

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

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.¹ 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.

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

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

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.

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

CITY COUNCIL STAFF REPORT

Current Business Item No. 19

August 12, 2020

File No. 0680-10

SUBJECT: Consideration 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 discuss, consider and take public input on potential amendments to 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 discuss, consider, and take public input and give staff direction on additional campaign control amendments, if any.

FISCAL ANALYSIS:

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

PREVIOUS ACTION:

The Campaign Control Ordinance was last amended in April 2018.

This current matter has been continued twice from the December 18, 2019, and March 4, 2020, City Council agendas to allow for a full council review and consideration of issues by councilmembers.

BACKGROUND:

In October 2019, Mayor McNamara asked that the issue of local campaign contribution limits be placed on the future agenda for review and discussion and further recommended proposed limits for consideration. Subsequently, Councilmember Olga Diaz asked to supplement the agenda item to further consider a limitation on the acceptance of campaign contributions from persons having business before the City Council and for a period of time after a vote. Thereafter, Deputy Mayor Martinez asked that additional items related to campaign finance be addressed.

State Law Campaign Contribution Limits.

The Political Reform Act ("PRA") regulates campaign finance and disclosure requirements for state and local candidates and committees. A city may also impose its own limits on campaign contributions in municipal elections and impose additional requirements separate from the PRA

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provided those requirements do not prevent compliance with the PRA. (Government Code § 81013; Elections Code § 10202.) The PRA, first enacted in 1974, is intended to ensure that disclosure of political contributions is accurate, timely, and truthful; to keep voters informed; to make elections fair by abolishing laws and practices that favor incumbents; and, to provide adequate enforcement mechanisms of its provisions. (Government Code § 81002.) The California Fair Political Practices Commission ("FPPC") has primary responsibility for the administration and implementation of the PRA.

On October 8, 2019, the State of California enacted AB 571, which amended various sections of California's Elections and Government Codes. Generally, the new enactment establishes limitations on contributions to a candidate for local office in the case where the local governing body has not adopted its own limits. Starting on January 1, 2021, the "default" limit on campaign contributions shall be the amount provided for in the Government Code for contributions to candidates running in state legislative races. Today, the limit for a "person" (as defined by the FPPC) to contribute to a candidate is \$4,700 per election for state senate and assembly races. However, the law specifically allows a city by ordinance or resolution to impose limits on contributions to candidates for elective city offices that are different from the state limit. (Government Code § 85702.5(a).) That is, a local jurisdiction may enact campaign contribution limits for persons and committees for elective offices in the jurisdiction that are stricter or more liberal than the default limit statute. The law further provides that the FPPC is not responsible for the administration or enforcement of the local campaign limitations ordinances and the local agency may establish its own administrative, civil or criminal penalties.

The Escondido Campaign Control Ordinance.

In 1983, the City of Escondido adopted Ordinance No. 83-46, which provided for Controls on Campaign Contributions. The ordinance was adopted to supplement the PRA.

The Ordinance is commonly referred to as the Campaign Control Ordinance and it has undergone multiple amendments since it was first adopted. For example, in 1997, the Campaign Control Ordinance was amended to conform to Proposition 208, which contained newly adopted statewide campaign laws. However, in 1998, a federal court issued a preliminary injunction prohibiting enforcement of the new state law finding that the limitations on the amounts of contributions was not narrowly drawn to achieve a legitimate purpose in violation of the First Amendment. *California ProLife Council v. Scully* (E.D. Cal. 1998) 989 F. Supp. 1282. The Ninth Circuit Court of Appeals later affirmed the injunction in 1999.

In 2007, the campaign contribution limit was increased to \$500 and a Consumer Price Index ("CPI") formula was added to allow for future increases over time. In 2013, the Campaign Control Ordinance was amended again to increase campaign contributions to \$4,100 and to remove the CPI adjustment. The 2013 amendment also removed the prohibitions on cash contributions by allowing such contributions up to \$25.

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In April 2018, the Campaign Control Ordinance was last amended in an effort to update the provisions to be largely consistent with the PRA. In addition to increasing the personal contribution limit to \$4,300, the Ordinance made changes to the definitions of "Committee" and "Contribution" to conform to the PRA, changed the amount of allowable cash contributions up to \$100, and repealed certain provisions relating to credit and checking accounts. No anonymous contributions are now allowable under Escondido's Campaign Control Ordinance.

Escondido Municipal Code Section 2-103(a), which limits campaign contributions by persons, provides:

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).

Escondido Municipal Code Section 2-100 identifies the purpose and intent of the City's efforts to enact regulations and limitations in local campaigns. As stated, the purpose of the Code is to "preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this article."

The City's existing Campaign Control Ordinance governs the campaign contribution limits for local City Council seat races and allows for campaign contributions below the state-mandated limit. It is enforceable today and would continue to be valid and enforceable after AB 571 becomes effective on January 1, 2021. The City Council has the authority to make changes to its local campaign contribution limits provided they are generally compliant with the PRA and AB 571.

First Amendment Issues.

In addition to state and local laws, campaign finance laws can also touch on federal constitutional issues. Most notably, *Citizens United v. Federal Election Comm'n*, 572 U.S. 185 (2014) addressed the issue of whether the government may restrict independent expenditures for political communications by entities other than individuals (i.e. corporations, unions, non-profits, etc.). The case arose out of a private organization's efforts to air a film critical of Hillary Clinton who was a presidential candidate. At the time, federal law prevented corporations and unions from making campaign expenditures for broadcasts, also known as "electioneering communications," which mention a candidate for office within 60 days of a general election or 30 days before a primary. The United States Supreme Court struck down the law finding that the First Amendment protects

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associations of people in addition to individual speakers and that the identity of the speaker is not the proper province of the government to regulate. As a result, a federal law that prohibited all expenditures by corporations or associations would violate the free speech rights guaranteed by the First Amendment.

The decision has been the subject of debate since its inception. Its relevance to this discussion is that the Supreme Court has demonstrated an interest in examining the principles of potential First Amendment violations when the government attempts to limit campaign expenditures that may help or, in the case of *United Citizens*, be arguably detrimental to, a candidate for office. As a result, a city enacting controls over the amounts, timing and source of campaign contributions must be mindful of the exacting review of such constraints on candidates for office and their supporters.

Recently, the United States Supreme Court took up the issue of campaign contribution limits in *Thompson v. Hebdon*, 140 S.Ct. 348 (November 25, 2019) (*per curiam*). In *Hebdon*, the State of Alaska limited the amount an individual can contribute to a candidate for political office, or to an election-oriented group other than a political party, to \$500 per year. A contributor who wished to contribute more than the limit to a candidate for office sued the State of Alaska claiming that the low maximum contribution amount constituted a violation of the First Amendment. The District Court and Ninth Circuit Court of Appeal rejected the claim and upheld the restriction.

The United States Supreme Court vacated the Ninth Circuit's decision and remanded the case to determine whether "Alaska's contribution limits are consistent with our First Amendment precedents." *Hebdon* at 351. While not providing clear direction as to the Court's opinion on the merits of the question, the Court's decision discussed certain "danger signs" regarding a government limitation on campaign contributions. The Court looked at (1) whether the limit was "substantially lower than previously [judicially] upheld limits;" (2) whether the limit is substantially lower than comparable limits in other states; and (3) whether the amount is adjusted for inflation. While not exhaustive of potential problems with a potentially violative campaign finance law, these are helpful touchpoints for First Amendment judicial review of any City legislation.

Comparative Local Ordinance Limits.

A survey was conducted of the campaign contribution limits enacted by all municipalities in San Diego County. Attachment 1 provides a spreadsheet of the results of that survey.

To be clear, the campaign contribution limits in other San Diego cities are not controlling of the discretion this City Council has on establishing limits for races in this jurisdiction. However, they may serve as a helpful guide in examining the reasonableness and appropriateness of the City contribution limitations, particularly in jurisdictions with comparable geographic, population, and council district characteristics, and consistent with the *Hebdon* "danger sign" No. 2 identified above. Currently, several cities in the county have no campaign contribution limits (Carlsbad, El Cajon,

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Imperial Beach, and Oceanside). Assembly Bill 571 will apply to those jurisdictions unless they establish their own local limits.

Other cities in the County have enacted individual contribution limits for all elected offices that range from \$100 (Poway) to \$1,090 (Lemon Grove) for City Council races. The County of San Diego has a contribution limit of \$850 per individual for County Supervisor seat races. Some limits are indexed for inflation, others are not.

As can be seen from Attachment 1, the City of Escondido's campaign contribution limit is the highest for cities *who have adopted some local limitation*. After the implementation of AB 571, for those cities who have no limits and choose not to amend their laws, the limitation will default to the limits for state legislative races under state law (\$4,700).

In examining cities of generally comparable size in the County of San Diego (population of 100,000-500,000) which have adopted a local ordinance, Escondido's limit is materially higher. On the other hand, assuming the cities with no local controls will be set at the state limit of \$4,700 in January 2021, Escondido's limit would be lower than three of the six cities in that category. The Cities of Oceanside, Carlsbad and El Cajon would be set at the state level and only the Cities of Chula Vista and Vista would have lower amounts than Escondido.

The average campaign contribution limit in cities with populations between 50,000 and 100,000 is \$460. Those cities include San Marcos, Encinitas, National City, La Mesa, Santee and Poway. In April 2020, National City adopted a campaign contribution limit ordinance to place a local limit and in doing so, went from no limit to \$1,000 (CPI adjusted). Cities with a population lower than 50,000, including Imperial Beach, Lemon Grove, Coronado and Solana Beach, have an average campaign contribution limit of \$1,500. The City of San Diego has nine council districts with roughly 150,000 people in each district. The City's campaign contribution limit is \$600 for councilmember districts and \$1,150 for the two city-at-large elections for mayor and city attorney in a city with a total population of approximately 1.4 million.

In light of potential First Amendment issues, and in furtherance of the city's desire to eliminate the potential of "improper influence, real or potential," it is always helpful for a city to periodically examine the economics and fairness of its current campaign financing ordinance. The first version of the Staff Report for the December 2019 meeting suggested that the personal campaign contribution limit of \$4,300 be reduced to \$250 for councilmember races and from \$4,300 to \$800 for citywide mayoral races. Those reductions would likely survive a legal challenge. Staff at this time does not have a recommended contribution limit amount or whether any such limits should be differentiated between district and city-wide elections. Indeed, the final number(s) may be tied to considerations arising out of the other proposed campaign finance issues discussed below.

To be clear, the contribution amounts are entirely a function of City Council discretion and should reflect the real conditions of campaigning in this City. The Councilmembers are in a unique position

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to understand the practicalities and economics of raising and spending money for elective office in this City and must use that experience in identifying a limit that is consistent with the First Amendment and the stated purpose of the City's own Campaign Control Ordinance.

Limitation on Contributions from Political Action Committees.

Deputy Mayor Martinez inquired whether a local campaign control ordinance may limit or prohibit Political Action Committee ("PAC") contributions. A PAC is an organization that pools campaign contributions from its members and disburses those funds for candidates or ballot measures. PACs are a lawful and constitutional mechanism to accumulate money and then direct that financial support to achieve a particular election result, including influencing voters to vote one way or another for a matter or person.

A local campaign control ordinance may prohibit or limit contributions from entities other than individuals and political party committees, including PACs. As true with all such limitation decisions, the council must be mindful that any contribution limitations should be premised on findings that allowance of such organizational funding is inconsistent with the purpose of the City's Campaign Control Ordinance and further, that such restrictions do not unfairly burden, or allow for an advantage to, any candidate in relationship to his or her opponents.

Timing of Implementation.

It is anticipated that, should the City Council adopt a campaign control ordinance amending the contribution limits or take like or related actions, the law would take effect beginning at the next election cycle or January 1, 2021. 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. As this council knows, three district seats will be on the ballot and candidates are already in campaign mode raising funds. Changing the law in the middle of the election cycle (before November 3) carries with it the risk that confusion may exist as to when the ordinance is actually effective and enforceable. A definitive date in the ordinance should eliminate any such confusion and have all candidates on an even playing field for future elections.

Disposition of Existing (Surplus) Campaign Funds.

An additional issue has been raised as to what impact a new limitation would have on existing campaign accounts. The suggestion has been made that campaign contribution funds lawfully received in the past should be disgorged or returned to allow for a level playing field going forward among all candidates, challengers and incumbents alike.

Neither federal nor state law directly address the issue of a local ordinance forcing such a disgorgement. While the council has discretion in the timing of the effectiveness of any ordinance limiting funding, a law requiring the involuntary disgorgement of lawfully received campaign

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contributions raises several constitutional and other legal concerns. First, an argument could be made that state law already controls the issue of the use of surplus campaign funds held in a candidate's election campaign account and therefore, a local ordinance directing a particular disbursement is preempted. Generally, preemption occurs when a city enacts a local law that duplicates, contradicts or enters a field which has been fully occupied by state law, whether expressly or by legislative implication. Here, the Government Code includes a comprehensive set of laws which regulate the campaign accounts and funds. For example, 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.). A local ordinance requiring uses at variance with state law would be preempted. Moreover, an attempt to require a particular result (e.g. return to contributor) would likely be preempted as state law allows the recipient of the contribution to determine the outcome of the use of the surplus funds as long as they are consistent with the law.

Second, even if not preempted, the effect of requiring a candidate to return contributions of properly contributed and acquired monies implicates (at least) the First Amendment rights of persons who had made the contributions in the first instance. The council would need to make legislative findings that there was a sufficiently important interest and the de-funding of existing accounts is "closely drawn" to achieve that interest. See, *Buckley v. Valeo*, 424 U.S. 1, 25-26 (1976) (campaign limits may be constitutional if the government demonstrates a sufficiently important interest and the employed means are closely drawn to avoid infringement of the candidate's and contributor's rights.) As noted above, the courts have looked very carefully at government attempts to interfere with a contributor's and candidate's efforts to participate in a campaign for elective office.

Third, an involuntary disgorgement of an existing campaign account containing properly received contributions in a particular manner may constitute an unconstitutional due process violation under state and federal law. The California Constitution provides that a "person may not be deprived of life, liberty, or property without due process of law..." (Cal. Const. Art. I, § 6.) The Fourteenth Amendment to the United States Constitution similarly provides that, "[n]o State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law..." The law is clear that the reference to the prohibitions on State actions in the United States Constitution applies to local public entity actions (laws). Should a candidate holding funds in an existing account prior to the effectiveness of such a law be involuntarily forced return those properly received funds, such a law would have all the hallmarks of a due process violation.

Finally, there may be fundamental fairness issues with such a proposal. For example, a candidate may have made certain strategic decisions regarding expenditures in a race assuming future campaign activity based on existing law. Further, a candidate's campaign may contend that it incurred costs in raising those campaign account funds now subject to return and there would be no means of recouping those costs under a disgorgement scheme. Under either of these scenarios, a

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change in the campaign contribution law may unfairly affect a candidate who had been operating lawfully under the current ordinance.

Voting and Limitations Related to Persons with City Business.

Councilmember Diaz has inquired about consideration and discussion of an additional limitation to local campaign contributions.

The question was posed whether the City could impose a further restriction on councilmember voting and/or acceptance of contributions when a person has a matter pending before the council or for a period of time after a council vote (e.g. 12 months). As an example, the City of San Marcos enacted Municipal Code Section 2.16.070 in 2003.

San Marcos Municipal Code Section 2.16.070 provides in relevant part as follows:

- (a) Within twelve (12) months after receiving a campaign contribution or other income totaling one hundred dollars (\$100) or more from any source ... no City Councilmember shall make, participate in making or attempt to influence any government decision or action that will have a reasonably foreseeable material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974.
- (b) No City Councilmember shall accept any campaign contribution or other income from any source totaling one hundred dollars (\$100) or more within twelve (12) months after he or she has made, participated in making, attempted to influence or influenced any government decision or action that had a material financial effect on the campaign contributor or other source of income that is distinguishable from its impact on the public generally or a significant segment of the public, as defined by the Political Reform Act of 1974.

State law provides a similar statute touching on the subject of accepting contributions from persons having business before state agencies, boards and commissions.

Government Code § 84308(b) provides in relevant part that no agency officer may “accept, solicit or direct a contribution of more than \$250 from any party ... while a proceeding involving a license, permit or other entitlement for use is pending before the agency and for three months following the date of a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant has a financial interest.”

Subsection (c) of Section 84308 further provides that “prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use before an agency, each officer of the agency

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who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party ... shall disclose that fact on the record of the proceeding.”

Government Code § 84308 does *not* apply to city councilmembers in their role as representatives of their districts or as the mayor because they are directly elected by the voters from this jurisdiction. Government Code §84308(a)(3). However, these rules do apply to a councilmember who is acting as a voting member of another agency.

One issue to consider is whether the implementation of voting restrictions similar to those in the City of San Marcos could affect the City’s ability to achieve a quorum to conduct business. That is, to the extent past contributions force councilmembers to recuse themselves from voting, circumstances could arise where a quorum of three councilmembers may not be achievable and conducting city business could be hampered. Equally true, to the extent that the use of campaign contributions could be “weaponized” as a means of strategically eliminating a council member’s opposition to a project, the council may wish to consider whether that would ever be a realistic possibility. There also exists the prospect that opponents of council decisions may wish to use such an ordinance to prompt questionable litigation over issues such as whether the council member had a sufficient material or financial interest in the vote or decision thereby violating the ordinance. Clearly, if such a rule was implemented, councilmembers would need to be hyper-vigilant as they review the council agendas to ensure that there are no upcoming matters requiring their recusal.

Other than the need to consider the potential for impacts to voting on city business, this office has no recommendation on the implementation of a law similar to the City of San Marcos or Section 84308, or some version of it. This office seeks direction on what type of amendments the City Council is looking for, if any, in the City’s Campaign Control ordinance to address this subject.

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. The benchmark for setting any local limits should be that it neither advantages nor disadvantages any candidate, is consistent with First Amendment and state constitutional principles, will be an amount that is fair to all who seek to achieve an elective office and to contributors who wish to voice their First Amendment right to support local candidates. Moreover, any limits should be focused on achieving the goals in the City’s Campaign Control ordinance.

Although only used in one city in the County, the City of San Diego, the use of a proportional difference for district seat vs. citywide races is supportable from the perspective of the costs associated with running a citywide race for elective office such as the mayor compared to a district race. The appropriate amounts and ratios are best left to the sound discretion of the City Council provided the above constitutional principles of campaign fairness are observed.

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This office and staff are prepared to assist the City Council with making any further amendments to the Escondido Municipal Code on this matter and related matters.

APPROVED AND ACKNOWLEDGED ELECTRONICALLY BY:

Michael R. McGuinness, City Attorney

8/5/20 3:18 p.m.

ATTACHMENTS:

1. Attachment 1 (Survey of Local Agency Campaign Contribution Limits)

Attachment 1
Survey of Local Agency Campaign Contribution Limits

City	Contribution Limits	
CARLSBAD		N/A
CHULA VISTA	Individual Committee/Party	\$350* \$1,190*
CORONADO	Individual City Contractors Political Party	\$200 \$0 \$0
DEL MAR	Individual Committee	\$200 \$2,000
EL CAJON		N/A
ENCINITAS		\$250
ESCONDIDO		\$4,300
IMPERIAL BEACH		N/A
LA MESA		Voluntary Expenditure Limits
LEMON GROVE		\$1,090*
NATIONAL CITY	Individual Political Party	\$1,000 \$2,000
OCEANSIDE		N/A
POWAY		\$100
SAN DIEGO	City Council Mayor/City Attorney Committee	\$600* \$1,150* \$11,400/ \$22,750
SAN MARCOS	Individual Committee/Party	\$250 \$500
SANTEE		\$700*
SOLANA BEACH	Individual Aggregate	\$180* \$5,000*
VISTA		\$480*

* indexed for inflation, may be higher

ARTICLE 7. CONTROLS ON CAMPAIGN CONTRIBUTIONS

Sec. 2-100. Purpose and intent.

Inherent to the high cost of election campaigning is the problem of improper influence, real or potential, exercised by campaign contributors over elected officials. It is the purpose and intent of the city council of the City of Escondido in enacting this article to preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this article. This article is enacted in accordance with the terms of Section 7 of Article XI of the Constitution of the State of California. The contribution limitations of this article shall not apply to ballot measure elections or to that portion of a recall election in which the electorate determines whether or not to recall an officeholder, but shall apply to all candidate elections, including the candidate election portion of a consolidated recall election. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-101. Citation.

This article shall be cited as the Escondido Municipal Election Campaign Control Ordinance. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

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.

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(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.

(910) *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:

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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. _____

(119) *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.

_____(142) *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.

(123) *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. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07; Ord. No. 2018-09, § 1, 4-25-18)

(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.

ATTACHMENT 2

(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. 2-103. Campaign contributions; limitations.

(a) 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 controlled committees supporting ~~or opposing~~ such candidate, to exceed ~~four thousand three~~ one thousand hundred dollars ~~(\$4,3001,000.00)~~ for any single election for a City Council district office, or to exceed one thousand seven hundred and fifty dollars (\$1,700.00) for any single election for the office of mayor or city treasurer.

(b) A candidate shall not lend his or her own campaign more than one hundred thousand dollars (\$100,000.00) per election. A candidate may not charge interest on any loan he or she made to his or her campaign.

(c) The terms of this section are applicable to any contributions made to a candidate or committee, whether used by such candidate or committee to finance a current campaign, to pay deficits incurred in prior campaigns, or otherwise.

(d) Contribution Amount Adjustment. The dollar amounts set forth in this section shall be adjusted and increased on a biennial basis by fifty dollars (\$50.00) commencing on January 1, 2023.

(e) City Clerk Notice. The city clerk shall publish a public notice of the adjustment by March 1, or as soon as practicable thereafter.

~~—(df)~~ If any person is found guilty of violating the terms of this section, the amount of funds received constituting such violation shall be paid by the candidate or committee treasurer who received such funds to the city treasurer for deposit in the general fund of the city. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07; Ord. No. 2013-04, § 1, 5-1-13; Ord. No. 2018-09, § 2, 4-25-18)

Secs. 2-104—2-106. Reserved.

Editor's note — Sections 2-104—2-106, pertaining to campaign contribution accounts and funds, derived from Ord. Nos. 88-60, 97-24 and 2007-26, were repealed by Ord. No. 2018-09, §§ 3—5, adopted April 25, 2018.

Sec. 2-107. Disbursements of unexpended 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, in the disbursement of any such funds. within ninety (90) days after the election, disburse the whole of the surplus to the general fund or pro rata to the contributors. The candidate or committee, or authorized agent thereof, shall file a statement within thirty (30) days of such disbursement with the city clerk, verifying the closure and listing the donees of all disbursements by this section and the dollar amounts given to each donee.

(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.

(Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97).

Sec. 2-108. Accountability.

Every candidate or committee establishing a campaign contribution checking account pursuant to this article shall make available on demand to any public officer having legal authority to enforce this article, the details of any such checking account requested and the records supporting it. Every candidate or committee establishing a campaign contribution checking account shall maintain a record of every contribution received and disbursement made from the checking account, which record shall include, but not be limited to, copies of checks, canceled checks, bank records, bills and invoices. Such records shall be kept by the candidate or treasurer of the committee establishing the account for the periods specified in Section 18401 of Title 2, Division 6 of the California Administrative Code. Each candidate and committee shall, on demand, make available to any public officer having authority to enforce this article, a written declaration of consent that such officer may have access to the campaign contribution checking account. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-109. Campaign statements.

Each candidate and committee shall file campaign statements in the time and manner required by the Political Reform Act of 1974 as amended (Government Code Section 84100 et seq.) and compliance with the requirements of that Act shall be deemed to be compliance with this section, provided that every campaign contribution, regardless of amount, is included in the statement. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 91-39, § 1, 10-2-91; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-109.1. Online or electronic filing of campaign disclosure statements of economic interest filings.

The purpose of this section is to require online or electronic filing of campaign statements and require online or electronic reporting of contributions and independent expenditures regarding elections of candidates to city offices and the qualification or passage of local ballot measures within the City of Escondido as currently required under the Political

Reform Act, commencing with California Code Section 84200 et seq., in order to facilitate review and maximize the availability of this information to the public.

Additionally, this section also requires online or electronic filing of statement of economic interest reports as required by the City's current conflict of interest resolutions and appendices and Government Code Section 87200.

(a) Definitions.

(1) "Statement of economic interest (SEI) filer" means any person holding a position that is listed in California Government Code Section 87200 or any person holding a position listed in the current City of Escondido conflict of interest resolutions and appendices and Government Code Section 87200.

(b) Electronic filings.

(1) Each elected official, candidate, candidate controlled committee and independent committee that is required to file a semi-annual campaign statement, a pre-election campaign statement or an amended campaign statement with the city clerk of the City of Escondido pursuant to Chapter 4 of the Government Code (commencing with Section 84100) and that receives a total of two thousand dollars (\$2,000.00) or more in contributions or makes a total of two thousand dollars (\$2,000.00) or more in independent expenditures, shall file the statement with the city clerk of the City of Escondido in an electronic format.

(2) Each person listed as a statement of economic interest filer that is required to file an assuming office, annual or leaving office statement with the city clerk of the City of Escondido pursuant to Government Code Section 87200 or the current City of Escondido conflict of interest resolutions and appendices shall file the statement with the city clerk of the City of Escondido in an electronic format.

(c) Exemption from filing paper copy. A candidate or committee or statement of economic interest filer that has filed an electronic statement or report is not required to file a paper copy.

(d) Option to file electronically. Any candidate or committee not required to file an electronic statement of report under Section 2-109.1 may voluntarily opt to file an

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electronic statement or report by submitting written notice to the city clerk. A candidate or committee that opts to file an electronic statement of report is not required to file a paper copy. (Ord. No. 2019-07, § 4, 7-17-19)

Sec. 2-110. Cash and anonymous contributions.

(a) No contribution of one hundred dollars (\$100.00) or more shall be made or received in cash. Any cash contributions of one hundred dollars (\$100.00) or more shall be paid promptly from available campaign funds, if any, to the city treasurer for deposit in the general fund of the city.

(b) No anonymous contributions shall be accepted by any candidate or committee. Any anonymous contributions received shall be paid promptly from available campaign funds, if any, to the city treasurer for deposit in the general fund of the city. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07; Ord. No. 2013-04, § 1, 5-1-13; Ord. No. 2018-09, § 6, 4-25-18)

Sec. 2-110.1. Assumed name contributions.

No contribution shall be made, directly or indirectly, by any person or combination of persons acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another person or combination of persons. No person shall make a contribution in his, her or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. When it is discovered by the campaign treasurer that a contribution has been received in violation of this section, the campaign treasurer shall pay promptly, from available campaign funds, if any, the amount received in violation of this section to the city treasurer for deposit in the general fund of the city. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.2. Campaign expenditures; uncontrolled by candidate or committee.

Persons or organizations not subject to the control of a candidate or committee but who make independent expenditures for or against a candidate or committee shall indicate clearly on any material published, displayed or broadcast that it was not authorized by a candidate or committee, when such expenditures in whole or part would have been covered by the provisions of this article if they were subject to the control of a candidate or committee. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.3. Suppliers of goods and services; disclosure of records required.

No person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign of the candidate shall refuse knowingly to divulge or disclose to the enforcement authority his or her record of any expenditures made by the candidate or committee in payment for such goods or

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services or both. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.4. Duties of city clerk.

In addition to other duties required under the terms of this article, the city clerk shall:

(a) Supply appropriate forms and manuals prescribed by the State Fair Political Practices Commission. These forms and manuals shall be furnished to all candidates and committees, and to all other persons required to report.

(b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of state law.

(c) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by state law.

(d) Report apparent violations of this article and applicable state law to the enforcement authority.

(e) Compile and maintain a current list of all statements or parts of statements filed pertaining to each candidate.

(f) Cooperate with the enforcement authority in the performance of the duties of the enforcement authority as prescribed in this article and applicable state law. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.5. Enforcement authority; duties, complaints, legal action, investigatory powers.

(a) The city attorney shall not investigate or prosecute any alleged violation of this article, but shall defend the constitutionality and legality of this article in any civil proceeding in which the city or the city council is a party.

(b) The enforcement authority shall enforce the provisions of this article.

(c) Special counsel shall be selected as the enforcement authority by the city attorney and appointed by the city council at least one hundred eighty (180) days prior to a city election. Should the appointment of additional special counsel become necessary or appropriate, the city attorney shall select, and the city council shall appoint, such additional special counsel as may be required. The review of complaints of violation of this article and any criminal prosecutions under this article shall be commenced by special counsel. Special counsel shall also commence and prosecute any necessary administrative proceeding or civil litigation to compel compliance with this article or to enjoin conduct in violation of this article. No enforcement or prosecution

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or action of special counsel shall be subject to the review or control of the city council or the city attorney.

(d) Any person residing in the City of Escondido who believes that a violation of any portion of this article has occurred may file a written complaint requesting investigation of such violation by the enforcement authority. If the enforcement authority determines that there is reason to believe a violation of this article has occurred, it shall conduct an investigation and may commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this article. Whenever the enforcement authority has reason to believe a willful violation of this article has occurred or is about to occur, it may institute such legal action at such time as it deems necessary to prevent further violations. The enforcement authority may decline to investigate any alleged violation of this article which is also an alleged violation of state law and is the subject of a complaint filed with the Fair Political Practices Commission, until the investigation of that complaint is complete.

(e) The enforcement authority shall have such investigative powers as are necessary for the performance of the duties prescribed in this article and may demand and be furnished records of campaign contributions and expenses at any time. In the event that production of such records is refused, the enforcement authority may commence civil litigation to complete such production.

(f) The enforcement authority shall determine whether required statements and declarations have been filed as required and, if so, whether they conform with the requirements of this article.

(g) The enforcement authority shall be immune to liability for the enforcement of this article.

(h) Any action alleging violation of this article must be commenced within two (2) years of the time the alleged violation occurred. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2002-21, § 1, 7-17-02; Ord. No. 2007-26, 9-19-07)

Sec. 2-110.6. Penalties.

Any person who knowingly or willfully violates any provision of this article is guilty of a misdemeanor. In addition to any other penalty provided by law, any willful or knowing failure to report contributions, done with intent to mislead or deceive, shall be punishable by a fine of not less than one thousand dollars (\$1,000.00). (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.7. Effect of violation on outcome of election.

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If, after election, a candidate is convicted of a violation of any provision of this article, the election to office of such candidate shall be void and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if not an incumbent, would otherwise take office, whichever occurs later. In such event, the vacancy shall be filled in accordance with the procedures provided for the filing of vacant city offices. If a candidate is convicted of a violation of this article at any time prior to election, his or her candidacy shall be terminated immediately and such candidate shall be no longer eligible for election. Any person convicted of a violation of this article shall be ineligible to hold city elective office for a period of five (5) years from and after the date of his or her conviction. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.8. City measures; exemptions.

This article shall not apply to contributions or expenditures by a committee or a person on behalf of a committee supporting or opposing a city measure. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.9. Rules of construction.

This article shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this article which does not directly affect the jurisdiction of the council or the city to control campaign contributions and expenditures shall avoid the effect of this article. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

Sec. 2-110.10. Severability.

If any provision of this article, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the article and the applicability of such provision to other persons and circumstances shall not be affected. (Ord. No. 88-60, § 1, 1-4-89; Ord. No. 97-24, § 1, 10-8-97; Ord. No. 2007-26, § 1, 9-19-07)

ORDINANCE NO. 2020-27

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 2-103 shall be repealed and replaced as follows:

Section 2-103. Campaign Contributions; limitations.

(a) 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 controlled committees supporting such candidate, to exceed one thousand dollars (\$1,000.00) for any single election for a City Council district office, or to exceed one thousand seven hundred and fifty dollars (\$1,750.00) for any single election for the office of mayor or city treasurer.

(b) A candidate shall not lend his or her own campaign more than one hundred thousand dollars (\$100,000.00) per election. A candidate may not charge interest on any loan he or she made to his or her campaign.

(c) The terms of this section are applicable to any contributions made to a candidate or committee, whether used by such candidate or committee to finance a current campaign, to pay deficits incurred in prior campaigns, or otherwise.

(d) Contribution Amount Adjustment. The dollar amounts set forth in this section shall be adjusted and increased on a biennial basis by fifty dollars (\$50.00) commencing on January 1, 2023.

(e) City Clerk Notice. The city clerk shall publish a public notice of the adjustment by March 1, or as soon as practicable thereafter.

(f) If any person is found guilty of violating the terms of this section, the amount of funds received constituting such violation shall be paid by the candidate or committee treasurer who received such funds to the city treasurer for deposit in the general fund of the city.

SECTION 4. 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.

(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, 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.

SECTION 5. 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 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. 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.