



# CITY COUNCIL STAFF REPORT

**Current Business Item No. 10**

**March 3, 2021**

**File No. 0680-10**

SUBJECT: Adoption of Ordinance Amending Campaign Control Ordinance

DEPARTMENT: City Attorney

RECOMMENDATION:

It is requested that the City Council consider the adoption and introduction of Ordinance No. 2021-04 amending Article 7 of Chapter 2 of the Escondido Municipal Code (EMC) to (1) strike section 2-107(b), and (2) exclude from the definition of "person" a Political Party Committee as defined.

FISCAL ANALYSIS:

The requested changes to the Campaign Control Ordinance will have no fiscal impact on the City of Escondido ("City").

PREVIOUS ACTION:

The Campaign Control Ordinance was last amended in October 2020. The City Council adopted lowered contribution limits for persons as defined, had those limits adjusted by a fixed amount on a biennial schedule, added a prohibition of allowing the pour-over of surplus campaign funds from one local campaign account to the next, and revised some miscellaneous language relating to the definitions in the code.

BACKGROUND:

On January 13, 2021, Councilmember Inscoe requested a future agenda item to discuss a review of, and amendments to, the City's Campaign Control Ordinance. The Ordinance was last amended prior to her election to represent Council District 2. She has specifically requested an amendment to (1) EMC section 2-107, relating to a required disbursement of surplus campaign funds; and (2) the definition of "person" in section 2-102 to exclude Political Party Committees.

In August and October 2020, in open session and at the request of various councilmembers, the City Attorney reviewed relevant state and local laws, constitutional issues, local campaign contribution limits enacted by other cities in San Diego County, and various other campaign contribution provisions related to voting restrictions and use of surplus campaign funds. In October 2020, the City Council, in a 3-1 vote, approved several components of the proposed amendments. A copy of the October 2020 staff report (without referenced attachments) is included as Attachment 1.

A. Required Disbursement of Surplus Campaign Funds.

In Ordinance No. 2020-27, the City Council adopted a new requirement that required the complete disbursement of all surplus funds held in a local campaign account at the close of the election season thereby prohibiting a pour-over of surplus campaign funds into a candidate's next local campaign account. The amendment was proposed by Councilmember Martinez and designed to have all candidates for office in the City start their respective campaigns on an equal financial footing. Councilmember Martinez expressed concern over the use of surplus campaign account funds being poured into a new campaign account allowing for an immediate financial advantage over opponents.

The City is a general law city and may impose its own limits on campaign contributions and elections separate from the Political Reform Act provided those requirements are constitutional and do not prevent compliance with the PRA. State law addresses the issue of the disbursement of surplus campaign funds held in a departing candidate's election campaign account. In particular, Government Code § 89519(b) provides that any surplus funds in a campaign account for a candidate leaving office may only be used in six (6) specific ways: payment of outstanding campaign debt; repayment of contributions; donations to bona fide charitable (and like) organizations; contributions to a political party committee; contributions to support or oppose federal office candidates; and the payment of professional services required by a committee to assist with administrative functions. State law does not address specifically the issue of the disbursement of surplus funds or "pour-over" from one account to the next from election to election of successful or returning candidates.

Mindful that the EMC must be constitutional and compliant with state law, it was amended to address the requested change by including (1) a specific reference to the need for candidates to comply with Government Code § 89519 in EMC 2-107(a), and (2) the following language as subsection (b) to EMC section 2-107:

No candidate for any city elected office, or his or her treasurer or committee, shall make a payment or contribution from an existing campaign account into a new campaign account for that candidate, except as allowed by state law.

Pursuant to the proposed amendment as requested by Councilmember Inscoe, Ordinance No. 2021-04 would remove subsection (b) of section 2-107 in its entirety. As a result, section 2-107 would provide simply that all candidates must comply with state law with respect to the disbursement of any surplus campaign funds in an account. See Attachment 2 Redline version. As a result, there would be no local prohibition of pouring-over from one local campaign account to the next any remaining balance or surplus funds.

B. Definition of Persons Subject to Campaign Control Ordinance.

The City's Campaign Control Ordinance includes a section on definitions for terms used throughout the law. Because the campaign control limitations and restrictions generally refer to "person," that definition of individuals and entities will affect the breath of how the ordinance will operate and to whom the law will apply.

Today, pursuant to EMC section 2-102(13), the term "person" means:

an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, political action committee, independent committee and any other organization or group of persons acting in concert. "Person" does include a political party committee.

As such, any limitations, restrictions, and prohibitions in the Ordinance would apply to Political Party Committees.

Councilmember Inscoe has requested that a Political Party Committee, as defined in the code, be excluded from the definition. Political Party Committee is defined in the EMC as "the state central or county central committee of an organization that meets the requirements for recognition as a political party pursuant to California Elections Code sections 5100 or 5151." Elections Code section 5100 and 5151 relate generally to parties qualified to participate in primary and presidential general elections, respectively.

#### CONCLUSION:

The City Council has authority, and has exercised its authority in the past, to establish local laws regarding local campaign contribution and related elections limits consistent with state law. The Councilmembers are most knowledgeable about the difficulties and practicalities involved in raising money for a local election, both as an incumbent and as a challenger in this jurisdiction, and as such are in the best position to evaluate this proposed ordinance. A decision on the proposed changes in Ordinance 2021-04 would be constitutional, consistent with state law and within the discretion of the City Council.

#### APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Michael R. McGuinness*, City Attorney  
2/25/21 11:52 a.m.

#### ATTACHMENTS:

1. Attachment 1 – October 21, 2020, Staff Report
2. Attachment 2 - (Redline version of Campaign Control Ordinance)
3. Ordinance No. 2021-04



## CITY COUNCIL STAFF REPORT

**Current Business Item No. 10**

**October 21, 2020**

**File No. 0680-10**

**SUBJECT:** Adoption of Ordinance Reducing Campaign Contribution Limits for Mayor and Councilmembers and Related Campaign Control Amendments

**DEPARTMENT:** City Attorney

**RECOMMENDATION:**

It is requested that the City Council consider and introduce Ordinance No. 2020-27 which amends the Escondido Municipal Election Campaign Control Ordinance to lower the maximum personal contributions from \$4,300 for city council candidates and mayoral candidates. It is further requested that the City Council consider and adopt additional and related amendments to the Campaign Control Ordinance.

**FISCAL ANALYSIS:**

Any changes to campaign contribution limits for local Escondido mayoral and council district seats in the existing Campaign Control Ordinance will have no fiscal impact on the City of Escondido. Other proposed changes will also have no fiscal impact for the City.

**PREVIOUS ACTION:**

The Campaign Control Ordinance was last amended in April 2018.

The issue of potentially lowering the campaign contribution limits was last heard by the City Council as a current business item on August 12, 2020. The Council gave direction to the City Attorney to return with proposed ordinance language consistent with the opinions expressed by the councilmembers.

**BACKGROUND:**

Mayor McNamara, Deputy Mayor Martinez and Councilmember Diaz expressed an interest in re-examining the campaign contribution limits and related Campaign Control Ordinance provisions in the Escondido Municipal Code ("EMC").

On August 12, 2020, in open session the City Attorney reviewed relevant state and local laws; constitutional issues; local campaign contribution limits enacted by other cities in San Diego County; and various other campaign contribution provisions related to voting restrictions and use of surplus campaign funds. A copy of that staff report is attached (see Attachment 1). The City Council provided feedback on the various issues and this item is intended to serve as a report and

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recommendation for the adoption of an ordinance effecting the council's stated approach to these issues.

## A. Campaign Contribution Limits.

Currently, Section 2-103(a) of the EMC provides as follows:

No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing such candidate, to exceed four thousand three hundred dollars (\$4,300.00).

During council discussion of this matter on August 12, as it related to district races, councilmembers noted various preferred contribution limits.<sup>1</sup> Deputy Mayor Martinez noted that a gradual decrease in the limit may be appropriate at this time. Given these comments, and in an attempt to both obtain a successful vote and achieve a material reduction from the current amount of \$4,300, it appears that the council would find reasonable and adopt a city councilmember district campaign contribution limit of \$1,000.

The city council also considered and discussed the issue of allowing for a differential between district-only council seat campaigns and the city-wide races for mayor and city treasurer. Although there did not appear to be much debate on the appropriateness of allowing for such a differential, there was less clear consensus on the specific amount or the formula for the amount (e.g. district amount multiplied by 2, 3 or 4). Mayor McNamara initially suggested a district/citywide ratio of 4:1 and Councilmember Diaz believed a ratio of 2:1 would be reasonable given the existence of fixed costs making a straight district/citywide 4:1 ratio too high. In an effort to synthesize all councilmember comments, given the stated rationales for reductions, the proposed district contribution limitation, and examining first amendment, practicality, incremental decreases, and fairness issues, this office recommends a city-wide campaign contribution limit of \$1,750.

The above proposed district and city-wide campaign contribution limits would survive a first amendment challenge, are consistent with the underlying purpose of the City's campaign control ordinance and achieve a substantial reduction in the current contribution limit. Moreover, these numbers are also fairly within the range of local agencies in San Diego County which have either enacted their own ordinances or who will be governed by state law starting January 1, 2021. Further, the enactment of this local limitation would remove the City from the operation of AB 571 which provides for a default campaign contribution limit of \$4,700 on those local agencies which fail to adopt their own limits.

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<sup>1</sup> Councilmember Morasco indicated that he did not favor any decrease in the current contribution limits.

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## Voting Limitations Related to Donations.

The City Council further discussed a restriction on councilmember voting and/or acceptance of contributions when a person/entity has a matter pending before the council or for a period of time after a council vote (e.g. 12 months). This type of provision can take various forms and includes variables relating to dollar amounts, timing of donations, etc. Deputy Mayor Martinez voiced some concerns over the potential for the new law being misinterpreted or creating technical violations. Councilmember Morasco was against this provision out of concerns over achieving quorums, potential unintended technical violations, and that the regulation was unnecessary to achieve fair and untainted council votes. Mayor McNamara did not express a strong or specific interest in the issue at the time of the meeting. A further follow up question to the mayor after the meeting made clear that he did not prefer adopting this item at this time.

Given that direction from a majority of the council is not clear on this issue, and a new council will be seated in a short period of time which may wish to take a fresh look at this question and its various forms, at this time no provision is being recommended by this office. As noted during the August presentation, all councilmembers are required to comply with the Political Reform Act, including Section 87100 which prohibits public officials from making decisions and/or using their official position to make or influence decisions in which they have a financial interest. Further, the EMC prohibits councilmembers from giving “any special consideration, treatment or advantage to any citizen beyond that which is available to every other citizen.” EMC 19-88. Finally, the EMC prohibits councilmembers from (1) having any financial or personal interest which is incompatible with the discharge of their official duties; (2) accepting gifts, favors or things of value that may influence him/her; and (3) having any financial or private interest in any legislation without disclosing on the record that interest. EMC 19-90.

## B. Indexing of Campaign Contribution Limits.

It is recommended that the ordinance account for changes in the cost of living. An indexing or preset adjustment schedule included within the ordinance itself may assist in allowing for a longer “shelf life” to the law so the council does not need to revisit and adjust the limitations repeatedly. It may also be that the politics associated with seeking to revisit the ordinance to increase the limits may prevent needed adjustments and an established and reasonable index will accommodate the need to keep the law current.

Councilmember Diaz expressed interest in using a fixed dollar increase as opposed to a percentage to avoid odd or unusual numbers (e.g. \$1,281). While that issue can be resolved through a rounding provision, no other councilmembers indicated a preference for a percentage index. Further, the use of a fixed dollar amount allows for the district and city-wide limitations to grow at the same rate relative to each other as opposed to increasing the different limits by the same percentage creating a widening gap between the amounts. As a result, the proposed ordinance includes a biennial \$50

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increase which would amount to a \$25 per year. Using the proposed \$1,000 district number, that increase is only 0.025% per year.

## C. Timing of Ordinance Effect.

The feedback from the council made it clear that the ordinance should be effective for the next election cycle. As a result, the timing of the adoption of this matter will ensure that the law as proposed would be effective after the current election and in place for the next general municipal election in November 2022. This would be consistent with the effective date of AB 571 and fundamental fairness for candidates in current races for the general municipal election to be held November 3, 2020.

## D. Required Relinquishment of Surplus Funds.

An additional issue discussed during the August City Council meeting related to whether the EMC may prohibit the disbursement of surplus campaign funds into a candidate's next campaign account so that all candidates for office would start campaigns on an equal financial footing. Deputy Mayor Martinez expressed concern over the use of surplus campaign account funds being poured into a new campaign account allowing for an immediate advantage over opponents.

As noted at the open session on this item, state law addresses the issue of the use of surplus campaign funds held in a candidate's election campaign account. In particular, Government Code § 89519(b) provides that surplus funds may only be used in six (6) specific ways (e.g. payment of debt, repayment of contributions, donations to bona fide charitable organizations, contributions to political party committees, etc.).

However, this office has attempted to address the issue by (1) including a specific reference to the need for candidates to comply with Government Code § 89519 in EMC 2-107(a), and (2) including the following language to EMC 2-107(b):

No candidate for any city elected office, or his or her treasurer or committee, shall make a payment or contribution from an existing campaign account into a new campaign account for that candidate, except as allowed by state law.

## E. Limits Related to Type of Donor.

Councilmember Morasco noted a concern that to the extent certain segments of potential campaign donors are affected by this ordinance, all types of donor groups should be equally impacted and restricted. Councilmember Diaz agreed with the principle that all types of donor groups, whether individual and entity, should be treated the same.

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As written, the ordinance limitations apply to all “persons” which is defined as:

an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, Political Action Committee, Independent Committee and any other organization or group of persons acting in concert.

As defined, a “person” does not include a Political Party Committee thereby allowing a state or county central committee of a qualifying organization which meets the requirements for recognition as a political party pursuant to California Elections Code exempt from the restriction.

## F. Miscellaneous Definitions.

In addition to the above substantive changes noted above, Ordinance No. 2020-27 also updates and/or includes definitions for the following terms used in the Campaign Control Ordinance in EMC 2-102: “Independent Committee,” “Political Party Committee,” “Person,” and “Political Action Committee.”

## CONCLUSION:

The City Council has authority, and has exercised its authority in the past, to set campaign contribution limits consistent with state law. The council members are most knowledgeable about the difficulties and practicalities involved in raising money for a local election both as an incumbent and as a challenger in this jurisdiction.

This report and the proposed Ordinance is an attempt to synthesize the comments expressed by the council into a constitutionally sound ordinance that accomplishes the purposes of effecting campaign finance reform and be consistent with the City’s existing Campaign Control Ordinance.

## APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

*Michael R. McGuinness*, City Attorney  
10/14/2020 4:35 PM

## ATTACHMENTS:

1. Attachment 1 - August 12, 2020, Staff Report
2. Attachment 2 - (Redline version of Campaign Control Ordinance)
3. Ordinance No. 2020-27



## Attachment 2

Amendments to EMC sections 2-102 and 2-107

### Proposed Redline Version

#### **Sec. 2-102. Definitions.**

As used in this article, the listed words or phrases shall be defined as follows:

(1) *Candidate* shall mean any individual who is listed on the ballot or who has begun to circulate nominating petitions or authorized others to circulate petitions in his or her behalf, for nomination for or election to any elective city office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution with a view to bringing about his or her nomination or election to any city office, whether or not the specific elective office for which nomination or election may be sought is known at the time the contribution is received or the expenditure is made and whether or not candidacy has been announced or a declaration of candidacy filed at such time. "Candidate" also includes any holder of any city office who is the subject of a recall election.

(2) *City office* shall mean the offices of mayor, councilmember and treasurer of the City of Escondido.

(3) *Committee* shall be defined as the definition found in Government Code Section 82013, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

(4) *Contribution* shall be defined as the definition found in Government Code Section 82015, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

(5) *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 he or she, his or her agent or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(6) *Election* shall mean any primary, general or special election held in the City of Escondido, including the candidate election portion of a consolidated recall election. The primary and general or special elections are separate elections for purposes of this article.

(7) *Enforcement authority* shall mean the officer, agent or organization designated by action of the city council to enforce the provisions of this article. Nothing in this article shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this article under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

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(8) *Expenditure* shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

(9) *Independent committee* shall mean a committee that receives contributions or makes expenditures for the purpose of influencing or attempting to influence a City election, which is not made with the cooperation, consultation, or in concert with, or at the request or suggestion of, any candidate or his or her committee, or any of their agents.

(10) *Independent expenditure*:

(a) *Independent expenditure* shall mean an expenditure by a person for a communication expressly advocating the support of or opposition to a clearly identified candidate which is not made with the cooperation or prior consent of a candidate, his or her agent, or a controlled committee of a candidate.

(b) For the purpose of this definition:

1. "Expressly advocating" shall mean any communication containing a message advocating support or opposition. Content may include, but not be limited to, the name of a candidate, the title of a measure or any expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," or "reject" and an identifying phrase.

2. "Clearly identified candidate" shall mean that the name of a candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous references.

3. "Made with the cooperation or with the prior consent of, or in consultation with, or at the behest or suggestion of, a candidate or his or her agent or a controlled committee of a candidate" shall mean any arrangement, coordination, or direction by a candidate, agent or committee prior to the publication, display or broadcast of the communication.

4. "Agent" shall mean any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or any person 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.

(c) An expenditure not qualifying under this section as an independent expenditure shall be considered a contribution to the candidate.

(11) *Measure* shall mean any proposition which is submitted to a popular vote at an election by action of the city council or which is submitted or is intended to be submitted to a popular vote at a city election by initiative or referendum procedure whether or not it qualifies for the ballot.

(12) *Payment* shall mean payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

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(13) *Person* shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, political action committee, independent committee and any other organization or group of persons acting in concert. "Person" does not include a political party committee.

(14) *Political action committee* shall mean an organization that generates, receives and/or pools campaign contributions from members or others and either makes direct expenditures on behalf of, or donates those contributions to campaigns for or against, candidates or ballot measures. As used herein, a labor union or employee bargaining group shall constitute a political action committee.

(15) *Political party committee* shall mean the state central or county central committee of an organization that meets the requirements for recognition as a political party pursuant to California Elections Code sections 5100 or 5151.

### **Sec. 2-107. Disbursement of surplus campaign funds.**

~~(a)~~— If the final campaign statement for a candidate or any committee discloses an unexpended surplus, the candidate or committee shall comply with Government Code Section 89519, as amended or applicable, in the closure of the account and disbursement of any such funds.

~~(b)~~— ~~No candidate for any city elected office, or his or her treasurer or committee, shall make a payment or contribution from an existing campaign account into a new campaign account for that candidate, except as allowed by state law.~~

ORDINANCE NO. 2021-04

AN ORDINANCE OF THE CITY COUNCIL OF  
THE CITY OF ESCONDIDO, CALIFORNIA,  
TO REPEAL AND REPLACE PROVISIONS  
OF ESCONDIDO MUNICIPAL CODE  
CHAPTER 2, ARTICLE 2, CONTROLS ON  
CAMPAIGN CONTRIBUTIONS

WHEREAS, the high cost of election campaigning creates problems of actual or perceived improper influence exercised by campaign contributors over elected officials; and

WHEREAS, the City Council for the City of Escondido (“City”) has enacted the Campaign Control Contribution Ordinance (“Ordinance”) to govern various aspects of campaign financing in the jurisdiction of the City; and

WHEREAS, the Ordinance at Escondido Municipal Code (“EMC”) Section 2-100 recites the purpose and intent of creating reasonable limits on the amounts and types of campaign contributions and it is incorporated herein as though fully set forth; and

WHEREAS, mindful of first amendment constitutional principles, fundamental due process and fairness, there exists a compelling need and it is in the best interests of the citizens of this City to update and adopt reasonable and enforceable regulations related to election campaign fundraising conducted in the City; and

WHEREAS, such campaign regulations may be enacted pursuant to the authority granted to the City by Article XI, Section 7 of the California Constitution, and specifically authorized by the Political Reform Act.

NOW, THEREFORE, IT IS HEREBY RESOLVED and the City Council of the City of Escondido DOES HEREBY ORDAIN as follows:

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. That EMC Chapter 2, Administration, Article 7, Controls on Campaign Contributions, Section 2-102 shall be repealed and replaced as follows:

**Section 2-102. Definitions.**

As used in this article, the listed words or phrases shall be defined as follows:

(1) *Candidate* shall mean any individual who is listed on the ballot or who has begun to circulate nominating petitions or authorized others to circulate petitions in his or her behalf, for nomination for or election to any elective city office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution with a view to bringing about his or her nomination or election to any city office, whether or not the specific elective office for which nomination or election may be sought is known at the time the contribution is received or the expenditure is made and whether or not candidacy has been announced or a declaration of candidacy filed at such time. "Candidate" also includes any holder of any city office who is the subject of a recall election.

(2) *City office* shall mean the offices of mayor, councilmember and treasurer of the City of Escondido.

(3) *Committee* shall be defined as the definition found in Government Code Section 82013, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

(4) *Contribution* shall be defined as the definition found in Government Code Section 82015, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

(5) *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 he or she, his or her agent or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(6) *Election* shall mean any primary, general or special election held in the City of Escondido, including the candidate election portion of a consolidated recall election. The primary and general or special elections are separate elections for purposes of this article.

(7) *Enforcement authority* shall mean the officer, agent or organization designated by action of the city council to enforce the provisions of this article. Nothing in

this article shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this article under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

(8) *Expenditure* shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

(9) *Independent Committee* shall mean a committee that receives contributions or makes expenditures for the purpose of influencing or attempting to influence a City election, which is not made with the cooperation, consultation, or in concert with, or at the request or suggestion of, any candidate or his or her committee, or any of their agents.

(10) *Independent expenditure*:

(a) *Independent expenditure* shall mean an expenditure by a person for a communication expressly advocating the support of or opposition to a clearly identified candidate which is not made with the cooperation or prior consent of a candidate, his or her agent, or a controlled committee of a candidate.

(b) For the purpose of this definition:

1. "Expressly advocating" shall mean any communication containing a message advocating support or opposition. Content may include but not be limited to the name of a candidate, the title of a measure or any expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," or "reject" and an identifying phrase.

2. "Clearly identified candidate" shall mean that the name of a candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous references.

3. "Made with the cooperation or with the prior consent of, or in consultation with, or at the behest or suggestion of, a candidate or his or her agent or a controlled committee of a candidate" shall mean any arrangement, coordination, or direction by a candidate, agent or committee prior to the publication, display or broadcast of the communication.

4. "Agent" shall mean any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or any person 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.

(c) An expenditure not qualifying under this section as an independent expenditure shall be considered a contribution to the candidate.

(11) *Measure* shall mean any proposition which is submitted to a popular vote at an election by action of the city council or which is submitted or is intended to be submitted to a popular vote at a city election by initiative or referendum procedure whether or not it qualifies for the ballot.

(12) *Payment* shall mean payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(13) *Person* shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, Political Action Committee, Independent Committee and any other organization or group of persons acting in concert. "Person" does not include a Political Party Committee.

(14) *Political Action Committee* shall mean an organization that generates, receives and/or pools campaign contributions from members or others and either makes direct expenditures on behalf of, or donates those contributions to campaigns for or against, candidates or ballot measures. As used herein, a labor union or employee bargaining group shall constitute a political action committee.

(15) *Political Party Committee* shall mean the state central or county central committee of an organization that meets the requirements for recognition as a political party pursuant to California Elections Code sections 5100 or 5151.

SECTION 3. That EMC Chapter 2, Administration, Article 7, Controls on Campaign Contributions, Section 2-107 shall be repealed and amended as follows:

**Section 2-107. Disbursement of surplus campaign funds.**

If the final campaign statement for a candidate or any committee discloses an unexpended surplus, the candidate or committee shall comply with Government Code Section 89519, as amended and applicable, in the closure of the account and disbursement of any such funds.

SECTION 4. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and

independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 5. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 6. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.