

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 12.06 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO (A) ALIGN THE CITY'S DISCLAIMER REQUIREMENTS FOR CAMPAIGN ADVERTISEMENTS WITH STATE LAW BUT WITH STRICTER REQUIREMENTS FOR THE DISCLOSURES OF "TOP CONTRIBUTORS"; (B) REQUIRE CAMPAIGN COMMITTEES MAKING INDEPENDENT EXPENDITURES TO FILE **ANY PRINTED CAMPAIGN ADVERTISEMENTS, **WITH A DISTRIBUTION OF 200 OR MORE**, WITH THE CITY CLERK; AND (C) MAKE OTHER TECHNICAL CHANGES, INCLUDING ALIGNING THE DEFINITION AND USE OF SURPLUS FUNDS IN THE MUNICIPAL CODE WITH THE MEANING UNDER STATE LAW**

WHEREAS, pursuant to the provisions and requirements of the California Environmental Quality Act of 1970, together with related State CEQA Guidelines and Title 21 of the San José Municipal Code (collectively, "CEQA"), the Director of Planning, Building and Code Enforcement has determined that the provisions of this Ordinance do not constitute a project, under File No. PP17-008 (General Procedure and Policy Making resulting in no changes to the physical environment); and

WHEREAS, the City Council of the City of San José is the decision-making body for this Ordinance; and

WHEREAS, this Council has reviewed and considered the "not a project" determination under CEQA prior to taking any approval actions on this Ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. The title of Chapter 12.06 of Title 12 of the San José Municipal Code is amended to read as follows:

Chapter 12.06

MUNICIPAL CAMPAIGNS AND OFFICEHOLDER CONTRIBUTIONSACCOUNTS

SECTION 2. Section 12.06.050 of Chapter 12.06 of Title 12 of the San José Municipal Code is amended to read as follows:

12.06.050 Contribution

A. "Contribution" means:

1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, or it is clear from the surrounding circumstances that the contribution is not made for political purposes.
2. An expenditure benefiting a candidate or committee made at the behest of a candidate, candidate controlled committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.

B. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation

by any person for the personal services or expenses of any other person, if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of any tangible thing of value.

C. The payment of salary, reimbursement for personal services or other compensation by an employer to an employee who spends any of his or her compensated time rendering services for political purposes related to a eCity candidate or committee is a contribution or an expenditure if:

1. The employee renders services at the request or direction of the employer; or
2. The employee, with the consent of the employer, is relieved of any normal working responsibilities related to his or her employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.

D. Payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, or independent expenditures made by independent committees are not deemed to be contributions for purposes of this eChapter. In addition, personal or professional services donated to a campaign by an individual are not deemed to be contributions for purposes of this eChapter. Any other payment or service not defined as a contribution in this sSection is also not deemed to be a contribution for purposes of this eChapter.

E. Pro bono legal services shall be allowed and made pursuant to the Political Reform Act, California Government Code Section 81000 et seq., as amended.

F. Any communication, other than a communication to members of an organization, made at the behest of a candidate, is a contribution to that candidate and is subject to the limits and prohibitions specified in Chapter 12.06 of the San José Municipal Code.

SECTION 3. Section 12.06.170 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby repealed.

~~**12.06.170 Political Reform Act**~~

~~"Political Reform Act" is the California Political Reform Act of 1974 (Government Code Section 81000 et seq., as amended).~~

SECTION 4. Section 12.06.295 of Chapter 12.06 of Title 12 of the San José Municipal Code is amended to read as follows:

12.06.295 Deposit of Personal Funds into Campaign Bank Accounts

A. A candidate must disclose the source of all personal funds deposited into his or her campaign bank account. If the source of the funds is a loan to the candidate, the name and address of the lender and the terms of the loan must also be disclosed.

B. The information required by Subsection A. must be reported, on a form provided by the City Clerk, on or before the date of the next pre-election campaign

disclosure statement, which must be filed after the funds are deposited into the campaign bank account.

- C. A candidate may deposit personal funds into his or her campaign bank account up to 11:59 p.m. on the one hundred eightieth (180th) day after the day of the election for the purpose of paying outstanding debt as set forth in Section 12.06.710.
- D. No candidate shall make loans to his or her own campaign or campaign committee where the outstanding total, at any one point in time, is more than twenty thousand dollars (\$20,000).
- E. Except as provided in this Section, nothing in this Chapter shall prohibit a candidate from making unlimited contributions to his or her own campaign.

SECTION 5. Section 12.06.720 of Chapter 12.06 of Title 12 of the San José Municipal Code is amended to read as follows:

12.06.720 Surplus Campaign Funds

~~Any remaining campaign funds in excess of expenses incurred for allowable expenses as specified under the Political Reform Act shall be deemed to be surplus campaign funds. Within one hundred eighty days after withdrawal, defeat, or election to office, the surplus campaign funds shall be returned to the contributors on a pro rata basis, turned over to the general fund of the city or may be used for attorney's fees and other costs in connection with an election contest or recount resulting from an Election that commenced the 180-day post-election contribution period.~~

A. Campaign funds under the control of a candidate for City office will be considered surplus campaign funds on the ninetieth (90th) day after the end of the

postelection reporting period following the election in which the candidate was elected or defeated or from which the candidate withdrew.

B. The “end of the postelection reporting period” has the same meaning as defined under the Political Reform Act.

C. Surplus campaign funds shall only be used for the following purposes:

1. The payment of outstanding campaign debts.

2. The repayment of contributions.

3. Donations to the general fund of the City or to a bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organization where no substantial part of the proceeds will have a material financial effect on the former candidate or elected officer, any member of his or her immediate family, or his or her campaign treasurer.

4. Contributions to a political party committee, provided the campaign funds are not used to support or oppose candidates for elective office. Notwithstanding the preceding sentence, the campaign funds may be used by a political party committee to conduct partisan voter registration, partisan get-out-the-vote activities, and slate mailers as that term is defined under the Political Reform Act.

5. Contributions to support or oppose a ballot measure.

6. The payment for professional services reasonably required by the candidate controlled committee to assist in the performance of its

administrative functions, including payment for attorney's fees and other costs for litigation that arises directly out of a candidate's activities, duties, or status as a candidate, including, but not limited to, an action to enjoin defamation, defense of an action brought for a violation of state or local campaign, disclosure, or election laws, and an action from an election contest or recount.

SECTION 6. Section 12.06.930 of Chapter 12.06 of Title 12 of the San José Municipal Code is amended to read as follows:

12.06.930 Disclosure of Post-Election Payment Agreements

- A. A candidate or his or her controlled committee must disclose, on a form provided by the City Clerk, any campaign-related agreements entered into by the candidate or controlled committee which provide for post-election payments. Such agreements include, but are not limited to, contingency payment or "bonus" payment plans offered by campaign consultants and agreements with persons who will receive compensation after the election for campaign services performed prior to the election.
- B. A post-election payment agreement must be reported on or before the filing date of the next ~~pre-election~~ campaign disclosure statement which must be filed after the agreement is entered into.

SECTION 7. Part 10 of Chapter 12.06 of Title 12 of the San José Municipal Code is amended to read as follows:

Part 10

ELECTIONEERING COMMUNICATIONS ADVERTISEMENTS

12.06.1000 Electioneering Communication Definitions

- A. The definitions set forth in the Political Reform Act shall govern the interpretation of this Part, unless otherwise specified herein. "Electioneering communication" means any form of communication, for which payment is made by a candidate, controlled committee or independent committee, that refers to a clearly identified candidate for Mayor or City Council of the City of San José and is disseminated, broadcast, or otherwise published within ninety (90) calendar days prior to an election for which the candidate is on the ballot.
- B. "Advertisement" means any general or public communication which is authorized and paid for by a committee for the purpose of supporting or opposing a candidate or candidates for municipal elective office or a municipal ballot measure or measures. If Subsection A. is held to be constitutionally insufficient by final judicial decision to support the regulation provided in this Part, then the term "electioneering communication" means any form of communication, for which payment is made, which promotes or supports a candidate for Mayor or City Council of the City of San José, or attacks or opposes a candidate for Mayor or City Council of the City of San José (regardless of whether the communication expressly advocates a vote for or against a candidate), and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.
1. Advertisement does not include those communications enumerated in Government Code Section 84501(a)(2), as may be amended.
 2. For the purposes of 12.06.1010.B and 12.06.1020, "Advertisement" does not include:

- a. News stories, commentaries or editorials disseminated, broadcast or otherwise published by newspaper, radio station, television station, internet site or any other recognized news medium unless the news medium is owned or controlled by any political party, political committee or candidate.
- b. Communications paid for by a governmental entity.
- c. Communications that occur during a candidate debate or forum.
- d. Communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a candidate.
- e. Communications in which a candidate's name is required by law to appear and the candidate is not singled out in the manner of display.
- f. Spoken communications between two (2) or more individuals in direct conversation unless at least one (1) of the individuals is compensated for the purposes of making the communication.
- g. Legitimate public polls disseminated for the purpose of gathering information and are not intended to influence voters.
- h. Any other type of communication where the committee can demonstrate that the required disclosures are impracticable or

cannot be reasonably printed or displayed in an easily legible typeface.

