation, or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate. In determining that a communication expressly advocates the election or defeat of a candidate, rather than a communication that advocates in favor of or against an issue, the City Clerk will consider the following three (3) components:

(1) Even if it is not presented in the clearest, most explicit language, speech is express if its message is unmistakable, unambiguous, and suggestive of only one plausible meaning.

(2) Speech may only be termed advocacy if it presents a clear plea for action, and thus speech that is merely informative is not covered by the Act.

(3) It must be clear what action is advocated. Speech cannot be considered express advocacy of the election or defeat of a clearly identified candidate when reasonable minds could differ as to whether it encourages a vote for or against a candidate or encourages the reader to take some other kind of action. If any reasonable alternative reading of speech can be suggested, it cannot be express advocacy subject to this section's disclosure requirements.

(j) *Severability.* If a provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(k) *Definitions.* As used in this section:

"*Business day*" means any day that is not a Saturday, Sunday, or holiday.

"*Campaign period*" means the entire time from the date on which an individual becomes a candidate until the election or defeat of the candidate. The campaign period ends on the date the mayor and council canvass and declare the results of the election at which the candidate is elected or defeated.



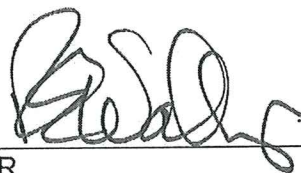
"Independent expenditure" has the same meaning as in A.R.S. section 16-901.

"Person" includes a political committee as defined in A.R.S. section 16-901, as well as a natural person.

SECTION 2. The various City officers and employees are authorized and directed to perform all acts necessary or desirable to give effect to this ordinance.

SECTION 3. WHEREAS, it is necessary for the preservation of the peace, health and safety of the City of Tucson that this ordinance become immediately effective, an emergency is hereby declared to exist, and this ordinance shall become effective immediately upon its passage and adoption.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona March 8, 2011.



MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

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