



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Nora Frimann
City Attorney

**SUBJECT: AN ORDINANCE TO AMEND
CHAPTER 12.06 OF THE
SAN JOSE MUNICIPAL CODE
TO EXTEND THE CAMPAIGN
CONTRIBUTION FUNDRAISING
PERIOD**

DATE: April 29, 2022

RECOMMENDATION

Approve an ordinance amending Chapter 12.06 of the San José Municipal Code to:

- 1) Extend the campaign contribution period for the primary and run-off elections for Mayor and Councilmember to 60 days after the date of each election; and
- 2) Specify that funds raised during this 60-day contribution period may only be used to retire campaign-related debts and liabilities and that any solicitation for such contributions by a candidate or candidate-controlled committee must indicate that all contributions received during this period will be used for this purpose.

OUTCOME

Approval of this ordinance will amend the Municipal Code to extend the campaign contribution period for the primary and run-off elections for Mayor and Councilmember by 60 days after the date of each election. The campaign contribution limit from the primary and run-off election, respectively, will apply for this additional 60-day fundraising period. Moreover, any funds raised during this period may only be used to retire campaign-related debts and liabilities, and any solicitation for such contributions by a candidate or candidate-controlled committee would need to indicate that all contributions received will be used for this purpose.

BACKGROUND

On November 16, 2021 and March 22, 2022, the Council directed staff to amend Section 12.06.290 of the Municipal Code to extend the campaign contribution period for primary and general elections for Mayor and Councilmember from the current deadline of 11:59 p.m. on the day before the primary and general election, respectively, to 60

days after the primary and general election dates. Council further directed that funds raised during this period must be used to retire campaign debts and liabilities and may not be used for any other purpose, and that solicitation of funds during this period must indicate clearly that they will be used for this purpose.

1. The Primary and Run Off Election Campaign Contribution Periods

Candidates for Mayor and Councilmember may only fundraise during permitted campaign contribution periods established under the Municipal Code. For the primary election, the campaign contribution period begins 180 days before the primary and ends at 11:59 p.m. the day before the primary election.¹ For those candidates who advance to the run-off, the campaign contribution period begins the day after the primary and ends at 11:59 p.m. the day before the run-off election.

Presently, candidates for Council office may raise \$700 per contributor per contribution period (e.g., primary and run-off) and Mayoral candidates may raise \$1,400 per contributor per contribution period. The City's contribution limit may be adjusted each election cycle to account for changes in the Consumer Price Index for the Bay Area.

2. Post-Election Contribution Period for Election Contests and Recounts

The City also permits contributions after an election in a limited circumstance. Any candidate who after an election is involved in an election contest or recount, either bringing or defending, may accept up to \$1,400 per contributor² up to 180 days after the applicable election to pay for attorney's fees and other costs related to the election contest or recount.

3. Debt Retirement Requirements

Under the Municipal Code, no money can be collected for debt retirement after the end of a campaign contribution collection period. Candidates must retire all campaign-related debts, including loans, within 180 days after the date of election. Any campaign-related debt, including any loan, which remains unpaid more than 180 days after the election, will be deemed to be a campaign contribution which was accepted at the time the debt was incurred.

¹ Special Municipal Elections to fill a vacancy on the Council are also subject to a similar contribution period that is tied to the date of the special election.

² The contribution limit during the post-election contribution period for election contests and recounts is the same as the mayoral contribution limit for all candidates.

4. Personal Funds

Candidates may contribute their own personal funds to their campaign. Contributions of personal funds are not subject to any contribution limit and a candidate may contribute personal funds before the primary election campaign contribution period begins.

However, candidates must disclose the source of all personal funds they deposit into their campaign bank account and may deposit personal funds until the 180th day after the election for the purpose of paying outstanding debt. Finally, no candidate may loan to their own campaign or campaign committee, at any one point in time, an amount where the total outstanding debt exceeds \$20,000.

ANALYSIS

Per Council direction, the proposed ordinance would amend the Municipal Code to extend the campaign contribution period for the primary and run-off elections for Mayor and Councilmember by 60 days after the date of each election. However, funds raised during this period could only be used to retire campaign-related debts and liabilities and any solicitation of such contributions by a candidate or candidate-controlled committee would need to indicate that all contributions received will be used for this purpose.

We understood Council's direction to only include extending the contribution period to allow for additional fundraising to retire debt, but not to create another opportunity to fundraise from donors who previously contributed the maximum amount during the election. The Council's direction to extend the contribution period, as we understood it, would create some nuance to the City's campaign finance laws. First, under the proposed ordinance, there would not be a separate contribution limit for this 60-day fundraising extension. The contribution limit from the primary and run-off election, respectively, would continue to apply during this 60-day period. Therefore, a person who, for example, contributed the maximum amount to a candidate for Council before the run-off election would not be able to contribute to the candidate after the run-off election in this 60-day period to retire debt.

Furthermore, we understood Council direction to maintain the post-election contribution period. Accordingly, the proposed ordinance does not disturb the post-election contribution period to fundraise for 180 days after an election to pay for attorney's fees and other costs related to an election contest or recount, if one were to occur. This means that a candidate involved in an election contest or recount could fundraise for an additional 60 days to retire campaign-related debts and liabilities, subject to the generally applicable campaign contribution limit, and fundraise for 180 days to pay for attorney's fees and other costs associated with an election contest or recount subject to a separate contribution limit. To distinguish between the two periods, the proposed ordinance refers to the 60-day extension to fundraise for debt retirement as the "debt

retirement contribution period” and the period to fundraise for an election contest or recount as the “election contest or recount contribution period.”

Finally, due to the timing of bringing this item back to Council and the process for adopting ordinances under the Charter, the proposed ordinance has a retroactive effective date of June 8, 2022 so that candidates may continue to fundraise after the 2022 primary election to retire campaign debt.

CONCLUSION

Approval of this ordinance would extend the campaign contribution period for the primary and run-off elections for Mayor and Councilmember by 60 days after the date of each election. Funds raised during this period may only be used to retire campaign-related debt and liabilities, and any solicitation for such contributions by a candidate or candidate-controlled committee would need to indicate that all contributions received will be used for this purpose.

CLIMATE SMART SAN JOSE

The recommendation in this memo has no effect on Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City’s Council Agenda website for the May 10, 2022 Council Meeting.

CEQA

Not a Project, File No. PP17-008, General Procedure and Policy Making resulting in no changes to the physical environment. (City Attorney)

NORA FRIMANN
City Attorney

By /s/ Mark J. Vanni
Mark J. Vanni
Sr. Deputy City Attorney

For questions please contact Mark Vanni, Senior Deputy City Attorney, at (408) 535-1997

cc: Jennifer Maguire