

ORDINANCE NO.

AN ORDINANCE OF THE CITY OF SAN JOSE ADDING SECTION 12.06.265 TO CHAPTER 12.06, ADDING CHAPTER 12.07, ADDING PART 4 TO CHAPTER 12.08, AND ADDING SECTION 12.12.510 TO CHAPTER 12.12 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO IMPLEMENT ARTICLE XX OF THE SAN JOSE CITY CHARTER

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 by adding a new section to be numbered, entitled, and to read as follows:

12.06.265 Prohibited Contributions – Lobbyists

In accordance with Charter Section 2004, a registered Lobbyist, as defined under Chapter 12.12, may not make any contribution to a candidate for City office or his or her controlled committee.

SECTION 2. Title 12 of the San José Municipal Code is hereby amended by adding a new Chapter to be numbered, entitled, and to read as follows:

**CHAPTER 12.07
CAMPAIGN CONTRIBUTIONS AND CONFLICTS OF INTEREST**

**Part 1
PURPOSE**

12.07.010 Intent

This Chapter is intended to implement Article XX of the City Charter.

12.07.020 Amendment

The provisions of this Chapter may only be modified in accordance with Charter Section 2007.

Part 2

DEFINITIONS

12.07.100 Definitions

The following definitions in this Part will govern the application and interpretation of this Chapter.

12.07.110 Party

“Party” means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

12.07.120 Participant

“Participant” means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in the Political Reform Act. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person Elected Officials or employees, testifies in person before the City, or otherwise acts to influence Elected Officials.

- A. A person “lobbies in person” when he or she communicates directly, either in person or in writing, with an Elected Official for the purpose of influencing the decision in a proceeding.
- B. A person “testifies in person” when he or she testifies or makes an oral statement before the City during a proceeding on a license, permit or other entitlement for use for the purpose of influencing the decision of the City.

- C. A person “otherwise acts to influence” Elected Officials when he or she communicates with an employee of the City, or when his or her agent lobbies in person, testifies in person or otherwise communicates with Elected Officials or employees of the City, for the purpose of influencing the Elected Officials decision in a proceeding.
- D. A person does not lobby, testify or otherwise act to influence Elected Officials or employees of the City by communications made to the public, other than those made in the proceedings before the City.

12.07.130 Contribution

“Contribution” has the same meaning as in Section 12.06.050 and includes contributions to candidates in federal, state, or local elections.

12.07.140 Elected Official

"Elected Official" means any of the members of the City Council, including the Mayor.

12.07.150 License, Permit, or Other Entitlement for Use

“License, permit, or other entitlement for use” means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises. “License, permit, or other entitlement for use” does not include decisions or proceedings where general policy decisions or rules are made, where the interests affected are many and diverse, or ministerial decisions where no discretion is exercised.

Part 3
REQUIREMENT

12.07.200 Contributions Creating a Conflict of Interest

- A. In accordance with Charter Section 2001, no Elected Official shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the City and for three months following the date a final decision is rendered in the proceeding if the Elected Official knows or has reason to know that the participant has a financial interest, as that term is used in the Political Reform Act. This prohibition shall apply regardless of whether the Elected Official accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other member of the Council, or on behalf of any candidate for office or on behalf of any committee.
- B. In accordance with Charter Section 2002(a), no Elected Official shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the City if the Elected Official has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding twelve (12) months from a party or his or her agent, or from any participant, or his or her agent, if the Elected Official knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in the Political Reform Act.
- C. As permitted under Charter Section 2002(b), if the Elected Official receives a contribution which would otherwise require disqualification under this Section,

returns the contribution within thirty (30) days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

- D. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before the City and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any Elected Official during the proceeding and for three (3) months following the date a final decision is rendered by the City in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before the City, the majority shareholder is subject to the disclosure and prohibition requirements specified in subsections A, B, this subsection D, and Section 12.07.230.
- E. As permitted under Charter Section 2003, the Council may adjust the monetary limits established in this Section to provide for cost of living adjustments and may do so in accordance with the procedures established under Section 12.06.210.D.

12.07.210 Agents

- A. For the purposes of this Chapter, a person is the “agent” of a party to, or a participant in, a proceeding involving a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. 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. To determine whether a contribution of more than two hundred fifty dollars (\$250) has been made by a person or his or her agent, contributions made by that person within the preceding twelve (12) months shall be aggregated with those made by his or her agent within the preceding twelve (12) months or the period of the agency relationship, whichever is shorter.

