

ORDINANCE NO. 2955

ORDINANCE OF THE CITY COUNCIL OF THE CITY OF
CHULA VISTA AMENDING CHAPTER 2.52 OF TITLE 2 OF
THE CHULA VISTA MUNICIPAL CODE REGARDING
CAMPAIGN FINANCE REFORM

WHEREAS, there have been many changes in the law of campaign finance since the City of Chula Vista's campaign contribution ordinance was adopted; and

WHEREAS, the current ordinance requires clarification of certain provisions that are ambiguous and difficult to implement; and

WHEREAS, the City Council of the City of Chula Vista has expressed a desire to amend the Municipal Code regulating election campaign finance and control; and

WHEREAS, at the October 23, 2001 City Council meeting, staff was directed to return to Council with recommendations for establishing a campaign finance reform committee; and

WHEREAS, on November 20, 2001 the City Council accepted a report from staff and formed a subcommittee to review the campaign contribution ordinance; and

WHEREAS, the Council directed the committee to review the campaign contribution ordinance in its entirety and redraft it to ensure consistency with State and Federal law; and

WHEREAS, the Council appointed to the campaign contribution ordinance committee Councilmember Patty Davis, former Councilmember John Moot, one member of the Ethics Commission and two members of the Charter Review Commission ("Committee"); and

WHEREAS, the Ethics Commission appointed Ricardo Gilbert and the Charter Review Commission appointed Cheryl Cox and Armida Martin del Campo; and

WHEREAS, the Council accepted a report and draft ordinance from the committee on February 3, 2004; and

WHEREAS, the Environmental Review Coordinator has reviewed the proposed activity for compliance with the California Environmental Quality Act (CEQA) and has determined that the activity is not a "Project" as defined under Section 15378 of the State CEQA Guidelines; therefore, pursuant to Section 15060(c)(3) of the State CEQA Guidelines the activity is not subject to CEQA. Thus, no environmental review is necessary.

NOW, THEREFORE, the City Council of the City of Chula Vista does hereby ordain:

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

2.52.010 Purpose and Intent.

In enacting this chapter, the City Council finds and declares that moderate monetary contributions to political campaigns are a legitimate form of participation in the American

political process. It is the policy of this City to protect the integrity of the electoral process; and the best interests of the citizens of this City are served by regulating campaign finance.

Inherent in the high cost of election campaigning is the problem of improper influence, real or potential, exercised by campaign contributors over elected officials. It is the purpose and intent of the City Council in enacting this chapter:

- A. To preserve an orderly political forum in which individuals may express themselves effectively;
- B. To place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in City elections;
- C. To prohibit contributions by organizations and permit individual contributions only;
- D. To provide full and fair enforcement of all the provisions of this chapter; and
- E. To encourage candidate adherence to election regulations by making them easier to understand.

2.52.020 Interpretation of this Ordinance.

The terms and phrases in this chapter shall be defined as those terms and phrases are defined in the Political Reform Act of 1974, as amended, (Government Code, section 81000 et seq.) unless otherwise specified in this chapter.

2.52.030 Definitions.

- A. "Agent" means a person who acts on behalf or at behest of any other person or accepts a contribution on behalf of a candidate. 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. "At the behest" means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express prior consent of.
- C. "Candidate" means any individual seeking any City elective office, the candidate's campaign committee, committee(s) controlled by the candidate, agents of the candidate.
- D. "City Campaign Statement" means the statement which, to the extent practicable, shall be similar to or consolidated with that required by state law.
- E. "City Elective Office" means the offices held by members of the City Council and Mayor.
- F. "Contributions" are defined in a manner identical with the definition found in Government Code Section 82015 and any related provisions in the California Code of Regulations.

- G. "Enforcement Authority" means that Special Counsel appointed by the City Council pursuant to Section 2.52.160.
- H. "General Election" is that election identified by Charter Section 900 which is combined with the State primary election.
- I. "Independent Expenditure Committee" is as defined in Government Code Sections 82013 and 82031 which supports or opposes in whole or in part a candidate for City elective office if contributions are made to said committee with the intent that they, or a comparable amount of funds otherwise owned by, or under the control of, the committee be used to support or oppose a particular candidate for a City elective office. This type of committee is not controlled by the candidate.
- J. "Intermediary" means a person who delivers to a candidate or committee or committee treasurer a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. Neither candidate or treasurer is considered an intermediary.
- K. "Organization" means a proprietorship, labor union, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, or committee, including a political action committee.
- L. "Person" means a natural individual.
- M. "Single Election Contest" means either a general or special election.
- N. "Special Election" defined in Charter Section 901, as all other Municipal elections that may be held by authority of the Charter or of any law.

2.52.040 Campaign Contributions. (First of two; Operative until November 2, 2004)

- A. No person, other than a candidate, shall make a contribution in excess of two hundred fifty dollars (\$250) to a candidate for a single election contest. No candidate shall solicit or accept a contribution in excess of \$250 from a contributor for a single election contest. A candidate may receive up to \$250 from a contributor in each of the general and special elections.
- B. The terms of this chapter are applicable to any contributions made to a candidate or committee hereunder, whether used by such candidate or committee to finance a current campaign or to pay debts incurred in prior campaigns.
- C. No person shall make a contribution to any candidate for City elective offices and no such candidate shall accept from any person, such a contribution sooner than eleven months preceding a single election contest.
- D. A contribution for an election may be accepted by a candidate for elective City office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.

- E. A candidate for City elective office may not solicit or accept contributions for a special election prior to the holding of the general election for that office. A candidate for City elective office may carry over contributions raised in connection with one election for elective City office to pay campaign expenditures incurred in connection with a subsequent election for the same elective City office.

2.52.040 Campaign Contributions. (Second of two; Operative November 3, 2004)

- A. No person, other than a candidate, shall make a contribution in excess of three hundred dollars (\$300) to a candidate for a single election contest. No candidate shall solicit or accept a contribution in excess of \$300 from a contributor for a single election contest. A candidate may receive up to \$300 from a contributor in each of the general and special elections.
- B. The terms of this chapter are applicable to any contributions made to a candidate or committee hereunder, whether used by such candidate or committee to finance a current campaign or to pay debts incurred in prior campaigns..
- C. No person shall make a contribution to any candidate for City elective offices and no such candidate shall accept from any person, such a contribution sooner than eleven months preceding a single election contest.
- D. A contribution for an election may be accepted by a candidate for elective City office after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election.
- E. A candidate for City elective office may not solicit or accept contributions for a special election prior to the holding of the general election for that office. A candidate for City elective office may carry over contributions raised in connection with one election for elective City office to pay campaign expenditures incurred in connection with a subsequent election for the same elective City office.

2.52.050 Surplus Campaign Funds.

- A. Upon leaving any elected office, or at the end of the post-election reporting period following the defeat of a candidate for elective office, whichever occurs last, campaign funds under the control of a candidate shall be considered surplus campaign funds.
- B. Surplus campaign funds shall be used only for the following purposes:
 - 1. To repay contributions.
 - 2. To make a donation to any bona fide charitable, educational, civic, religious, or nonprofit organization, where no substantial part of the proceeds will have a material financial effect on the candidate, any member of his or her immediate family, or his or her campaign treasurer.

3. To pay for professional services reasonably required by the candidate or committee to assist in the performance of its administrative functions, including payment for attorney's fees for litigation that arises directly out of a candidate's activities or his or her status as a candidate, including, but not limited to, an action to enjoin defamation, defense of an action brought of a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

2.52.060 Organizational Contributions.

- A. No organization shall make a contribution to any candidate or candidate campaign committee. This chapter shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the qualification for the ballot or adoption of one or more City measures.
- B. No officer, employee, agent or attorney or other representative of a person covered by this chapter shall aid, abet, advise or participate in a violation of this chapter. 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.
- C. No candidate shall knowingly accept a payment or contribution made in violation of this chapter.

2.52.070 Contribution in Violation of this Ordinance.

- A. If a contribution is tendered and would be in violation of this chapter it shall be returned within three business days of discovery.
- B. If a contribution which is in violation of this chapter is received by a candidate, the candidate shall report in writing within three business days of discovery of the receipt of the contribution to the City Clerk the facts surrounding such contribution and shall return such contribution to the contributor within 24 hours of discovery.
- C. 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 three business days of discovery of receipt.

2.52.080 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 six point type on each such solicitation:

NOTICE

Ordinance No. 2955 of the City of Chula Vista limits contributions to campaigns for City elective office, either to candidate controlled committees or to regulated independent expenditure committees, to three hundred dollars per contributor.

2.52.090 Loans.

- A. A loan or extension of credit shall be considered a contribution from the maker of the loan or extender of credit and shall be subject to the contribution limitations of this chapter.
- B. The provisions of this chapter apply to personal loans or extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender's regular course of business on terms available to members of the general public for which the candidate is personally liable.
- C. A candidate for elective City office may not personally loan to his or her campaign an amount in excess of \$20,000.
- D. Each opponent of a candidate who has made a loan to his or her campaign pursuant to this section shall be permitted to solicit and receive, and contributors to such opponent may make, contributions in excess of the limits contained in Section 2.52.040 of the Municipal Code. The limitation contained in Section 2.52.040 shall be suspended from the date candidate made said loan so that the opponent may receive contributions in excess of the limitation up to the amount loaned by the candidate. Those contributions received within or in excess of the limitation shall count toward equaling the amount loaned.
- E. Each opponent of a candidate or other person who has given notice pursuant to 2.52.100 shall not be bound by the loan limitation within this section to the extent the amount of personal funds expended or contributed exceeds \$20,000.

2.52.100 Notice Regarding Personal Funds.

- A. No candidate or other person 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 or other person'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 to the last known address of the opponent candidates as shown in the records of the City Clerk and shall specify the amount intended to be expended or contributed; and
 - 2. All personal funds to be expended or contributed by the candidate shall first be deposited in the candidate's campaign contribution checking account. The required notice shall be given no later than twenty-one days prior to the election. If the expenditure or contribution occurs during the twenty-one days preceding the election, the required notice shall be provided within twenty-four hours.
- B. Each opponent of any candidate who has complied with the above conditions shall be permitted to solicit and receive, and contributors to each such opponent may make, contributions in excess of the limits established in subdivision (a) of Section 2.52.040 of the Municipal Code. The limitation contained in Section 2.52.040 shall be suspended from the date candidate deposited said funds so that

the opponent may receive contributions in excess of the limitation up to the amount of personal funds deposited by the candidate in his or her campaign contribution checking account. Those contributions received within or in excess of the limitation shall count toward equaling the amount of personal funds deposited by the candidate in his or her campaign contribution checking account.

2.52.110 Family Contributions.

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. Contributions by a husband and wife shall be treated as separate even if combined into one check but presented with two signatures.

2.52.120 Prohibition of Contribution in the Name of Another Individual.

It is unlawful for any individual, or combination of individuals acting jointly, to make directly or indirectly a contribution in the name of another individual or combination of individuals.

2.52.130 Contributions for Legal Defense.

- A. Notwithstanding anything contained herein to the contrary, a payment to or for the benefit of a Councilmember and Mayor or candidate made and used for the express purpose of offsetting costs already incurred by that Councilmember and Mayor or candidate in the defense of a criminal or administrative prosecutorial action against said Councilmember and Mayor, and not made or used for the purpose of aiding in the election of said Councilmember and Mayor or candidate, and not made within (before or after) 100 days of an election in which the Councilmember and Mayor or candidate is competing for a seat or office, shall not be deemed to be a contribution for the purposes of this chapter.

2.52.140 Campaign Contribution Checking Account.

The campaign account required by Government Code section 85201(a) shall be established at a financial institution located in San Diego County.

2.52.150 Campaign Statements.

Each candidate and committee shall file campaign statements in the time and manner required by the Political Reform Act of 1974 as amended (Government Code Sections 84100 et seq.). Compliance with the requirements of that act shall be deemed to be compliance with this chapter.

2.52.160 Duties of City Clerk.

In addition to other duties required of the City Clerk under the terms of this chapter and City Charter, the Clerk shall:

- A. Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission. These forms and manuals shall be furnished to all candidates and committees, and to all other persons required to report.

- B. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of state law.
- C. Notify promptly all person and known committees who have failed to file a document in the form and at the time required by state law.
- D. Report apparent violations of this chapter and applicable state law to the Enforcement Authority.
- E. Compile and maintain a current list of all statements or parts of statements filed with the Clerk's office pertaining to each candidate and each measure.
- F. Cooperate with the Enforcement Authority in the performance of the duties of the Enforcement Authority as prescribed in this chapter and applicable state laws.

2.52.170 Enforcement.

- A. The City Attorney shall not investigate or prosecute alleged violations of this 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. Special Counsel shall investigate or prosecute alleged violations of this chapter.
- C. City Attorney shall solicit proposals from attorneys in accordance with Section 503 of the City Charter and Section 2.56 of the Municipal Code to act as Special Counsel 180 days prior to a City election. As part of the annual budget process, City Council shall appropriate no less than \$100,000 to fund the retention of Special Counsel. Said funds shall be separate from the City Attorney's budget and used solely for the investigation and prosecution of alleged violations of this chapter.
- D. City Attorney shall appoint a panel of no less than three attorneys to act as Special Counsel. Said attorneys shall be compensated by the City and shall serve as the Enforcement Authority for this ordinance. Should the appointment of additional Special Counsel become necessary or appropriate, the City Attorney shall appoint such additional Special Counsel as may be required. A single member of the Special Counsel panel will be assigned to each case. Assignments will be made on a rotating basis.
- E. Complaints of violation of this chapter shall be submitted in writing, under penalty of perjury, by a resident of the City to the City Clerk. Said complaint shall state the full allegation of facts that would constitute a violation of the code. The complaint must be filed within 90 days of discovery of the alleged violation, but no later than 180 days from the date of the election.
- F. City Clerk shall forward the complaint to the randomly assigned Special Counsel from the panel of attorneys appointed by the City Attorney within 5 working days of receipt for a probable cause determination. If no probable cause is determined to exist the complaint shall be dismissed summarily and interested parties shall be notified in writing.

- G. If probable cause is determined to exist, Special Counsel shall take further investigatory and procedural steps necessary to resolve the matter.
- H. Violations of this chapter may be pursued either through a civil or criminal action at the discretion of the Special Counsel. Special Counsel may also commence and prosecute any necessary administrative proceedings or civil litigation to compel compliance with the chapter. No enforcement or prosecution or action of Special Counsel shall be subject to the review or control of the City Attorney or City Council.
- I. Special Counsel may investigate and may institute legal action to prevent further violations. The Special Counsel may decline to investigate if the allegation is also a violation of state law and is subject of a complaint filed with the Fair Political Practices Commission.
- J. Special Counsel shall be immune to liability for enforcement of chapter.

2.52.180 Penalties.

- A. Any person who willfully violates any provision of this chapter is guilty of a misdemeanor. Any person who willfully causes or solicits any other person to violate any provisions of this chapter, or who aids and abets any other person in the violation of this chapter shall be guilty of a misdemeanor.
- B. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by Special Counsel for an amount not more than three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, or \$5000 per violation which ever is greater.

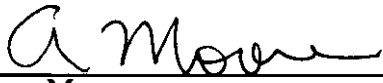
In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant. If a judgment is entered the funds recovered shall be deposited into the City's General Fund

2.52.190 Severability.

If any provision of this chapter, or the application of any such provision to any person or circumstances, shall be held invalid, the remainder of this chapter 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 chapter are severable.

SECTION II: This ordinance shall take effect and be in full force on the thirtieth day from and after its adoption except as previously indicated.


Submitted and approved by



Ann Moore
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 24th day of February, 2004, by the following vote:

| | | |
|---------|-----------------|-----------------------------------|
| AYES: | Councilmembers: | Davis, McCann, Rindone, and Salas |
| NAYS: | Councilmembers: | None |
| ABSENT: | Councilmembers: | Padilla |



Mary Salas, Deputy Mayor

ATTEST:



Susan Bigelow, CMC, City Clerk

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

I, Susan Bigelow, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2955 had its first reading at a regular meeting held on the 17th day of February, 2004 and its second reading and adoption at a regular meeting of said City Council held on the 24th day of February, 2004.

Executed this 24th day of February, 2004.



Susan Bigelow, CMC, City Clerk