3. Any advertisement that meets the definition of a "sign" as defined in Section 23.02.500 of this Code is also subject to the provisions of Title 23.

C. "Cumulative Contributions" means the cumulative amount of contributions received by a committee beginning twelve (12) months before the date of the expenditure and ending seven (7) days before the time the advertisement is sent to the printer or broadcaster or otherwise distributed.

D. "Earmarked funds" means any of the following:

1. Funds solicited and received by a contributor from donors for the purpose of making a contribution to the committee paying for the advertisement.

2. Funds were given to the contributor subject to a condition, agreement or understanding with the donor that all or a portion would be used to make a contribution to the committee paying for the advertisement, including the identification of the committee as a potential recipient.

3. Existing funds held by a contributor from a donor where a subsequent agreement or understanding was reached with the donor that all or a portion of the funds would be used to contribute to the committee paying for the advertisement, including the identification of the committee as a potential recipient.

4. Funds were promised, subject to an enforceable promise, to the contributor subject to a condition, agreement or understanding with the

donor that all or a portion would be used to make a contribution to the committee paying for the advertisement, including the identification of the committee as a potential recipient.

E. "Top contributors" means the persons from whom the committee paying for an advertisement has received its three (3) largest cumulative contributions of **two thousand five hundred dollars (\$2,500)**~~five thousand dollars (\$5,000)~~ or more.

1. A tie between two (2) or more contributors qualifying as top contributors shall be resolved by determining the contributor who made the most recent contribution to the committee, in which case the most recent contributor shall be listed before any other contributor of the same amount.
2. If a contributor appears to qualify as a top contributor but received Earmarked Funds to make the contribution, the person, entity or committee that earmarked the funds and gave the funds to the contributor shall instead be disclosed as the top contributor. The person, entity or committee that transferred earmarked funds shall disclose the true source of the funds to the committee receiving the earmarked funds at the time the funds are promised or transferred.
3. If an advertisement paid for by an independent committee supports or opposes a candidate, the determination of top contributors pursuant to paragraphs (1) and (2) shall not include any nonprofit organization exempt from federal income taxation pursuant to Section 501(c)(3) of the United States Internal Revenue Code or any person who has prohibited in writing the use of that person's contributions to support or oppose candidates if

the committee does not use such contributions to support or oppose candidates.

4. Disclosure of a contributor is not required if reasonable evidence is presented that there is a probability that disclosure would subject the individual to threats, harassment and reprisals. This subsection D.4 does not apply where top contributors are required to be disclosed in advertisements under the Political Reform Act.

12.06.1010 Disclosure of ~~Electioneering Communications~~Advertisements,
Generally

- A. Except as otherwise provided in this Section, disclosures on advertisements shall be made in accordance with the Political Reform Act~~disclaimers of electioneering communication shall be made pursuant to the Political Reform Act, California Government Code Section 81000 et seq., as amended.~~
- B. An advertisement paid for by an independent committee, excluding a political party committee, shall include the words “committee major funding from” followed by the names of the top contributors to the committee paying for the advertisement. The disclosure requirements for committees with respect to major funding under Chapter 4 of the Political Reform Act shall apply in the same manner, form, or method for the disclosure of top contributors on advertisements under this Part. Every electioneering communication in printed form paid for by an independent committee must place the following statement on the communication in typeface that is easily legible, contrasts with the background, and is no smaller than twelve-point font for communication no larger than eleven (11) inches by seventeen (17) inches (or equivalent area for non-rectangular dimensions) or is no smaller than five percent (5%) of the printable height for

~~communication larger than eleven (11) inches by seventeen (17) inches (or equivalent area for non-rectangular dimensions):~~

~~Notice to Voters~~

~~(Required by the City of San José)~~

~~This electioneering communication is not authorized or approved by any candidate for city office or by any election official. It is paid for by (committee name and committee identification number).~~

~~(Address, city, state).~~

~~Total cost of this mailing is (amount).~~

~~If an acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the notice disclosure required by this Section.~~

- C. Section 12.06.1010.B does not apply when a top contributor as defined under the Political Reform Act is required to be disclosed in advertisements pursuant to the Political Reform Act. In such instances, the disclosure of a top contributor shall be made in accordance with the Political Reform ActEvery electioneering communication in spoken form must include the words "paid for by" immediately followed by the name of the candidate, controlled committee or independent committee that paid for the communication in a manner that is clearly audible and at the same general volume and speed as the rest of the communication.

~~D.— Any independent committee for whom the City Clerk is the regular filing official that makes a payment or payments or a promise of a payment or payments that cumulatively total one thousand dollars (\$1,000) or more for an electioneering communication must file with the City Clerk a report on a form approved by the City Clerk, disclosing the independent committee's name, address, occupation, and employer, and the amount of the payment. The report must be filed within twenty-four (24) hours of making the payment or the promise to make the payment, and must be accompanied by a legible copy of the electioneering communication if in printed form or a transcript of the electioneering communication if in spoken form.~~

~~E.— Except as provided in this Section, if any independent committee for whom the City Clerk is the regular filing official has received a payment or a promise of a payment from another person totaling one hundred dollars (\$100), or more specifically, for the purpose of making the electioneering communication, the independent committee receiving the payment must disclose on the report the name, address, occupation, and employer of the person who made a payment or promise of a payment, the amount received and the date of the payment.~~

~~F.— A person who receives or is promised a payment that is otherwise reportable under this Section is not required to report the payment if the person provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.~~

~~G.— The provisions of this Section do not apply to:~~

~~1.— News stories, commentaries or editorials disseminated, broadcast or otherwise published by newspaper, radio station, television station, internet site or any other recognized news medium unless the news~~

- ~~medium is owned or controlled by any political party, political committee or candidate;~~
- ~~2. Communications to members of an organization, except those made by a political party;~~
 - ~~3. Communications paid for by a governmental entity;~~
 - ~~4. Communications that occur during a candidate debate or forum;~~
 - ~~5. Communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a candidate;~~
 - ~~6. Communications in which a candidate's name is required by law to appear and the candidate is not singled out in the manner of display;~~
 - ~~7. Spoken communications between two (2) or more individuals in direct conversation unless at least one (1) of the individuals is compensated for the purposes of making the communication; or~~
 - ~~8. Communications that appear on bumper stickers, pins, stickers, badges, ribbons and other similar memorabilia.~~
- ~~H. Any communication, other than a communication to members of an organization, made at the behest of a candidate, is a contribution to that candidate and is subject to the limits and prohibitions specified in Chapter 12.06 of the San José Municipal Code.~~

~~I. Any Electioneering Communication that meets the definition of a "sign" as defined in Section 23.02.500 of this Code is subject to the provisions of Title 23.~~

12.06.1020 Filing with the City Clerk

- ~~A. Any independent committee for whom the City Clerk is the regular filing official that makes a payment or payments or a promise of a payment or payments that cumulatively total one thousand dollars (\$1,000) or more for an advertisement must file with the City Clerk a report, on a form approved by the City Clerk, disclosing the independent committee's name, address, occupation, and employer, and the amount of the payment. The report must be filed within twenty-four (24) hours of making the payment or the promise to make the payment.~~
- ~~B. Except as provided in this Section, if any independent committee for whom the City Clerk is the regular filing official has received a payment or a promise of a payment from another person totaling one hundred dollars (\$100) or more specifically for the purpose of making the advertisement, the independent committee receiving the payment must disclose on the report the name, address, occupation, and employer of the person who made a payment or promise of a payment, the amount received and the date of the payment.~~
- ~~C. A person who receives or is promised a payment that is otherwise reportable under this Section is not required to report the payment if the person provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.~~
- ~~D. Any independent committee for whom the City Clerk is the regular filing official must provide within twenty-four (24) hours of its distribution, dissemination, or publication a legible copy to the City Clerk of any advertisement as follows:~~

1. If over two hundred (200) printed items were mailed or otherwise distributed, a copy of the advertisement must be provided.
2. If the advertisement is audio or video, including if distributed solely through the internet or other electronic means, a script must be provided.
3. If the advertisement is an electronic or digital advertisement, a copy of the advertisement as distributed must be provided.
4. Implementation of all or parts of this subsection D will be determined by the City Clerk upon a finding that the budgetary and technical resources are available and allocated to collect and process any advertisements that are required to be filed under this subsection.

PASSED FOR PUBLICATION of title this _____ day of _____, 2021, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk