

ORDINANCE NO. 3179

ORDINANCE OF THE CITY OF CHULA VISTA AMENDING  
CHULA VISTA MUNICIPAL CODE CHAPTER 2.52, THE  
CITY'S CAMPAIGN CONTRIBUTION ORDINANCE

WHEREAS, Chula Vista City Charter section 904 requires the City Council to “adopt reasonable regulations related to campaign contributions” in order to “avoid the potential for undue or improper influence over elected officials resulting from excessive campaign contributions;” and

WHEREAS, in 1989, the City adopted Chula Vista Municipal Code Chapter 2.52, “Campaign Contributions,” in compliance with the City’s Charter requirements, and amended the Chapter to its current form in 2007; and

WHEREAS, the City Council finds that limitations on campaign contributions have been found to lessen the appearance of and potential for corruption in the election process and the potential for undue or improper influence over elected officials; and

WHEREAS, at the May 25, 2010, June 15, 2010, and October 12, 2010 City Council meetings, certain City Council members expressed concerns regarding the City’s campaign ordinance, including the amount of City resources expended to investigate complaints filed under the ordinance, potential abuse of the ordinance, and potential duplication of efforts by the City and other agencies; and

WHEREAS, the Council directed the City Attorney to review the ordinance and return to Council with a revised ordinance in response to the Council’s comments; and

WHEREAS, the City Attorney has undertaken a comprehensive review of the ordinance and has revised the ordinance accordingly; and

WHEREAS, the City Charter Section 312(e) provides that ordinances may be amended by reenactment of the affected sections.

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

SECTION I. ACTION

Chapter 2.52 of the Chula Vista Municipal Code is amended as follows:

## Chapter 2.52

### CAMPAIGN CONTRIBUTIONS

Sections:

- 2.52.010 Purpose and intent.
- 2.52.020 Interpretation of this chapter.
- 2.52.030 Definitions.
- 2.52.040 Campaign contribution limits.
- 2.52.050 Loans.
- 2.52.060 Notice regarding personal funds.
- 2.52.070 Campaign contribution account.
- 2.52.090 Return of prohibited contributions.
- 2.52.100 Written solicitations by candidates.
- 2.52.120 Contributions for legal defense.
- 2.52.130 Duties of City Clerk.
- 2.52.140 Enforcement.
- 2.52.150 Penalties.
- 2.52.160 Severability.

**2.52.010 Purpose and intent.**

This chapter is intended to supplement, the Political Reform Act of 1974 (California Government Code sections 81000, *et seq.*) (the, "PRA"), and the implementing regulations adopted by the Fair Political Practices Commission (the, "FPPC") (*see*, California Code of Regulations, Title 2, Division 6, sections 18110 through 18997). All local candidates should be aware that they must comply with this Chapter 2.52, as well as the PRA and the FPPC regulations, when participating in a local election campaign.

Sections 81013 and 85703(a) of the PRA authorize the City Council to adopt contribution limitations and prohibitions applicable to elections for local elective office. 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 to serve the best interests of the citizens of this City 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 prevent corruption and avoid the appearance of corruption by regulating campaign contributions to candidates for local elective office;
- 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 have the same definitions given to them in the PRA(*see*, California Government Code sections 82000 through 82054) and the FPPC Regulations, unless otherwise specified in this chapter.

B. The terms of this chapter are applicable to any contribution 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 February 10, 2011, and are applicable to all contributions received by candidates seeking City elective office in any election which takes place after that date.

### **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. "Campaign statement" means the campaign statement required by the PRA (*see*, California Government Code sections 84200, *et seq.*).

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

F. "City elective office" means the offices held by the Mayor, members of the City Council, or the City Attorney. The "same City elective office," as that term is used in this chapter, means the specific Council seat numbered one, two, three, or four or the specific seat held by the Mayor as defined by Charter Section 300(C), or the specific seat held by the City Attorney.

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. "Organization" means a proprietorship, labor union, firm, partnership, joint venture, syndicate, business, trust, company, corporation, association, or committee, including a political action committee. "Organization" does not include political party committees, as that term is defined in California Government Code section 85205.

K. "Person" means a natural individual.

L. "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.

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

N. "Special election" is as defined in Charter Section 901.

**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 person for a single election contest. A candidate may receive up to \$300.00 from a person in each of the general and special elections. The contribution limit in this subsection shall be adjusted bi-annually pursuant to subsection 2.52.040.D.

B. No political party committee, as that term is defined in California Government Code section 85205, shall make a contribution in excess of \$1,000.00 to a candidate for a single election contest. No candidate shall solicit or accept a contribution in excess of \$1,000.00 from a political party committee for a single election contest. A candidate may receive up to \$1,000.00 from a political party committee in each of the general and special elections. The contribution limit in this subsection shall be adjusted bi-annually pursuant to subsection 2.52.040.D.

C. 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.

D. The contribution limits set forth in this section shall be adjusted every odd-numbered year, starting in 2013. The City Clerk shall adjust the contribution limits to reflect any changes in the Consumer Price Index for the San Diego area for the two-year period ending on December 31<sup>st</sup> of the previous year. Adjustments shall be rounded to the nearest ten dollars. The City Clerk shall publish a Public Notice of any adjustments by March 1<sup>st</sup> of each odd-numbered year, or as soon after as practicable, following the Bureau of Labor Statistic's release of the applicable Consumer Price Index data. The adjustments shall go into effect as soon as the public notice is published but shall apply only to elections held in subsequent years. The adjustments shall not be construed to raise the contribution limits applicable to past elections or to special elections held in the same year that the limits are adjusted.

E. No person shall make a contribution to any candidate and no such candidate shall accept from any person such a contribution sooner than 11 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.

I. The contribution limitations of this section are not limitations on expenditures and shall not be construed to limit the expenditures by any candidate, person or committee.

**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 to 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.**

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

**2.52.090 Return of prohibited contributions.**

If a contribution is tendered and would be in violation of this chapter, it shall be returned by the candidate to the contributor within 60 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.\*

\*The dollar amount to be included in this Notice shall be amended bi-annually to reflect any CPI adjustment to the contribution limit made pursuant to 2.52.040.D.

**2.52.120 Contributions for legal defense.**

Notwithstanding anything contained herein to the contrary, a payment to or for the benefit of a Councilmember, 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 act as the enforcement authority as to 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, or the District Attorney, shall investigate or prosecute alleged violations of this chapter.

C. The Board of Ethics shall solicit proposals from attorneys in accordance with Section 503 of the City Charter and Chapter 2.56 CVMC to act as the enforcement authority 11 months prior to a general election.

D. The Board of Ethics shall appoint a panel of no less than three attorneys to act as the enforcement authority. These attorneys shall be compensated by the City for work performed pursuant to this Chapter. Should the appointment of additional special counsel become necessary or appropriate, the Board of Ethics 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 violations of this chapter shall be: in writing; sworn under penalty of perjury by the complainant, who shall be a resident of the City; accompanied by proof that the complainant is a resident of the City; and submitted to the City Clerk. The complaint shall state a full recitation of all facts that are alleged to constitute a violation of this chapter. If a complaint does not comply with these requirements, the City Clerk shall return the complaint to the complainant, with an explanation as to why it is insufficient for filing.

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. The enforcement authority shall make a probable cause determination within 30 calendar days of receiving the complaint.

G. If probable cause is determined to exist, the enforcement authority shall notify the City Attorney. If the enforcement authority determines that probable cause exists to find that there was a knowing or willful violation of this chapter, the City Attorney shall forward the complaint to the District Attorney for further handling. If the enforcement authority determines that probable cause exists to find that there was a negligent violation of this chapter, the City Attorney shall forward the complaint to the special counsel who is next in the rotation of panel counsel to act as the enforcement authority and take further investigatory and procedural steps necessary to resolve the matter. However, if the City Attorney is the subject of the complaint, the duties of the City Attorney under this section shall be handled by the City Clerk.

H. Violations of this chapter that are forwarded to the District Attorney for handling shall not be subject to further action by the enforcement authority. Violations of this chapter that are not forwarded to the District Attorney for handling but, rather, are forwarded to the next panel counsel for further investigation pursuant to subsection G., above, may be pursued by the enforcement authority either through a civil or administrative action. The enforcement authority may also commence and prosecute any necessary administrative proceedings or civil litigation to compel compliance with this chapter. No enforcement of 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. If the allegation contained in the complaint is also a violation of state law, the special counsel shall not investigate but, rather, shall forward the complaint to the Fair Political Practices Commission, or other appropriate state agency.

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 four 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 four-year period for civil and

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 this chapter.

M. If the enforcement authority or District Attorney determines that no violation occurred, the enforcement authority shall review the complaint and, if necessary, conduct further investigation to determine if there is probable cause to find that the complainant committed perjury. If such probable cause exists, the enforcement authority shall forward the complaint to the District Attorney for prosecution for perjury.

### **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 the violation of this chapter shall be guilty of a misdemeanor.

B.

1. Any person who negligently violates any provision of this chapter shall be liable in a civil or administrative action brought by the enforcement authority for an amount not more \$500.00 per violation, and shall be required to correct the violation. .
2. Any person who intentionally violates any provision of this chapter, causes any other person to violate any provision of this chapter, or intentionally files a false complaint under this chapter, shall be liable in a civil administrative action brought by the enforcement authority for a maximum of \$1,000.00 per violation, or per false complaint filed.
3. Any amounts paid pursuant to this section shall be used to offset the costs of enforcing this chapter.
4. If it is determined by the District Attorney that the complainant committed perjury in filing the complaint, the complainant may be liable, in addition to any criminal penalties, for damages in the amount of fees, costs and other amounts suffered or incurred as a result of, or arising out of the filing of, such complaint.

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, or anyone who is determined by the District Attorney to have committed perjury in filing a complaint under this Chapter.

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.

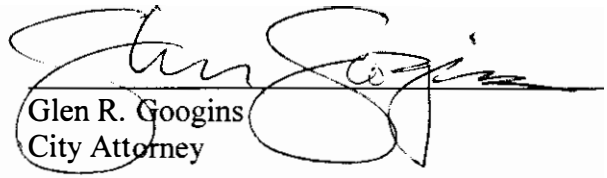
**SECTION II EFFECTIVE DATE.**

This ordinance will take effect and be in force thirty days after final passage.

Presented by

Approved as to form only by

  
Glen R. Googins  
City Attorney

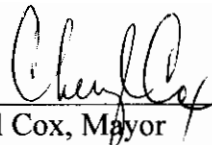
  
Glen R. Googins  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 11th day of January 2011, by the following vote:

AYES: Councilmembers: Aguilar, Castaneda and Ramirez

NAYS: Councilmembers: Bensoussan and Cox

ABSENT: Councilmembers: None

  
Cheryl Cox, Mayor

ATTEST:

  
Donna R. Norris, CMC, City Clerk

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

I, Donna R. Norris, City Clerk of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 3179 had its first reading at a regular meeting held on the 14th day of December 2010 and its second reading and adoption at a regular meeting of said City Council held on the 11th day of January 2011; and was duly published in summary form in accordance with the requirements of state law and the City Charter.

2/1/11  
Dated

  
Donna R. Norris, CMC, City Clerk