

ORDINANCE NO. 2654

AN ORDINANCE AMENDING CHAPTER 2.52 OF THE CHULA VISTA MUNICIPAL CODE TO CLARIFY THE CONTRIBUTIONS LIMITATION WHEN TWO ELECTIONS FOR DIFFERENT TERMS OF OFFICE FOR THE SAME SEAT ARE OCCURRING SIMULTANEOUSLY AND OTHER CHANGES

The City Council of the City of Chula Vista does ordain as follows:

SECTION I: That Chapter 2.52 of the Chula Vista Municipal Code is hereby amended to read as follows:

Chapter 2.52

CAMPAIGN CONTRIBUTIONS

Sections:

- 2.52.010 Findings.**
- 2.52.020 Purpose.**
- 2.52.030 Interpretation of this Ordinance.**
- 2.52.040 Definitions.**
- 2.52.050 Limitation on Contributions from Persons.**
- 2.52.060 Prohibition of Contributions by Organizations.**
- 2.52.070 Written Solicitations by Candidates.**
- 2.52.080 Returned Contributions.**
- 2.52.090 Loans.**
- 2.52.100 Family Contributions.**
- 2.52.105 Notice Regarding Personal Funds.**
- 2.52.110 One Campaign Committee and One Checking Account per Candidate.**
- 2.52.120 Prohibition on Transfers.**
- 2.52.130 Contents of City Campaign Statements.**
- 2.52.140 Duties of Treasurers and Candidates.**
- 2.52.150 Duties of City Clerk with Respect to Campaign Statements.**
- 2.52.160 Audits.**
- 2.52.165 Disqualification and Disclosure.**
- 2.52.170 Criminal Sanctions.**
- 2.52.180 Injunctive Relief.**
- 2.52.190 Enforcement.**
- 2.52.200 Severability.**

2.52.010 Findings.

In enacting this ordinance, the city council of the City of Chula Vista finds and declares the following:

- A. Moderate monetary contributions to political campaigns are a legitimate form of participation in the American political process, but the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates for city offices.
- B. The rapidly increasing costs of political campaigns have forced many candidates for elective office to raise larger and larger sums from individuals or interest groups with a specific financial stake in city matters. This can cause the public perception that the votes of city council members and decisions of elected officials are being improperly influenced by monetary contributions. This perception can undermine the credibility of the city council and the governmental process.
- C. It is the policy of this city to protect the integrity of the electoral process.
- D. The best interests of the citizens of this city are served by reducing the direct and indirect costs of campaigns.

2.52.020 Purpose.

The city council of the City of Chula Vista enacts this ordinance to accomplish the following purposes.

- A. To encourage public trust in the electoral and decision-making processes of the city, and ensure that individuals and interest groups have a fair and equal opportunity to participate in the elective and legislative process.
- B. To reduce the influence of large contributors with a specific financial stake in matters before the city, thus countering the perception that decisions of city officials are influenced more by the size of contributions than the merits of proposals or the best interests of the people of the city.

2.52.030 Interpretation of this Ordinance.

Unless the term is specifically defined in this ordinance or the contrary is stated or clearly appears from the context, the definitions set forth in the Political Reform Act of 1974 (Government Code Sections 81000 et. seq.) shall govern the interpretation of this ordinance.

2.52.040 Definitions.

- A. "Agent". For purposes of this section, a person is the "agent" of the party to, or a participant in, a proceeding involving a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents".

- B. "Candidate" means a candidate for any city elective office, the candidate's campaign committee, committee(s) controlled by the candidate, agents of the candidate, and any person acting at the behest of a candidate. An incumbent shall be presumed to be a candidate unless he or she files a written statement with the city clerk stating that he or she does not intend to be a candidate for the next election for his or her office.
- C. "City Campaign Statement" means the statement which, to the extent practicable, shall be similar to or consolidated with that required by state law.
- D. "City Elective Office" means the offices held by members of the city council and any other separately elected offices of the city.
- E. "Contributions" are defined in a manner identical with the definition found in Government Code Section 82015 and any related provisions in the California Administrative Code, except that, notwithstanding anything contained herein to the contrary, a payment by a third party to, or for the benefit of, a councilperson made and used for the express purpose of offsetting costs already incurred by that councilperson in the defense of a criminal or administrative prosecutorial action against said councilperson, and not made or used for the purpose of aiding in the election of said councilperson, and not made within (before or after) 100 days of an election in which the councilperson is competing for a seat or office, shall not be deemed to be a contribution for the purposes of this chapter.
- F. "Intermediary" means a person who delivers to a candidate or committee a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. No person who is the treasurer of the committee to which the contribution is made or is the candidate who controls the committee to which the contribution is made shall be an intermediary for such contribution.
- G. "Organization" means a proprietorship, labor union, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, or committee, including a political action committee.
- H. "Person" means a natural individual.
- I. "Political Purpose" means an action by a candidate for the purpose of influencing, or attempting to influence, either directly or indirectly, the actions of the voters for or against the election of that candidate or any other candidate for the same city elective office.
- J. "State Campaign Statement" means an itemized report which is prepared on a form prescribed by the Fair Political Practices Commission and which provides the information required by Chapter 4 of Title 9 of the Government Code.
- K. "Party" means any person who files an application for or is the subject of, a proceeding involving a license, permit or other entitlement for use.

- L. "Participant" means any person who is not a party, but who actively supports or opposes a particular decision in a proceeding involving a license, permit or other entitlement for use, and who has a financial interest in the decision as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person, the officers or employees of the city, testifies in person before the city, or otherwise acts to influence officers of the city.

2.52.050 Limitation on Contributions from Persons.

- A. Time Limitation for Making Contributions.

No person shall make a contribution to any candidate for city elective offices sooner than eleven months preceding an election contest but in no event sooner than the date upon which the holding of the election contest becomes certain, and no such candidate shall accept from any person, such a contribution.

- B. Monetary Limitation for Making Contributions.

No person shall make to any candidate for city elective office, and no such candidate shall accept from any person, a contribution or contributions totalling more than \$250 for a single election contest. To the extent federal law prohibits limitations on expenditures, this ordinance is meant to be consistent with federal law.

- 1. Same Day, Same Office, Multiple Election Rule.

For the purposes of this section, multiple elections scheduled to be held on the same day for the same office, but for different terms, such as in the case of a special election to be held to fill a vacancy, and a general municipal election to be held to fill a full length term, shall be deemed to be a single election for determining the monetary limitation. This section is deemed to be declaratory of existing law, and shall apply to all contributions received prior to and after the effective date of this ordinance for if the contribution was intended to be used in connection with the election commencing in March, 1996. To the extent that the operation of this section requires the return of any contributions in excess of the limitation herein imposed, the candidate and/or regulated independent expenditure committee shall so return such excess contribution.

2.52.060 Prohibition of Contributions by Organizations.

- A. Prohibition.

No organization (e.g., corporation, partnership, trust, association, committee, etc.) shall make a contribution to any candidate, and no such candidate shall accept a contribution from an organization.

B. Rule of Attribution to Organization.

All contributions made by a person whose contribution activity is financed, maintained or controlled by an organization or any other person shall be deemed to be made by that organization or other person. If the contribution is deemed made by an organization, it is prohibited by subdivision A. If deemed to be made by another person, it shall constitute a contribution by a "committee" (a form of "organization") and thereby also is prohibited by subdivision A.

2.52.070 Written Solicitations by Candidates.

Any candidate making a written solicitation for a contribution for his or her campaign for city elective office shall include the following written notice in no less than ten point type on each such solicitation:

NOTICE

Ordinance No. 2298 of the City of Chula Vista limits contributions to campaigns for city elective office to two hundred fifty dollars (\$250) per contributor. When contributions from an individual cumulatively amount to \$100 or more, the complete name, address, occupation and employer (or name of business if self-employed) of each donor must be reported in the city campaign statement.

2.52.080 Returned Contributions.

A contribution shall not be considered to be received if it has not been negotiated, deposited, or utilized, and is returned to the donor within ten (10) days of receipt, or no later than the date on which the candidate is required to file a State or city Campaign Statement, whichever date is earlier.

2.52.090 Loans.

- A.** A loan shall be considered a contribution from the maker and the guarantor of the loan and shall be subject to the contribution limitations of this ordinance. Loans from the candidate to him or herself shall be subject to the contribution limitations of this ordinance.
- B.** The proceeds of a loan made to a candidate by a commercial lending institution in the regular course of business on the same terms available to members of the public and which is secured or guaranteed personally and solely by the candidate shall not be subject to the contribution limits of this ordinance.
- C.** Extensions of credit, other than loans pursuant to subsection B, for a period of more than thirty (30) days are subject to the contribution limits of this ordinance.

2.52.100 Family Contributions.

- A. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated where the checks are drawn separately and signed by the spouse making the contribution.
- B. Contributions by children under the age of eighteen (18) shall be treated as contributions by their parents and attributed proportionately to each parent (one-half to each parent or the total amount to a single custodial parent).

2.52.105 Notice Regarding Personal Funds.

- A. No candidate shall expend or contribute more than \$5,000 in personal funds in connection with an election campaign unless and until the following conditions are met:
 - 1. Written notice of the candidate's intent to so expend or contribute in excess of \$5,000 shall be provided to the city clerk and all opponent candidates. The notice shall be delivered personally or sent by registered mail and shall specify the amount intended to be expended or contributed; and
 - 2. All personal funds to be expended or contributed by the candidates shall first be deposited in the candidate's campaign contribution checking account at least 21 days before the election. The required notice shall be given no later than 24 hours after the date of the deposit or 21 days prior to the election whichever occurs first.
- B. If sent by mail, the notice to opponent candidates shall be sent to the last known address of the opponent candidates as shown in the records of the city clerk.

2.52.110 One Campaign Committee and One Checking Account Per Candidate.

A candidate for city elective office shall have no more than one campaign committee and one checking account for each election, from which all contributions shall be accounted for, and out of which all expenditures shall be made.

A. Same Day, Same Office, Multiple Election Rule.

For the purposes of this section, multiple elections scheduled to be held on the same day for the same office, but for different terms (such as in the case of a special election to be held to fill a vacancy in a Seat, and a general municipal election to be held to fill a full length term for same Seat) shall be deemed to be a single election for the purposes of this section.

2.52.120 Prohibition on Transfers.

- A. No candidate for city elective office shall make any contribution from campaign funds to another candidate running for city elective office or to a candidate for a non-city elective office. This section shall not prohibit a candidate from making a contribution from his or her own personal funds to his or her candidacy or to the candidacy of any other candidate for elective office.
- B. No candidate shall use or transfer contributions received for one campaign for city elective office to any other campaign by the same person as a candidate for the same office or any other elective office consistent with state law, except that a candidate eligible to compete in a consequent runoff contest may transfer contributions received for the predecessor election contest to that candidates campaign committee for the runoff election contest.
- C. The use of any funds which were received prior to January 1, 1989, shall be governed by the Political Reform Act (Government Code Section 81000 et seq.) and any regulations adopted by the Fair Political Practices Commission pursuant thereto.

2.52.130 Contents of City Campaign Statements.

- A. All city campaign statements required to be filed with the city clerk pursuant to this ordinance shall contain the following information:
 - 1. The information required by Government Code Section 84211 and any administrative regulations adopted pursuant thereto; and
 - 2. Any information required by the city clerk.
- B. All city campaign statements required to be filed with the city clerk pursuant to this ordinance, shall be on a form prescribed by the city clerk. To the extent practicable, such form should be similar to, or consolidated with, those required by state law.

2.52.140 Duties of Treasurers and Candidates.

All city campaign statements filed under this ordinance shall be signed under penalty of perjury and verified by both the candidate and the campaign treasurer. The verification shall state that the candidate and the campaign treasurer have used all reasonable diligence in its preparation, and that to the best of their knowledge it is true and complete.

2.52.150 Duties of City Clerk with Respect to Campaign Statements.

- A. It shall be the duty of the city clerk to determine whether required city campaign statements have been filed. The city clerk is hereby authorized to make that determination only from facts and information within her knowledge, and is not

required to conduct an investigation to determine whether or not a candidate has an obligation to file a city campaign statement.

- B. It shall be the duty of the city clerk to determine whether city campaign statements filed conform on their face with the requirements of this ordinance.
- C. It shall be the duty of the city clerk to accept for filing any city campaign statement which this ordinance requires to be filed. In those cases where the city clerk discovers in his or her review of city campaign statements that a candidate has filed an incorrect, incomplete or illegible statement, or a statement which cannot be reproduced, he or she shall promptly notify the candidate of the error or omission.

However, no notification is required in those cases in which the errors or omissions are minor ones which do not recur throughout the statement. An error or omission is minor if it does not result in omission of the amount of an individual contribution or expenditure. An error or omission in connection with the identification of a donor or intermediary is minor if such person is identified by name and either street address, occupation, employer or principal place of business. An error or omission in connection with the identification of the recipient of an expenditure or person providing consideration for an expenditure is minor if such person is identified by name.

2.52.160 Audits.

- A. The city finance director may make, or have made, investigations or audits with respect to any city campaign statements required by this ordinance, or any campaign accounts for city elective office maintained by any candidate, at any time between the last day for filing a declaration of candidacy for a city elective office and one year following the date of the election in which a candidate is elected to that city elective office.
- B. Any candidate whose campaign statements are subject to an investigation or audit by the city shall provide the finance director with all financial records, documents and any other information or material required by the finance director.

2.52.165 Disqualification and Disclosure.

- A. Disclosure of Contribution; Limit.

Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before the city, each councilmember who received a campaign contribution during any campaign for office in the last four years in an amount of more than one thousand dollars (\$1,000) in the aggregate, from a party, participant, or their agents, or officers or agents of an organization party or participant, shall disclose that fact on the record of the proceeding.

B. Disqualification Limit.

No such councilmember shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the city if the councilmember has willfully or knowingly received a contribution in an amount of more than one thousand dollars (\$1,000) in the aggregate, in any campaign during the last four years from a party, participant or their agents, or from officers or agents of an organization party or participant; provided, however, that the councilmember knows or has reason to know that the party, participant or other agents or officers have a financial interest in the decision, as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7 of the Government Code.

C. When a councilmember runs for reelection the same disclosure and disqualification requirements set forth in "A" and "B" above apply during his or her current term of office for contributions received towards his or her reelection.

D. Parties and participants to a proceeding before the city council involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than one thousand dollars (\$1,000) in the aggregate, made at any time during the prior four years by the party, participant, their agents, or from officers or agents of an organization party or participant, to any city council member.

E. For the purposes of disclosure and disqualification under subdivisions B and C, aggregation shall occur regardless of whether the contribution activity of an organization's officers and agents is financed, maintained or controlled or at the behest, consent or encouragement of an organization or another person or not.

F. The provisions of Government Code Section 84308, its implementing regulations, and the administrative interpretations thereof by the FPPC shall be utilized in applying the provisions of this section.

2.52.170 Criminal Sanctions.

Any knowing or willful violation of any provision of this chapter may be prosecuted either as an infraction or as a misdemeanor at the discretion of the prosecutor.

2.52.180 Injunctive Relief.

Any candidate or other resident of the city may bring an action, at any time, in a court of competent jurisdiction to enjoin actual or threatened violations or, to compel compliance with, or to obtain judicial declarations regarding, the provisions of this ordinance.

2.52.190 Enforcement.

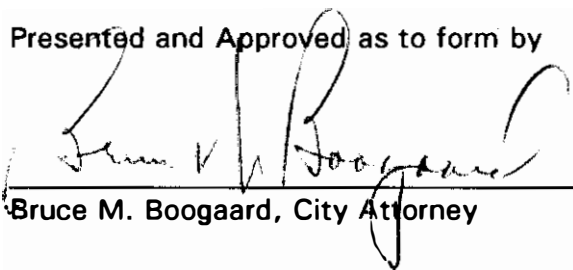
- A. The city attorney shall not investigate or prosecute any alleged violations of the chapter, but shall defend the constitutionality and legality of this chapter in any civil proceeding in which the city or the city council is a party.
- B. Review of complaints of violation of this chapter and criminal prosecution thereof shall be commenced only by the district attorney, unless the district attorney fails or refuses to investigate, in which case the special counsel shall be the attorney general. However, if the attorney general shall fail or refuse to investigate a bonafide allegation of the violation of this chapter, the special counsel shall be such other qualified and independent attorney who shall be appointed by the city attorney, except and unless the alleged violation of this chapter concerns or involves the city attorney, in which case said special counsel shall be appointed by a majority vote of the city council. No enforcement or prosecution or action of special counsel shall be subject to the review or control of the city council or the city attorney.
- C. Any person residing in the city who believes that a violation of this chapter has occurred may file a written complaint requesting investigation of such violation by the special counsel. If the special counsel determines that there is reason to believe a violation of this chapter has occurred, it shall conduct an investigation and may commence such administrative, civil, or criminal legal action as it deems necessary for the enforcement of this chapter.
- D. The special counsel shall have such investigative powers as are necessary for the performance of duties described in this chapter and may demand and be furnished records of campaign contributions and expenditures of any person or committee at any time. In the event that production of such records is refused, the special counsel may commence civil litigation to compel such production.
- E. The special counsel shall be immune to liability for its enforcement of this chapter.
- F. The special counsel may maintain on behalf of the city, a candidate or other resident of the city may maintain on their own behalf, a civil action to recover personally from a candidate any contributions received by the candidate in excess of the contributions limits established by this ordinance or any contributions which a candidate fails or refuses to remit to the city clerk or return to the donor. Any money recovered in any action maintained pursuant to this section shall be deposited in the campaign enforcement fund.
- G. Any action alleging violation of this chapter must be commenced within four years of the time the alleged violation occurred.
- H. Violations involving wilful acceptance of cumulative illegal contributions of \$2500 or more shall constitute a crime of moral turpitude pursuant to city Charter Section 303.

2.52.200 Severability.

If any provision of this ordinance, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this ordinance to the extent it can be given effect, or the application of those provisions to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby, and to this end the provisions of this ordinance are severable.

SECTION II: This ordinance shall take effect and be in full force and effect on the thirtieth day from and after its second reading and adoption.

Presented and Approved as to form by

A handwritten signature in black ink, appearing to read "Bruce M. Boogaard", is written over a horizontal line. The signature is cursive and somewhat stylized.

Bruce M. Boogaard, City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 5th day of December, 1995, by the following vote:

AYES: Councilmembers: Alevy, Moot, Padilla, Rindone, Horton
NAYS: Councilmembers: None
ABSENT: Councilmembers: None
ABSTAIN: Councilmembers: None



Shirley Horton, Mayor

ATTEST:



Beverly A. Authelet, City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2654 had its first reading at a regular meeting held on the 21st day of November, 1995 and its second reading and adoption at a regular meeting of said City Council held on the 5th day of December, 1995.

Executed this 5th day of December, 1995.



Beverly A. Authelet, City Clerk