12.07.220 Acceptance, Solicitation, Direction, and Receipt

For the purposes of this Chapter:

- A. A person “accepts” or “receives” a contribution under this Chapter only if the contribution is for that person's own candidacy or own controlled committee.
- B. A person “makes a contribution” to an Elected Official or candidate only if the contribution is made for that Elected Official's or candidate's own candidacy or controlled committee.
- C. An Elected Official “solicits” a contribution only if he or she knows or has reason to know that the person being solicited for a contribution is a party or agent of a party, or is a participant or agent of a participant and either:
 - 1. The Elected Official or candidate personally requests a contribution for his or her own campaign or controlled committee, or for any other candidate, public official or committee, either orally or in writing; or
 - 2. The agent of the Elected Official or candidate with the Elected Official or candidate's knowledge, requests a contribution for the Elected Official or candidate's own campaign or controlled committee.

- D. Notwithstanding subsection C, a solicitation does not include a request made in a mass mailing sent to members of the public, to a public gathering, or published in a newspaper, on radio or TV, on social media sent to members of the public, or in any other mass media. A person does not “solicit” solely because his or her name is printed with other names on stationery or a letterhead used to request contributions.
- E. A person “directs” a contribution if he or she acts as the agent of another person or of a committee other than his or her own controlled committee in accepting a contribution on behalf of, or transmitting a contribution to, such other person or committee.

12.07.230 Prohibitions and Disqualifications

For purposes of this Chapter:

- A. A “proceeding involving a license, permit or other entitlement for use” includes any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use.
- B. A proceeding involving a license, permit or other entitlement for use is “pending before” the City:
 - 1. When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the City for its determination or other action;

2. It is the type of proceeding where Elected Officials are required by law to make a decision, or the matter has been otherwise submitted to Elected Officials for their decision; and
 3. The decision of an Elected Official or Elected Officials with respect to the proceeding will not be purely ministerial.
- C. An Elected Official knows or has reason to know that a person has a financial interest in the decision in a proceeding if:
1. The person is a party; or
 2. The person is a participant and reveals facts in his or her written or oral support or opposition before the City which make the person's financial interest apparent.
- D. An Elected Official knows, or should have known, about a proceeding pending before the City if either:
1. The Elected Official has received notice of the license, permit or other entitlement for use. Notice includes receipt of an agenda or docket identifying the proceeding and the party or other persons affected by name; or
 2. The Elected Official has actual knowledge of the proceeding.
- E. An Elected Official knows, or should have known about a contribution if:

1. The contribution has been disclosed by the party pursuant to Section 12.07.240; or
2. The Elected Official has actual knowledge of the contribution.

12.07.240 Disclosure

- A. Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before the City, each Elected Official who received a contribution within the preceding twelve (12) months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the public record at the beginning of a public hearing in a proceeding involving the license, permit, or other entitlement for use, if a hearing is held. If there is no public hearing, the disclosure shall be entered into the written record of the proceeding.
- B. A party to a proceeding involving a license, permit, or other entitlement for use pending before the City shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding twelve (12) months by the party, or his or her agent, to any Elected Official.
- C. Any party to a proceeding involving a license, permit, or other entitlement for use pending before the City shall disclose on the record of the proceeding the names of any persons whose contributions are required to be aggregated, if the person has made a contribution to an Elected Official. The disclosure shall be made at the time the application is filed, or the proceeding is otherwise commenced, if the contribution was made during the twelve month period preceding the filing of the application or commencement of the proceeding, or no later than thirty (30) days

after the contribution is made if the contribution is made at any stage during the proceeding.

- D. The disclosure shall include the name of the party and any other person making the contribution, if any, the name of the recipient, the amount of the contribution, and the date the contribution was made.
- E. Nothing in this Section shall be construed to imply that any contribution subject to being reported as required by the Political Reform Act or San José Municipal Code shall not be so reported.

12.07.250 Aggregating Contributions

For purposes of this Chapter:

- A. To determine whether a contribution of more than two hundred fifty dollars (\$250) has been made by any party to a proceeding, contributions made by a party's parent, subsidiary, or otherwise related business entity, (as those relationships are defined herein in subsection B), shall be aggregated and treated as if received from the party for purposes of the limitations and disclosure provisions this Chapter.
- B. Parent, Subsidiary, Otherwise Related Business entity, defined.
 - 1. A parent-subsidiary relationship exists when one corporation has more than fifty percent (50%) of the voting power of another corporation.
 - 2. Business entities, including corporations, partnerships, joint ventures and any other organizations and enterprises operated for profit, which do not

have a parent-subsiary relationship are otherwise related if any one of the following three (3) tests is met:

- a. One (1) business entity has a controlling ownership interest in the other business entity.
- b. There is shared management and control between the entities. In determining whether there is shared management and control, consideration should be given to the following factors:
 - i. The same person or substantially the same person owns and manages the two (2) entities;
 - ii. There are common or commingled funds or assets;
 - iii. The business entities share the use of the same offices or employees, or otherwise share activities, resources or personnel on a regular basis; or
 - iv. There is otherwise a regular and close working relationship between the entities.
- c. A controlling owner (fifty percent (50%) or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

Part 4
ADMINISTRATION AND ENFORCEMENT

12.07.300 Enforcement

- A. The Board of Fair Campaign and Political Practices shall have jurisdiction to hear complaints alleging a willful or knowing violation of this Chapter. Any person may file a complaint with the Board of Fair Campaign and Political Practices.

- B. Willful or knowing violations of this Chapter may result in civil penalties imposed by the Board of Fair Campaign and Political Practices in accordance with Sections 12.04.110 and 12.04.120.

- C. The failure of any Elected Official to comply with this Chapter shall have no effect on the validity of any action taken by the Council or Mayor and may not support an allegation of or serve as a basis for a claim of potential or actual bias or conflict in any matter.

SECTION 3. Chapter 12.08 of Title 12 of the San José Municipal Code is hereby amended by adding a new Part to be numbered, entitled, and to read as follows:

Part 4
GIFTS FROM LOBBYISTS, CONTRACTORS, AND DIRECT BENEFICIARIES
PROHIBITED

12.08.300 Definitions

For the purposes of this Part 4:

- A. “City Official” has the same meaning as in Section 12.12.120.
- B. “Lobbyist” has the same meaning as in Section 12.12.180.
- C. “Direct Beneficiary of a City Contract” means any person identified in a City contract as having a direct financial interest in the performance of the contract.
- D. “Gift” has the same meaning as defined in the Political Reform Act.
- E. “Contractor of the City” means any person or entity that is a party to a contract with the City, excluding nonprofit organizations with tax exempt status under Section 501(c)(3) Title 26 of the Internal Revenue Code.

12.08.310 Prohibition

- A. Notwithstanding any provision in Chapter 12.08 and as prohibited by Charter Section 2005, no City Official may accept, directly or indirectly, any Gift from any registered Lobbyist, Contractor of the City, or direct beneficiary of a City contract except as provided in this Chapter.
- B. No registered Lobbyist; contractor of the City, or direct beneficiary of a City contract may give a Gift to a City Official or act as an agent or intermediary in the making of any Gift, or to arrange for the making of any Gift by any other person.
- C. Nothing in this Section shall be construed to imply that any Gift subject to being reported as required by the Political Reform Act or San José Municipal Code should not be so reported.

SECTION 4. Part 5 of Chapter 12.12 of Title 12 of the San José Municipal Code is hereby amended by adding a new section to be numbered, entitled, and to read as follows:

12.12.510 Board and Commission Membership

- A. As prohibited under Charter Section 2006, no registered Lobbyist may serve on a Board or Commission within two (2) years of any Lobbying Activity.
- B. As prohibited under Charter Section 2006, no person with a contract with the City may serve on a Board or Commission within two (2) years of expiration or termination of the contract.
- C. Any person will be deemed to have vacated his or her seat on a Board or Commission if, after appointment, he or she subsequently becomes a registered Lobbyist or enters into a contract with the City.
- D. Nothing under this Section is intended to prohibit persons from serving on a Board or Commission as a representative of a nonprofit organization with tax exempt status under Section 501(c)(3) of Title 26 the Internal Revenue Code, a government agency, or an entity or specified interest group whose representation is required on the Board or Commission by law.
- E. For the purposes of this Section, Boards or Commissions does not include advisory bodies without decision-making authority.
- F. Any person serving on a Board or Commission as of the effective date of this Section, who would otherwise be prohibited from serving under this Section, may continue to serve the remaining balance of his or her term.

SECTION 5. This Ordinance shall become operative immediately upon the date that Article XX of the Charter is approved by the voters of San José at the statewide general election of November 2020. However, if Article XX is not approved by the voters of San José at the statewide general election of November 2020, this Ordinance shall be inoperative and immediately repealed.

PASSED FOR PUBLICATION of title this ____ day of _____, 2020, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk