

DRAFT

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTER 12.06 OF THE SAN JOSE MUNICIPAL CODE TO EXTEND THE CAMPAIGN CONTRIBUTION PERIOD FOR COUNCILMEMBER AND MAYOR ELECTIONS TO 210 DAYS BEFORE THE PRIMARY ELECTION AND FOR THE PRIMARY AND RUN-OFF ELECTIONS FOR MAYOR AND COUNCILMEMBER TO 60 DAYS AFTER THE DATE OF EACH THE PRIMARY AND RUNOFF ELECTIONS, AND SPECIFY THAT FUNDS RAISED DURING THIS THE 60-DAY CONTRIBUTION PERIOD AFTER THE PRIMARY AND RUNOFF ELECTION 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

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. Chapter 12.06 of Title 12 of the San José Municipal Code is hereby
amended and reads as follows:

Chapter 12.06
MUNICIPAL CAMPAIGNS AND OFFICEHOLDER ACCOUNTS

PART 1
DEFINITIONS

12.06.010 Definitions.

The following definitions used in this chapter shall have the meanings set forth below. Except as otherwise provided here, the terms and provisions of this chapter shall be interpreted in accordance with the applicable definitions and provisions of the Political Reform Act of 1974, as amended (Government Code Section 81000 et seq.) and the regulations of the California Fair Political Practices Commission, as amended.

12.06.020 Business entity.

"Business entity" shall mean any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

12.06.030 Candidate.

"Candidate" shall mean an individual who:

- A. Is listed on the ballot; or

- B. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective city office; or
- C. Has given his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective city office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or
- D. Has filed a form "statement of intention" to be a candidate with the city clerk.

12.06.040 Committee.

"Committee" means any person or combination of persons who, directly or indirectly, does any of the following:

- A. Receives contributions totaling two thousand dollars or more in a calendar year; or
- B. Makes independent expenditures totaling one thousand dollars or more in a calendar year; or
- C. Makes contributions totaling ten thousand dollars or more in a calendar year to or at the behest of a candidate or controlled committee.

A person or combination of persons that becomes a committee will retain its status as a committee until such time as that status is terminated pursuant to California Government Code Section 84214.

2.06.050 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 or an employee who spends any of his or her compensated time rendering services for political purposes related to a City 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 Chapter. In addition, personal or professional services donated to a campaign by an individual are not deemed to be contributions for purposes of this Chapter. Any other payment or service not defined as a contribution in this Section is also not deemed to be a contribution for purposes of this Chapter.
- 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.

12.06.060 Controlled committee.

"Controlled committee" shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if such candidate, his or her agent, or any other committee such candidate controls, has a significant influence on the actions or decisions of the committee.

12.06.080 Election.

"Election" and "city election" mean any regular municipal or special municipal election in the city.

12.06.110 Fair political practices commission.

"Fair political practices commission" is the body charged with administering the Political Reform Act and adopting implementing regulations.

12.06.120 Independent committee.

"Independent committee" shall mean all committees other than controlled committees.

12.06.130 Independent expenditure.

"Independent expenditure" means an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a particular result in an election, but which is not made to or at the behest of the affected candidate or his or her controlled committee.

12.06.140 Reserved.

12.06.150 Reserved.

12.06.160 Person.

"Person," for purposes of this chapter, shall include an individual, business entity, foundation, organization, committee or association, nonprofit corporation, and any other organization or group of people acting in concert.

12.06.170 ReservedDebt Retirement Contribution.

"Debt Retirement Contribution" is a campaign contribution accepted within sixty days after the date of the election that may only be used by any council or mayoral candidate and any controlled committee of a council or mayoral candidate to retire campaign related debt and liabilities.

12.06.175 Post-electionElection Contest or Recount C-ontribution.

"~~Post~~Election Contest or Recount ~~-election~~ contribution" is a campaign contribution accepted within one hundred eighty days from the date of the election ~~that.~~ ~~Post-election contributions~~ may only be used by any council or mayoral candidate and any controlled committee of a council or mayoral candidate for attorney's fees and other costs in connection with an election contest or recount resulting from the election that commenced the one hundred eighty day Election Contest or Recount ~~post-election~~ contribution period.

12.06.180 Statement of intention to be a candidate.

The form "statement of intention" is a written statement, filed with city clerk in accordance with Government Code Section 85200 and regulations thereunder, declaring intention to be a candidate for a specific elective city office.

