

ORDINANCE NO. 3086

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING  
CHAPTER 2.52 OF THE CHULA VISTA MUNICIPAL CODE  
REGARDING CAMPAIGN CONTRIBUTIONS

WHEREAS, the City of Chula Vista, pursuant to the police powers delegated to it by the California Constitution and as a charter city, has the authority to enact laws that promote the public health, safety, and general welfare of its residents; and

WHEREAS, the City Council of the City of Chula Vista has the authority to regulate aspects of campaign finance and control related to the election of City officials, which is a matter of the general welfare of Chula Vista residents; and

WHEREAS, Charter Section 904 provides that it is the policy of the City to avoid the potential for undue or improper influence over elected officials resulting from excessive campaign contributions. In furtherance of that purpose, the City Council shall adopt reasonable regulations related to campaign contributions which shall be contained in the City Code; and

WHEREAS, in 2004, the City Council amended the Chula Vista Municipal Code to add a revised Chapter 2.52 regarding campaign contributions; and

WHEREAS, the 2004 amendment was the result of a process started in November 2001 at the request of the City Council to review a model ordinance prepared by the San Diego Election Campaign Finance and Control Commission and use it as a tool to draft a new campaign contribution ordinance to meet the needs of Chula Vista; and

WHEREAS, the 2004 ordinance was prepared and reviewed by an Ad Hoc Committee, which included a member of the Charter Review Commission, the Ethics Commission, an existing Councilmember, and a former Councilmember, prior to the ordinance's approval by the City Council; and

WHEREAS, in 2007, it was brought to the City Council's attention that the revised 2004 campaign ordinance had areas of ambiguity that needed review and possible revision; and

WHEREAS, the 2004 ordinance had been in place for two elections, the general election of June 2006 and the special election in November 2006; and

WHEREAS, on March 20, 2007, the City Council voted to form an Ad Hoc Committee on the Campaign Contribution Ordinance to review the existing law and ensure it is meeting the needs of the people of Chula Vista and to bring forward suggestions regarding proposed changes as needed; and

WHEREAS, the City Council requested that the Ad Hoc Committee be composed of a member of the City's Charter Review Commission and Board of Ethics, and a member who sat on the City's previous committee on campaign finance, which was formed in June 2003; and

WHEREAS, the Ad Hoc Committee met several times in noticed public meetings during the Summer of 2007 to discuss the existing campaign contribution ordinance; and

WHEREAS, on August 14, 2007, the City Council directed the City Attorney to return to Council with a report outlining the ambiguities with the existing campaign contribution ordinance and proposing language to clarify these ambiguities without making any substantive changes to the existing ordinance or adding any new concepts; and

WHEREAS, the City Attorney's Office prepared its report by reviewing the language of the existing ordinance, on its face, meaning the actual words used, and as it has been applied to issues raised during the general election in June 2006 and the special election in November 2006; gathering information from the City Clerk on questions raised during the 2006 election cycle; considering the discussions of the Ad Hoc Committee; and responding to the City Council's direction to the City Attorney in August 2007; and

WHEREAS, on September 25, 2007, the City Attorney's Office presented its report to the City Council, and the City Council voted to approve several policy changes to the existing ordinance; and

WHEREAS, on September 25, 2007, the City Council directed the City Attorney's Office to incorporate its requested changes to the existing ordinance and to prepare an ordinance with the changes for Council's review; and

WHEREAS, on September 25, 2007, the City Council further directed the City Attorney's Office to present the revised draft ordinance to the Ad Hoc Committee, which met on October 10, 2007 and October 16, 2007; and

WHEREAS, the City Attorney's Office comes now to the City Council with the revised draft ordinance.

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

**SECTION I:** The Chula Vista Municipal Code is amended to add a revised Chapter 2.52, entitled "Campaign Contributions," 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 contributions by individuals 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 chapter.**

A. 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.) and in regulations adopted by the Fair Political Practices Commission unless otherwise specified in this chapter.

B. The terms of this chapter are applicable to any contributions made to a candidate or candidate-controlled committee, whether used by the candidate to finance a current campaign or to pay debts incurred in prior campaigns.

C. Revisions to this chapter take effect on December 13, 2007, and are applicable to all contributions received by candidates seeking City elective office in the general election of June 2008 and any election thereafter. Any candidate for City elective office participating in the general election of June 2008 shall have a grace period of 60 days from the effective date, as stated in this paragraph, to repay any campaign contributions made or received prior to the effective date of the revisions in conflict with or in violation of any provisions of this chapter. A candidate repaying any campaign contributions or loans during this 60-day grace period shall provide written notice to the City Clerk of the repayment within three business days, defined as Monday through Friday and excluding City holidays, of the repayment.

**2.52.030 Definitions.**

A. "Agent" means a person who acts on behalf or at the 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. "Campaign contribution account" is that account in which all contributions or loans made to the candidate shall be deposited, as required by Government Code section 85201.

D. "Candidate" means any individual seeking any City elective office, the candidate's campaign committee, committee(s) controlled by the candidate, agents of the candidate.

E. "City campaign statement" means the statement, which, to the extent practicable, shall be similar to or consolidated with that required by state law.

F. "City elective office" means the offices held by the Mayor or members of the City Council. The "same City elective office," as used herein, means the specific Council seat numbered one (1), two (2), three (3), or four (4) or the specific seat held by the Mayor, as defined by Charter Section 300(C).

G. "Contribution" is defined in a manner identical with the definition found in Government Code section 82015, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

H. "Enforcement authority," under this chapter, means that special counsel appointed by the City Attorney pursuant to CVMC 2.52.140.

I. "General election" is that election identified by Charter Section 900, which is combined with the state primary election.

J. "Independent expenditure committee" is as defined in the Political Reform Act, 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.

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. "Political Reform Act" means the California Political Reform Act of 1974, as amended, found at Government Code section 81000 et seq., and includes regulations adopted by the Fair Political Practices Commission.

N. "Single election contest" means either a general or special election.

O. "Special election" is 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 contribution limits.**

A. No person, other than a candidate, shall make a contribution in excess of \$300.00 to a candidate for a single election contest. No candidate shall solicit or accept a contribution in excess of \$300.00 from a contributor for a single election contest. A candidate may receive up to \$300.00 from a contributor in each of the general and special elections.

B. No organization shall make a contribution to any candidate or candidate-controlled campaign committee. This chapter shall not apply to contributions made to a committee that is organized solely for the purpose of supporting or opposing the qualification for the ballot or adoption of one or more city measures. 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 individual, or combination of individuals acting jointly, shall make directly or indirectly a contribution in the name of another individual or combination of individuals.

D. 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.

E. No person shall make a contribution to any candidate, and no such candidate shall accept from any person such a contribution earlier than eleven months preceding a single election contest.

F. A contribution for an election may be accepted by a candidate 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.

G. A candidate may not solicit or accept contributions for a special election prior to the holding of the general election for that office.

H. A candidate may carry over contributions raised in connection with one election for City elective office to pay campaign expenditures incurred in connection with a subsequent election for the same City elective office.

**2.52.050 Loans**

A. A candidate shall not personally loan to his or her campaign funds, with the intent to receive repayment of those funds, an aggregate amount in excess of \$5,000 for a single election contest.

B. 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 limit of \$300.00 per person, pursuant to CVMC 2.52.040. The \$300.00 contribution limit does not apply to loans made to a candidate for the purpose of a campaign by himself or herself or 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.

**2.52.060 Notice regarding personal funds.**

If a candidate spends or contributes personal funds of more than \$5,000 aggregate, in connection with a campaign for a single election contest, a candidate shall do all of the following:

A. Prior to spending or contributing the personal funds, the candidate shall provide written notice of the candidate's intent to spend or contribute more than \$5,000 of personal funds 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 of personal funds intended to be expended or contributed. The notice shall also provide the date the personal funds shall be deposited into the candidate's campaign contribution account, as required by CVMC 2.52.070(B). Separate notice is also required for every separate deposit of personal funds of any amount that is a contribution from a candidate to his or her campaign, once the candidate has spent or contributed more than \$5,000 in personal funds in connection with the campaign for a single election contest.

B. The required notice shall be given no later than 21 days prior the election, unless the expenditure or contribution occurs during the 21 days preceding the election, in which case the required notice shall be provided 24 hours prior to deposit into the candidate's campaign contribution account.

**2.52.070 Campaign contribution account.**

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

B. All personal funds to be expended or contributed by a candidate, including all loans of personal funds, shall first be deposited in the candidate's campaign contribution account.

**2.52.080 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, including loans to oneself up to an amount of \$5,000.

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 candidate-controlled 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.

**2.52.090 Return of prohibited contributions.**

A. A contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported, as provided by the California Political Reform Act.

B. If a contribution is tendered and would be in violation of this chapter, it shall be returned by the candidate to the contributor within sixty days of receipt by the candidate.

**2.52.100 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

The City of Chula Vista Municipal Code limits contributions to campaigns for City elective office to three hundred dollars per person.

**2.52.110 Campaign statements.**

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

**2.52.120 Contributions for legal defense.**

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, Mayor, or candidate in the defense of a criminal or administrative prosecutorial action against said Councilmember, Mayor, or candidate and not made or used for the purpose of aiding in the election of said Councilmember, Mayor, or candidate, and not made within (before or after) 100 days of an election in which the Councilmember, Mayor, or candidate is competing for a seat or office, shall not be deemed to be a contribution for the purposes of this chapter.

**2.52.130 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 persons and known committees who have failed to file a document in the form and at the time required by state law.

D. Report alleged violations of this chapter filed pursuant to CVMC 2.52.140(E) 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 City 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.

**2.52.140 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. The enforcement authority, as defined by this chapter, shall investigate or prosecute alleged violations of this chapter.

C. The City Attorney shall solicit proposals from attorneys in accordance with Section 503 of the City Charter and Chula Vista Municipal Code Chapter 2.56 to act as the enforcement authority eleven months prior to a general election. As part of the annual budget process, the City Council shall appropriate no less than \$100,000 to fund the retention of special counsel to serve as the enforcement authority. These 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. The City Attorney shall appoint a panel of no less than three attorneys to act as the enforcement authority. These attorneys shall be compensated by the City. Should the appointment of additional special counsel become necessary or appropriate, the City Attorney shall appoint additional special counsel as may be required. A single member of the special counsel panel shall be assigned to each case. Assignments shall be made on a rotating basis.



E. Complaints of violations of this chapter shall be submitted in writing, under penalty of perjury, by a resident of the City to the City Clerk. The complaint shall state a full recitation of all facts that are alleged to constitute a violation of this chapter.

F. The City Clerk shall forward the complaint to the enforcement authority within five 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 of the dismissal in writing.

G. If probable cause is determined to exist, the enforcement authority 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 enforcement authority. The enforcement authority may also commence and prosecute any necessary administrative proceedings or civil litigation to compel compliance with this chapter. No enforcement or prosecution or action by the enforcement authority shall be subject to the review or control of the City Attorney or City Council.

I. The special counsel, serving as the enforcement authority, 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 the subject of a complaint filed with the Fair Political Practices Commission.

J. Criminal prosecution for violations of this chapter must be commenced within one year after the date on which the violation occurred.

K. Civil prosecution for violation of this chapter must be commenced within four years after the date on which the violation occurred. No administrative action alleging a violation of any of the provisions of this chapter shall be commenced more than five years after the date on which the violation occurred. If the person alleged to have violated a provision of this chapter engages in the fraudulent concealment of his or her acts or identity, the five-year period for administrative actions shall be tolled for the period of concealment. For purposes of this subdivision, "fraudulent concealment" means the person knows of material facts related to his or her duties under this chapter and knowingly conceals them in performing or omitting to perform those duties, for the purpose of defrauding the public of information to which it is entitled under this title.

L. Special counsel, serving as the enforcement authority, shall be immune to liability for enforcement of chapter.

**2.52.150 Penalties.**

A. Any person who knowingly or willfully violates any provision of this chapter; who knowingly or willfully causes, solicits, advises, or participates with any other person to violate any provision of this chapter; or who knowingly or willfully aids and abets any other person in violation of any provision of this chapter shall be guilty of a misdemeanor.

B. Any person who intentionally or negligently violates any provision of this chapter or causes any other person to violate any provision of this chapter shall be liable in a civil or administrative action brought by the enforcement authority for an amount not more than three times the amount the person failed to report properly or unlawfully contributed, expended, gave or received, or \$5,000 per violation, whichever is greater.

C. This section shall apply only to persons who have filing or reporting obligations under this chapter or the Political Reform Act, or who are compensated for services involving the planning, organization, or directing any activity regulated or required by this chapter or the Political Reform Act.


D. Whether or not a violation is inadvertent, negligent, or deliberate, and the presence or absence of good faith shall be considered in applying the remedies and sanctions of this chapter. Further, in determining the amount of civil 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.


**2.52.160 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.

Presented by

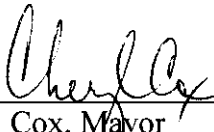
Approved as to form by

  
\_\_\_\_\_  
Ann Moore  
City Attorney

  
\_\_\_\_\_  
Ann Moore  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 13th day of November 2007, by the following vote:

AYES:	Councilmembers:	Castaneda, McCann, Ramirez, Rindone, and Cox
NAYS:	Councilmembers:	None
ABSENT:	Councilmembers:	None

  
 \_\_\_\_\_  
 Cheryl Cox, Mayor

ATTEST:

  
 \_\_\_\_\_  
 Susan Bigelow, MMC, 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. 3086 had its first reading at a regular meeting held on the 6th day of November; 2007 and its second reading and adoption at a regular meeting of said City Council held on the 13th day of November 2007; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

Executed this 13th day of November 2007.

  
 \_\_\_\_\_  
 Susan Bigelow, MMC, City Clerk