PART 2

CAMPAIGN CONTRIBUTIONS

12.06.200 Intent and purpose.

It is the intent of the city council of the City of San José in enacting this chapter to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials. In order to achieve this purpose it is not

necessary to, nor is it the city council's intent to, impose limitations on individuals and committees whose sole objective is the passage or defeat of ballot measures.

12.06.210 Campaign contribution limitations.

A. Beginning January 1, 2011, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. Five hundred dollars for the primary election;
2. Five hundred dollars for the general election, if any;
3. Five hundred dollars for any special election;
4. Five hundred dollars for any special run-off election, if any.

B. Beginning January 1, 2011, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. One thousand dollars for the primary election;
2. One thousand dollars for the general election, if any;
3. One thousand dollars for any special election;
4. One thousand dollars for any special run-off election, if any.

C. Any Debt Retirement Contribution made by any person to any council or mayoral candidate and any controlled committee of that candidate, other than the candidate in their own aid, are inclusive of and subject to the campaign contribution limits under Subsections A and B.

D. The total Election Contest or Recount ~~post-election~~ contribution made by any person to any council or mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. One thousand one hundred dollars for the ~~post-election~~ Election Contest or Recount contribution after the primary election;
2. One thousand one hundred dollars for the ~~post-election~~ Election Contest or Recount contribution after the general election, if any;
3. One thousand one hundred dollars for the ~~post-election~~ Election Contest or Recount contribution for any special election;
4. One thousand one hundred dollars for the ~~post-election~~ Election Contest or Recount contribution for any special run-off election, if any.

ED. Two hundred and eighty (280) days before every regularly scheduled primary municipal election, the City Clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982-1984=100) for All Urban Consumers in the San Francisco-Oakland-Hayward area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "adjustment period" as defined in this Section.

1. Each adjustment period will be the CPI reported for the month of December 2010 and the CPI reported for the month that is at least two hundred and eighty days (280) days before the regularly scheduled primary municipal election.
2. If the CPI has increased for the applicable adjustment period, the City Clerk must multiply the contribution limits established in Subsections A.

and B. by the percentage increase for the adjustment period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred dollars (\$100), the City Clerk will recommend that the City Council adopt a resolution adjusting the contribution limit(s) established in Subsections A. and/or B. by the percentage increase rounded to the nearest one hundred dollars (\$100). The contribution limit established in Subsection **GD** shall be the same as the limits established in Subsection B., as adjusted.

3. In the event the City Council adopts a resolution adjusting the contribution limits, the City Clerk will publish the adjusted contribution limits **at least one hundred and ninety (190) days before the for regularly scheduled primary municipal election.**
4. In the event the CPI is no longer published, the City Clerk will use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

12.06.215 Contribution limitations to city council and mayoral candidates.

No person shall make nor shall any person solicit or accept any contribution which will cause the total amount contributed by such person to a council candidate, mayoral candidate or any controlled committee of that candidate, other than the candidate in aid of himself or herself, to exceed the campaign contribution limitations set forth in Section 12.06.210.

12.06.220 Applicability to agents.

- A. "Agent" shall mean any person who has express or implied authority to make or to authorize the making of expenditures on behalf of a candidate, or who has

been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. An "agent" is also any person who is serving or has served in an advisory, decision-making, or strategic role with a candidate's campaign, with or without compensation, where that person's duties and/or actions reflect or require direct knowledge of the candidate's campaign strategy, plans and needs.

- B. The prohibitions and requirements of this chapter applicable to a candidate shall also apply to the candidate's agent.

12.06.230 Anonymous contributions.

- A. No person may make nor may any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value for a clearly identified candidate for San José City Council or Mayor.
- B. All anonymous contributions must be surrendered to the director of finance for deposit in the general fund of the city, earmarked to defray the costs of municipal elections.

12.06.235 Information needed prior to deposit.

No contribution of any amount shall be deposited into a campaign account unless the name, address, occupation and employer of the contributor is on file in the written records of the candidate receiving the contribution.

12.06.240 Contributions through other persons prohibited.

In applying the limitations set forth in this chapter to the contributions of a person, each contribution made under any of the following circumstances shall be deemed to have

been made by the person and shall be included in determining whether the applicable limitation for such person has been exceeded:

- A. A contribution by an employee over whom the person exercises control as a supervisor or as an owner of the business entity for which the employee works, where the contribution was coerced by the person or made at his or her instigation from monies given or promised to the employee as a gift, bonus or other form of reimbursement for the contribution.
- B. A contribution of a spouse or child of the person where the contribution is coerced by the person or made from monies given or promised by the person in instigation of the contribution.

12.06.250 Contributions by certain business entities prohibited.

Except as otherwise provided in this chapter, contributions by business entities shall be defined and limited in accordance with the Political Reform Act as amended.

12.06.260 Prohibited contributions - Cardrooms.

- A. A cardroom, cardroom owner, officer of a cardroom, key management employee of a cardroom, spouse of a cardroom owner or spouse of a cardroom officer may not make any contribution to candidates or candidate controlled committees under this chapter.
- B. Cardroom and cardroom owner are as defined in Chapter 16.02 of this Code.
- C. A key management employee of a cardroom is any person who has the authority to hire or fire other employees.

12.06.270 Reserved.

12.06.280 Reserved.

12.06.290 Campaign ~~and post-election~~ contribution collection periods.

- A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during ~~the a~~ campaign contribution period set forth in this Section.
- B. The campaign contribution period for the primary municipal election for council or mayor shall:
 - 1. Begin on the ~~one hundred eightieth~~ **two hundred and tenth** day before the primary municipal election.
 - 2. End at 11:59 p.m. on the day before the primary municipal election.
- C. The campaign contribution period for the run-off municipal election for council or mayor shall:
 - 1. Begin on the day after the primary municipal election for that office.
 - 2. End at 11:59 p.m. on the day before a run-off municipal election for that office.
- D. The Debt Retirement Contribution period for the primary election for council or mayor shall:
 - 1. Begin on the date of the primary municipal election for that office.
 - 2. End at 11:59 p.m. on the sixtieth day from the date of the primary municipal election.
- E. The Debt Retirement Contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the date of the run-off municipal election.
2. End at 11:59 p.m. on the sixtieth date from the date of the run-off municipal election.

~~DE~~. The Election Contest or Recount ~~post-election~~ contribution period for the primary municipal election for council or mayor shall:

1. Begin on the date of the primary municipal election.
2. End at 11:59 p.m. on the one hundred eightieth day from the date of the primary municipal election.

~~EG~~. The Election Contest or Recount ~~post-election~~ contribution period for the run-off municipal election for council or mayor shall:

1. Begin on the date of the run-off municipal election.
2. End at 11:59 p.m. on the one hundred eightieth day from the date of the run-off municipal election.

~~FH~~. Any contribution which is received outside of any ~~the~~ campaign ~~and post-election~~ contribution period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five business days.

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 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.

PART 3
RESERVED

PART 4
TRANSFER OF FUNDS

12.06.410 Prohibition on transfer of funds.

- A. The transfer of any city campaign funds to any other person's city campaign fund is prohibited.
- B. The transfer of any city campaign contribution to any other candidate's noncity campaign fund is prohibited.

12.06.420 Disclosure - Transfers to a candidate's own city and noncity campaign.

A. No contribution collected for any city campaign fund may be transferred to another campaign fund of the candidate, unless a written disclosure appeared on all materials printed by the campaign committee during the campaign, which informed potential donors that such contributions are subject to being transferred to the candidate's own city and noncity campaigns, at any time, at the discretion of the candidate.

B. The disclosure required by this section shall consist of the following statement in fourteen point type:

Any contribution to this campaign may be transferred to this candidate's campaign for reelection or another city or noncity campaign at (name of the candidate's) sole discretion.

C. The prohibition in this section does not apply if a candidate becomes eligible to run in a general or run-off election. The candidate may transfer and use any remaining campaign funds from the primary or special election in the general or special run-off election.

12.06.430 Reserved.

***PART 5
RESERVED***

***PART 6
SPECIAL MUNICIPAL ELECTIONS***

12.06.600 Special municipal elections.

- A. Except as otherwise provided by this Part 6, the provisions of Chapter 12.06 shall apply to special municipal elections. This Part 6 of Chapter 12.06 shall only apply to special municipal elections which do not exceed a six-month period from the call of the special municipal election to the date of a special municipal run-off election if any.
- B. The prohibition on transfers of any city campaign funds to any other person's city campaign fund in Section 12.06.410 shall apply to any special municipal election.
- C. The prohibition on transfers of any city campaign funds to any other candidate's noncity campaign fund in Section 12.06.410 shall apply to any special municipal election.
- D. The disclosure requirements for transfers of city campaign funds to a candidate's own city and noncity campaign in Section 12.06.420 shall apply to any special municipal election.

12.06.610 Campaign ~~and post-election~~ contribution collection periods.

- A. The campaign contribution collection period for a special municipal election and a special municipal run-off election shall:
 - 1. Begin on the date that the special municipal election is set by the city council and begin the day after the special municipal election for any run-off election.
 - 2. End at 11:59 p.m. on the day before the election and any run-off election.

B. The Debt Retirement Contribution period for the special municipal election and for any run-off election shall:

1. Begin on the date of the special municipal election and the date of the special municipal run-off election, if a run-off is required.
2. End at 11:59 p.m. on the sixtieth day from the date of the special municipal election and the date of the special municipal run-off election, if a run-off is required.

BC. The Election Contest or Recount ~~post-election~~ contribution period for the special municipal election and for any run-off election shall:

1. Begin on the date of the special municipal election and the date of the special municipal run-off election, if a run-off is required.
2. End at 11:59 p.m. on the one hundred eightieth day from the date of the special municipal election and the date of the special municipal run-off election, if a run-off is required.

12.06.620 Reserved.

PART 7

DEBT RETIREMENT, AND SURPLUS CAMPAIGN FUNDS

12.06.710 Deadline for debt retirement.

- A. No money can be collected for debt retirement after the end of the campaign contribution collection period ~~as~~ set forth in Section 12.06.290. Except for an Election Contest or Recount Contribution, money raised during the Debt Retirement Contribution period may only be used to retire campaign-related debts and liabilities. All solicitations for funds made by a candidate or candidate controlled candidate-controlled committee during the Debt Retirement

Contribution period must indicate that the funds will only be used to retire campaign-related debt and liabilities.

- B. A candidate must retire all campaign-related debts, including loans, within one hundred eighty days after the date of the election.
- C. A campaign-related debt, including any loan, which remains unpaid more than one hundred eighty days after the election is deemed to have been a campaign contribution which was accepted at the time the debt was incurred.
- D. It is a violation of this section to forgive all or part of a loan or debt which is owed to the person by a candidate and which exceeds the applicable contribution limitations. Forgiveness of a loan or debt shall not be deemed to include the failure to collect the loan or debt where there have been substantial attempts, in good faith, to collect the monies owed and such efforts have proved unsuccessful. In such case, a candidate is not exonerated from violations of this chapter if an outstanding loan or debt exceeds the contribution limitations.

12.06.720 Surplus campaign funds.

- 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.

PART 8

OFFICEHOLDER ACCOUNTS

12.06.810 Officeholder account prohibited.

No city officeholder, or any person or committee on behalf of a city officeholder may establish an officeholder account or an account established under the Political Reform

Act, California Government Code Section 81000 et seq. as amended, for the solicitation or expenditure of officeholder funds unless otherwise provided in San José Municipal Code Section 12.06.1100 et seq. Nothing in this section shall prohibit an officeholder from spending personal funds on official or related business activities.

PART 9

CAMPAIGN DISCLOSURE

12.06.910 Statements and Reporting Requirements.

- A. Each candidate and candidate controlled committee receiving contributions or making expenditures in a City election must file with the City Clerk campaign disclosure statements in the form and at the times required by Chapter 12.06 and the Political Reform Act. The campaign disclosure statements may be completed on forms required to be filed by the regulations of the Fair Political Practices Commission so long as such forms are completed in sufficient detail to comply with the requirements of this Chapter.
- B. Each candidate must file with the City Clerk, at the time nomination papers are filed pursuant to Section 12.05.060, a declaration by the candidate or treasurer of the candidate controlled committee that the candidate or candidate controlled committee has not accepted nor solicited, and will not accept nor solicit any campaign contribution in violation of the requirements and limitations of this Chapter.
- C. When listing contributions, each candidate and candidate controlled committee receiving contributions or making expenditures in a City election must itemize all contributions accepted during the campaign contribution collection periods specified in this Chapter, including all amounts less than one hundred dollars (\$100.00).

- D. Each independent committee that makes independent expenditures in a City election must file with the City Clerk campaign disclosure statements in the form and at the times required by the Political Reform Act. When listing contributions or expenditures on the form required by the Political Reform Act, each independent committee must itemize all contributions accepted and expenditures made during the campaign contribution collection periods specified in this Chapter, including all amounts less than one hundred dollars (\$100.00).
- E. The first and second semi-annual campaign statements must be filed at the times prescribed for semi-annual statements by the Political Reform Act as well as any other times prescribed in Chapter 12.06, for candidates, candidate controlled committees and independent committees for whom the City Clerk is the regular filing official.
- F. The first and second pre-election campaign statements must be filed at the times prescribed for pre-election statements by the Political Reform Act as well as any other times prescribed in Chapter 12.06, for candidates, candidate controlled committees and independent committees for whom the City Clerk is the regular filing official.
- G. Each candidate and candidate controlled committee must file a third campaign statement by noon on the day before the election. The third pre-election statement shall cover the period commencing after the closing date of the second pre-election campaign statement required in Subsection E above through 11:59 p.m. on the day before the third campaign statement is due.
- H. If any candidate, candidate controlled committee or independent committee for whom the City Clerk is the regular filing official files a campaign disclosure statement after any deadline imposed by this Chapter, the City Clerk shall fine

the delinquent filer ten dollars (\$10.00) per day, starting the day after the filing deadline, until the statement is filed; however, no liability may exceed the cumulative amount of reported contributions or expenditures, or one hundred dollars (\$100.00), whichever is greater. The City Clerk may reduce or waive the fine if he or she determines that the late filing was not willful and that enforcement will not further the purposes of this Chapter.

- I. The City Clerk has the authority to require the candidate, candidate controlled committee or independent committee for whom the City Clerk is the regular filing official to file an amendment to a filing. The filer shall submit the required amendment to a filing within thirty (30) calendar days of notification. Should the filer not comply with this timeline, the City Clerk shall fine the delinquent filer ten dollars (\$10.00) per day, starting the day after the filing deadline, until the amendment is filed; however, no liability may exceed the cumulative amount of reported contributions or expenditures, or one hundred dollars (\$100.00), whichever is greater. The City Clerk may reduce or waive the fine if he or she determines that the late filing was not willful and that enforcement will not further the purpose of this Chapter.

12.06.915 Electronic campaign disclosure.

- A. Each candidate, candidate controlled committee and independent committee for whom the city clerk is the regular filing official that is required to file campaign disclosure statements by Chapter 12.06 or the Political Reform Act shall file the statement in an electronic format with the city clerk, provided the city clerk has prescribed the format at least sixty days before the statement is due to be filed.
- B. Once a candidate or committee is subject to the electronic filing requirements imposed by this section, the candidate or committee will remain subject to the

electronic filing requirements until the candidate or committee files a termination statement pursuant to Chapter 12.06 and the Political Reform Act.

12.06.920 Reserved.

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 campaign disclosure statement which must be filed after the agreement is entered into.

PART 10
ADVERTISEMENTS

12.06.1000 Definitions.

- A. The definitions set forth in the Political Reform Act shall govern the interpretation of this Part, unless otherwise specified herein.
- 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.

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) 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 Advertisements, Generally.

- A. Except as otherwise provided in this Section, disclosures on advertisements shall be made in accordance with the Political Reform Act.
- 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.
- 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 Act.

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.

PART 11
LEGAL DEFENSE FUNDS

12.06.1100 Intent.

It is the intent of the City Council of the City of San José in enacting this part to permit officeholders and candidates to establish legal defense accounts pursuant to Government Code Section 85304.5(a), as may be amended, and to place limits on the amount individuals may contribute to an officeholder or candidate legal defense account in order to prevent the perception by the public that such contributions may give rise to undue or improper influence over elected officials.

12.06.1110 Definitions.

The definitions set forth in this section shall govern the application and interpretation of this part.

- A. Candidate. "Candidate" means a candidate for elective office in the City of San José.
- B. Legal Defense Account. "Legal defense account" means the bank account established at a financial institution located in the State of California pursuant to Government Code Section 85304.5(a), as may be amended.
- C. Legal Defense Fund. "Legal defense fund" means money in a legal defense account.
- D. Officeholder. "Officeholder" means an elected officer in the City of San José.
- E. Political Reform Act. "Political Reform Act" means California Government Code Section 81000 et seq., as may be amended.

12.06.1120 Establishing legal defense account.

- A. An officeholder or candidate may establish a legal defense account by depositing funds into a bank account separate from any other bank account held by the officeholder or candidate.
- B. The officeholder or candidate shall establish a controlled committee for the legal defense account by filing a statement of organization pursuant to Government Code Section 84101, as may be amended.
 - 1. The statement of organization shall contain a description of the specific legal dispute or disputes for which the account is established, and shall be amended pursuant to Government Code Section 84103, as may be amended, as legal disputes are either resolved or initiated.
 - 2. The words "legal defense fund" and the officeholder's or candidate's last name shall be included in the committee name.
 - 3. The officeholder or candidate, and the treasurer of the legal defense committee, are subject to recordkeeping requirements specified in Government Code Section 84104, as may be amended, and shall keep separate detailed accounts, records, bills, and receipts, for each legal proceeding including documentation to support the basis and timing for raising legal defense funds.

12.06.1130 Legal defense account contribution limit.

- A. Contributions to the legal defense account are limited to one thousand one hundred dollars per calendar year from any person to any officeholders or candidate. This contribution limit will automatically be adjusted to equal the amount as the mayoral candidate limit pursuant to Section 12.06.210.B, as amended pursuant to Section 12.06.210.D.

- B. The contributions to a legal defense account are limited to an amount reasonably calculated to pay for attorney's fees and other related legal costs for the legal proceeding or proceedings identified in the statement of organization.

12.06.1140 Legal defense account uses.

- A. Legal defense account contributions are not campaign contributions for purposes of this chapter. Such contributions are solely intended to pay for attorney's fees and other legal costs related to the defense of the officeholder or candidate in a particular civil, criminal or administrative enforcement proceeding, arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder's governmental activities and duties.
- B. Contributions to the legal defense account may not be solicited or received until and unless the officeholder or candidate:
 - 1. Reasonably concludes that a government agency has commenced an investigation which may lead to a civil, criminal, or administrative enforcement proceeding or the agency formally commences the proceeding, whichever is earlier; or
 - 2. A private person has filed a complaint in a civil proceeding.
- C. Contributions must not be expended for fundraising, media or political consulting fees, mass mailing or other advertising, payment or reimbursement for a fine, penalty, judgment or settlement, or payment to return or disgorge contributions made to any other committee controlled by the officeholder or candidate.

12.06.1150 Prohibition on other accounts.

An officeholder or candidate, and any person or committee on behalf of an officeholder or candidate, is hereby prohibited from establishing an account established under the Political Reform Act for the solicitation and expenditure of legal defense funds, except

as provided in this chapter. Nothing in this section prohibits an officeholder or candidate from spending personal funds for legal defense purposes.

12.06.1160 Legal defense account disclosure.

- A. An officeholder or candidate who is a candidate in an upcoming city election shall disclose his or her legal defense fund activity on campaign statements filed in accordance with the schedule prescribed by the Political Reform Act and Chapter 12.06 for other candidate controlled committees in the city.
- B. An officeholder or candidate who is not a candidate in an upcoming city election shall disclose his or her legal defense fund activity on campaign statements filed quarterly, as follows:
 - 1. No later than April 30 for the period of January 1 through March 31.
 - 2. No later than July 31 for the period of April 1 through June 30.
 - 3. No later than October 31 for the period of July 1 through September 30.
 - 4. No later than January 31 for the period of October 1 through December 31.
- C. The disclosures required under this section shall be made to the city clerk in accordance with the requirements for campaign disclosure statements as described in Section 12.06.910 et seq. of this Code.

12.06.1170 Termination of account and committee.

The legal defense account must be terminated, and all remaining funds returned or disposed of, within ninety days of the date the last legal dispute for which the account is established has been resolved.

12.06.1180 Disposition of remaining funds.

Funds remaining in the legal defense account following payment of all attorney's fees and other related legal costs for which the account was established shall be distributed in the following manner:

- A. Returned to the contributors on a pro rata basis; or
- B. Transferred to the general fund of the City of San José.

SECTION 2. This ordinance shall become effective retroactively June 8, 2022.

PASSED FOR PUBLICATION of title this _____ day of _____, 2022, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk