

ORDINANCE NO. 5839

**AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE,
CALIFORNIA AMENDING SECTIONS 1.10.030 and 1.10.060 OF THE GLENDALE
MUNICIPAL CODE, 1995, PERTAINING TO THE GLENDALE CAMPAIGN FINANCE
ORDINANCE**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE AS FOLLOWS:

Section 1. Section 1.10.030 of the Glendale Municipal Code, 1995, is hereby amended to read as follows:

1.10.030 - Campaign contribution limits.

- A. No intended candidate for any elected city office, and no committee acting on behalf of such candidate, shall solicit or accept, or cause to be solicited or accepted, any contribution for use in any election for such office unless and until such candidate shall have complied with the requirements of the Political Reform Act of 1974 as amended.
- B. No person shall contribute a total of more than one thousand dollars (\$1,000.00) to any candidate for city council, city clerk, city treasurer, and to his or her controlled committee for a single election cycle. A candidate for city council, city clerk or city treasurer, and his or her controlled committee shall not accept any contribution or contributions totaling more than one thousand dollars (\$1,000.00) from any person in a single election cycle. Nothing in this section is intended to limit the amount a candidate can contribute to his or her candidacy directly or by a personal loan for city council, city clerk or city treasurer from his or her own personal funds.
- C. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated. Contributions by children under eighteen (18) years of age shall be treated as contributions by their parents and attributed proportionally to each parent - one-half to each parent or the total amount to a single custodial parent.

- D. Contributions made or received on the day immediately after an election to and including November 1st of the same year shall only be used for the payment of debts as set forth under section 1.10.090 or as surplus or excess funds pursuant to section 1.10.080 to be used only as permitted under the State Political Reform Act (Government Code section 89511 et seq.) as it now exists or may hereafter be amended, or to establish an officeholders account pursuant to section 1.10.085

- E. Contributions may be solicited and received by a holder of elected office for an officeholders account up to a maximum annual limit of ten thousand dollars (\$10,000.00) subject to the contribution limits and the limit on fund raising to replenish the account as set forth in this chapter 1.10

- F. The contribution limits set forth herein shall be reviewed in July of each even-numbered year commencing July 1, 2010 and shall be adjusted consistent with the cost of living index (CPI - All Urban Consumers) Los Angeles, Long Beach, Anaheim. The adjustment shall be rounded up to the nearest ten dollars (\$10.00).

Section 2. Section 1.10.060 of the Glendale Municipal Code, 1995, is hereby amended to read as follows:

1.10.060 - Contribution prohibition—Contractors or subcontractors doing business with the city or applicants seeking entitlement; prohibition on voting.

- A. **Definitions.** For purposes of this section the following words and phrases shall mean:

"Affected party" shall mean a party to a city contract, a subcontractor under a city contract, an applicant seeking entitlement, a contractor of applicant seeking entitlement, or a subcontractor

of applicant seeking entitlement.

"Applicant seeking entitlement" means any person who has filed an application or letter seeking approval of an entitlement with the city, redevelopment agency, or housing authority, or any person who is an owner or lessee of property on whose behalf an application or letter seeking approval of an entitlement is filed.

"Application is pending" means an application or letter which is subject to review, hearing or consideration by the council, successor agency, GEDC, and/or housing authority and the application or letter seeking an entitlement has been filed and, either will be set for review, hearing or other consideration by the council, successor agency, or housing authority as a matter of right, or has been formally appealed to the council, successor agency, GEDC or housing authority. The three examples set forth below are intended to provide interpretive guidance:

- (1) An application for a zone change is filed. Since a zone change can only be effectuated by the council, upon filing the application it would be pending before the council;
- (2) An application for a conditional use permit is filed. Only at such time as the grant or denial of a conditional use permit is appealed to the council would it be pending before the council;
- (3) An application for a variance in the downtown specific plan area is filed. Since the council has original jurisdiction, the variance application would be pending before the council when filed.

"City contract" means any agreement or contract, including any amendment or modification to an agreement or contract, with the city, successor agency, GEDC or housing authority, where such contract or agreement is subject to approval by the council, successor agency, GEDC, or housing authority for (a) the rendition of personal services; (b) construction and/or the furnishing of any material, supplies or equipment; (c) the sale, lease, exchange, or transfer of any land or building to or from the city, successor agency, GEDC, or housing authority; or (d) a grant, loan, loan guaranty, land write down, or other similar form of financial assistance. Contract does not include a contract awarded pursuant to a competitive bidding process under the Charter of the City of Glendale, a transfer or exchange of land to or from one public agency to another public agency, or the transfer of an easement, license, or right-of-way in the ordinary course of a development project.

"Contractor of applicant seeking entitlement" means a person who is, or has been promised to be, a party to a contract as an architect, design professional, engineer, or general or prime contractor with an applicant seeking entitlement, as defined herein, which contract has, or would have a total anticipated or actual value of twenty-five thousand dollars (\$25,000.00) or more.

"Council" means the city council of the City of Glendale.

"Design professional" means a person who performs services in the nature of designing structures, buildings, interiors, landscape and/or hardscape but does not have any particular license.

"Entitlement" means permit, license, conditional use permit, variance, architectural or design

review (at any stage), franchise, administrative exception, parking reduction, review of plans, development agreement, disposition and development agreement, exclusive negotiation agreement, owner participation agreement, affordable housing agreement, financial assistance for a proposed project, or any other land use entitlement.

"GEDC" means the Glendale Economic Development Corporation.

"Housing authority" means the housing authority of the City of Glendale.

"Person" shall have the meaning ascribed to it in section 1.10.020.

"Successor agency" means the successor agency to the Glendale Redevelopment Agency,.

"Related persons" includes any of the following persons with respect to a party with a city contract, a subcontractor under a city contract, applicant seeking entitlement, contractor of applicant seeking entitlement, and subcontractor of applicant seeking entitlement: a member of its board of directors, its chairperson, its chief executive officer/president, its chief financial officer, its chief operating officer, any person with ownership interest of more than ten (10) percent in such person, and/or any committee, as defined in this chapter, that is owned or controlled by such person.

"Subcontract" means a contract subordinate to another contract made between the contracting

parties which includes an agreement for a subcontractor to perform all or part of certain work to be performed by an architect, design professional, engineer, general or prime contractor.

"Subcontractor" means a person who has entered into a contract for the performance of all or a portion of the work undertaken under an agreement with an architect, design professional, engineer, or general or prime contract, usually by a general or prime contractor.

"Subcontractor of applicant seeking entitlement" means a person who is, or has been promised to be, a party to a subcontract as an architect, design professional, engineer, or to perform other work with a "contractor of applicant seeking entitlement" as defined herein, which subcontract has, or would have a total anticipated or actual value of twenty-five thousand dollars (\$25,000.00) or more.

B. No person who is a party to a city contract, as defined in subsection A., shall make a contribution to an individual holding city elective office where the city contract has a total anticipated or actual value of fifty thousand dollars (\$50,000.00) or more, or a combination or series of such contracts or agreements having a value of fifty thousand dollars (\$50,000.00) or more.

C. No member of the council, nor the city clerk or city treasurer shall receive a contribution from a person who is a party to a city contract, as defined in subsection A., where the city contract has a total anticipated or actual value of fifty thousand dollars (\$50,000.00) or more, or a combination or series of such contracts, having a value of fifty thousand dollars (\$50,000.00) or more.

- D. No person acting as a subcontractor under a subcontract through a city contract, as defined in subsection A., shall make a contribution to a council member where an individual subcontract has a total anticipated or actual value of twenty-five thousand dollars (\$25,000.00) or more, or a combination or series of such individual subcontracts with the same subcontractor, for the same or different projects with the aggregate value of twenty-five thousand dollars (\$25,000.00) or more.
- E. No member of the council shall receive a contribution from a person who is party to a subcontract under a city contract, as defined in subsection A., where the subcontract has a total anticipated or actual value of twenty-five thousand dollars (\$25,000.00) or more, or a combination or series of such subcontracts having a value of twenty-five thousand dollars (\$25,000.00) or more.
- F. No applicant seeking entitlement, contractor of an applicant seeking entitlement or a subcontractor of an applicant seeking entitlement shall make a contribution to a council member while such application is pending before the council, redevelopment agency, or housing authority and for a period of twelve (12) months after the last and final approval by the council, redevelopment agency, or housing authority has been granted.
- G. A member of the council, successor agency, GEDC or housing authority who has received a campaign contribution from an affected party for a city council election within the twelve months preceding a vote of the council, successor agency, GEDC or housing authority on any of the following matters shall not vote on said matter and shall be considered disqualified from participating in said matter: (i) approval of a city contract, as defined in subsection A.; (ii) award of a proposal in response to a request for

proposals; (iii) conditional use permit; (iv) variance; (v) approval of architectural or design review (at any stage); (vi) award of a franchise; (vii) administrative exception; (viii) parking reduction; (ix) approval of a development agreement; (x) approval of a disposition and development agreement; (xi) approval of an exclusive negotiation agreement; (xii) approval of owner participation agreement; (xiii) approval of an affordable housing agreement; (xiv) financial assistance for a proposed project; (xv) or any other land use. In addition, the member shall not be considered toward reaching a quorum. In the event that a quorum or more are disqualified from voting on a matter covered herein, members will be selected by random draw until there are the minimum number of members of the relevant body to render a lawful decision (e.g. in most cases, a quorum).

- H. For purposes of subsection G., with respect to the prohibition on voting as applied to contractors of applicants seeking entitlement or subcontractors of applicants seeking entitlement, the voting prohibition applies only where the member of the council, successor agency, GEDC, or housing authority receiving the contribution knows or has reason to know of the contribution and where the information about the status of the contributor as an architect, design professional, engineer, contractor, or subcontractor is readily ascertainable through reasonably accessible information (example; where a contribution is received by a campaign treasurer, listed on a 460 Form, or received as an officeholder account contribution and the name of the architect, design professional, engineer, contractor or subcontractor is on a city list or city developed database, it would be deemed that the official should know or have reason to know that they would be precluded from voting. Should an architect, design professional, engineer, contractor or subcontractor not be on a city developed list or city developed database, and an elected

official votes on a matter where they had received a contribution, no violation will be deemed to have occurred).

1. City staff shall develop, acquire, or modify existing systems at one time or in phases within a reasonable period of time, to establish reports which include the name of vendors, contractors, subcontractors, applicants for entitlement, contractors of applicants seeking entitlement, and subcontractors of applicants seeking entitlements, as defined in this chapter. Once prepared, the reports shall be a public record.
2. Written notice of the campaign contribution prohibitions and voting limitations of this section 1.10.060 shall be included in requests for proposals issued by the city, redevelopment agency or housing authority and is to be provided to all applicants seeking entitlement from the city, redevelopment agency or housing authority.
3. An applicant seeking entitlement shall disclose to the city, redevelopment agency or housing authority the name(s) of all architects, design professionals, engineers, contractors and subcontractors (and their related persons) if known, at the time of filing an appeal or, if no appeal is required, when staff first prepares a report to the relevant agency involving consideration of any matter under subsection 1.10.060G(i) through (xv). In addition, an applicant seeking entitlement shall also disclose whether they made a campaign or officeholder account contribution in the preceding twelve (12) months. The disclosure(s) shall be made under penalty of perjury.

4. At such time as the applicant seeking entitlement selects architects, design professionals, engineers, contractors or subcontractors, the applicant shall disclose such information (including their related persons) in writing to the city, redevelopment agency, GEDC or housing authority within ten (10) days of the selection. Should an architect, design professional, engineer, contractor or subcontractor be substituted or added to a project which is the subject of an application for entitlement, such change or changes shall be disclosed in writing to the city, redevelopment agency, GEDC or housing authority within ten (10) days from the date of the change.


- I. The twenty-five thousand dollar (\$25,000.00) and fifty thousand dollar (\$50,000.00) values set forth herein shall be reviewed once every five (5) years commencing in July 1, 2015 and shall be adjusted consistent with the cost of living index (CPI - All Urban Consumers) Los Angeles, Long Beach, Anaheim. The adjustment shall be rounded up to the nearest one thousand dollars (\$1,000.00).

- J. For the purposes of the limitations, restrictions, prohibitions and disclosure obligations set forth in this section 1.10.060, each person who is a party to a city contract, subcontractor under a city contract, an applicant seeking entitlement, a contractor of applicant seeking entitlement or a subcontractor seeking entitlement shall include not only that person (e.g. applicant seeking entitlement) as defined in subsection A. of this section but also that person's related persons. By way of example, this section's limitations, restrictions, prohibitions and disclosure obligations apply not only to a business entity that is an applicant seeking entitlement, but that business entity's related


persons.

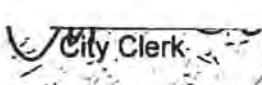
- K. The prohibitions and limitations set forth in this section pertain only to campaign contributions received for elections to elective office in the City of Glendale.

Adopted by the Council of the City of Glendale this 18th day of November, 2014.



 Mayor (Pro Tem)


ATTEST: 

 City Clerk (Acting)

STATE OF CALIFORNIA)
 COUNTY OF LOS ANGELES) SS.
 CITY OF GLENDALE)

I, ARDASHES KASSAKHIAN, City Clerk of the City of Glendale, certify that the foregoing Ordinance No. 5839 was passed by the Council of the City of Glendale, California, at a regular meeting held on the 18th day of November, 2014, and that the same was passed by the following vote:

- Ayes: Devine, Najarian, Weaver
- Noes: None
- Absent: Friedman, Sinanyan
- Abstain: None



 City Clerk (Acting)

APPROVED AS TO FORM


 City Attorney
 DATE 11/13/14

MOTION

Moved by Council Member Najarian, seconded by Council Member Friedman, that the City Council has reviewed the update on the Campaign Finance Ordinance and amendments to said Ordinance necessary to address certain legal issues, and to make minor changes and clean up amendments, as further described in the November 4, 2014, staff report from the City Attorney. Further, Council hereby directs staff to note and file the report and hereby provides the following direction:

Vote as follows:

Ayes: Devine, Friedman, Najarian, Weaver, Sinanyan

Noes: None

Absent: None

Abstain: None

THE MOTION WAS ADOPTED AT THE REGULAR CITY COUNCIL MEETING OF: Tuesday, November 4, 2014.

FileNet

NOV - 6 2014

APPROVED AS TO FORM

CHIEF ASSISTANT CITY ATTORNEY

DATED 10/31/14



CITY OF GLENDALE, CALIFORNIA
REPORT TO THE:

Joint City Council Housing Authority Successor Agency Oversight Board

November 4, 2014

AGENDA ITEM

Report: Update on Campaign Finance Ordinance and Amendments to Ordinance to Address Legal Issues and Make Minor and Cleanup Amendments

- (1) Motion to Note and File Report and Provide Direction
- (2) Ordinance for Introduction

COUNCIL ACTION

Public Hearing Ordinance Consent Calendar Action Item Report Only

Approved for November 4, 2014 calendar

ADMINISTRATIVE ACTION

Signature

Submitted by:

Michael J. Garcia, City Attorney

Prepared by:

Michael J. Garcia, City Attorney

Approved by:

Scott Ochoa, City Manager

Reviewed by:

Yasmin Beers, Assistant City Manager

Ardashes Kassakhian, City Clerk

RECOMMENDATION

The City Attorney recommends that the Council receive this update and provide any direction it deems appropriate. The City Attorney recommends introduction of an ordinance amending Glendale Municipal Code, Chapter 1.10, to address recent case law and to make minor and cleanup changes.

BACKGROUND

On July 29, 2008, the City adopted Ordinance No. 5621 which imposed campaign finance regulations for local elections. Among other things, Ordinance No. 5621 established regulations regarding campaign contribution limits, loans to campaigns, prohibitions from contractors doing business with the City, nonmonetary contribution limits, and use of excess campaign funds. The Council subsequently adopted Ordinance Nos. 5668 (2009), 5744 (2011), 5768 (2012) 5817 (2013) (together, the "Ordinance") to expand and/or clarify the scope of the campaign finance regulations. In general, the Ordinance does the following:

- Limits individual contributions to individual candidates to \$1,000 per election cycle, and prohibits persons from contributing to all candidates in total more than \$1,000 times the number of seats up for election.
- Prohibits Persons (which includes all forms of business entities and organizations, including labor organizations) who have a contract with the City, Successor Agency, or Housing Authority from making campaign contributions to council members and also prohibits council members from receiving those contributions.
- Prohibits subcontractors under City contracts from making campaign contributions and prohibits Council members from receiving said contributions.
- Prohibits land use entitlement applicants from making a contribution while an application is pending before the Council, Successor Agency and Housing Authority and for twelve months after the final decision.
- Prohibits council members from voting on contracts or land use entitlements if they have received a contribution 12 months prior to consideration of a contract or entitlement if the council member received a contribution from the contractor or its subcontractors (in the case of contracts) or from the land use applicant or its contractors, architects, design professionals, or engineers.
- The prohibitions apply to certain representatives of land use applicants, contractors, or subcontractors as well, e.g. members of board of directors, chairperson, CEO, 10% investor etc.
- Limit fundraising for debt repayment purposes to Nov. 1 after the April election.

Aggregate Contributions from Contributors

The Ordinance limits how much a person may donate in the aggregate during an election campaign. It provides that contributions from a single person may not exceed the product of \$1000 multiplied by the number of council positions appearing on the ballot at that election plus \$1000 multiplied by the two city-wide offices when appearing on the ballot (clerk and treasurer). By way of example, during the election cycle for the April 2015 municipal election, there will be two Council seats up for election. Thus, a person could contribute a maximum of \$2,000 to all candidates during the election cycle and can spread that to as many candidates as he or she wishes as long as no candidate receives more than \$1,000 from a single contributor. G.M.C. sec. 1.10.030(C).

Staff recommends repeal of section 1.10.030(C), given the United States Supreme Court's recent pronouncement in *McCutcheon v. Federal Election Commission* (2014) 134 S.Ct. 1434. In *McCutcheon*, the Supreme Court struck down an aggregate cap on how much a person could donate in total to all congressional candidates. The Court stated that limits on campaign contributions are justified on only one basis – to prevent *quid pro quo* corruption or the appearance of *quid pro quo* corruption. This is what justifies limitations on the amount a person can donate to an individual candidate, such as Glendale's \$1,000 limit on individual campaign contributions. However, the Court held that the aggregate cap does not prevent corruption or the appearance of corruption since the individual caps serve that purpose and impinging on the right of people to donate as many people as they wish unduly restricts First Amendment freedoms.

It is staff's opinion that the aggregate cap in Section 1.10.030(C) is very similar to the aggregate cap at issue in *McCutcheon* and is constitutionally suspect. For this reason, staff recommends amending Section 1.10.030 to remove the aggregate cap. The individual limit of \$1,000 and the other requirements of Section 1.10.030 would remain in place.

Other Changes – Minor and Cleanup Changes

- Clarification of current interpretation regarding applicability of contribution restriction and voting prohibitions – Based on the definition of the terms "candidate" and "contribution" in the Ordinance, our Office interprets the contribution limitations in section 1.10.030 and the contribution and voting prohibitions in section 1.10.060 as applying only to contributions to City elective offices and not to other non-City elective offices. We are proposing one addition to Section 1.10.060 to expressly set forth this interpretation into the Ordinance.
- Remove references to Redevelopment Agency; include Successor Agency and the Glendale Economic Development Corporation; grammatical and stylistic changes.

Council Input/Direction on Future Potential Changes and Implementation Issues

Council has requested a discussion related to potential changes or additions to the Ordinance, as well as regarding issues related to its implementation:

- Broadening the scope of prohibited actions relating to affected donors - As noted above, the Ordinance prohibits a council member from voting on contracts and entitlements affecting specified contributors and from participating in said matters. The question has been raised whether the Ordinance should expressly prohibit council members from attempting to influence the outcome of a decision in a manner that is short of participation in the Council discussion and the actual vote.

The Ordinance can be expanded in a manner such as the FPPC regulations which prohibit a public official from making, participating or *attempting to influence a decision* affecting an economic interest such as a source of income. To the extent the Ordinance's current prohibition seeks to address the problems, real or perceived, of developers and contractors seeking to influence the outcome of decisions, the broadening of the Ordinance would continue to serve that purpose. Staff seeks Council input and direction on this point.

- Fundraising for Payment of Outstanding Debt – A question has been raised as to whether November 1 after an April election date is sufficient time to raise funds to pay off any outstanding campaign debt, or whether there should be a time restriction at all as long as there are debts outstanding. Council should provide direction if it wishes to change the current rule.
- Voting and Contributing Restrictions Related to Real Estate Agents/Brokers and Entitlement Consultants - Currently, the Ordinance applies to prevent contributions from developers, their contractors and subcontractors, and related architects, engineers, and design professionals while an application is pending and for a 12 month period thereafter. Conversely, it prevents council members from voting on matters affecting contractors, developers, subcontractors, and their architects, engineers and design professionals if they have received a contribution 12 months prior to the vote. Council members have requested a discussion as to whether these same prohibitions should apply to real estate professionals, i.e. agents and brokers, who may receive commission income as a result of a project approval. The same question has been raised with respect to land use entitlement consultants. If the Council has this discussion and desires to broaden the Ordinance's applicability, query whether such prohibitions should also apply to a party to a contract to sell property to a project developer. Staff seeks Council input and direction on this issue. Given that the election cycle has started for the April 2015 election, staff proposes that any change not be effective until after the election. However, this would also be a policy decision of Council.
- Conflict Reviews – Council members have expressed whether alternative methods exist for providing and reviewing the information necessary to determine whether a proposed contract or entitlement affects a campaign contributor. The current practice is for staff to obtain the information regarding the contractor/developer and include the information regarding the developer/contractor, any subcontractors, architects, design professional, and their officers, boards of directors and 10% or more owners. The council members are then responsible for reviewing their campaign forms (Form 460) to determine whether a conflict exists.

Staff seeks Council direction as to whether a change to this process should be made. Staff does not recommend that staff review and make determinations on the Form 460s, due to workload issues and the council members' primary responsibility over campaign issues. Other options could include:

- o Providing lists of the developers/contractors and their key personnel to the Council at an earlier point than at the time of dissemination of staff reports. In many cases this may be feasible; however, in other cases this might delay staff report processing and not work as effectively as desired, since staff often has to conduct follow-up with contractors and applicants to obtain the information.
- o Staff can, on a weekly basis, have the Form 460 information (in hard copy and in electronic format to the extent feasible) for each Council Member in their weekly agenda binder and permanently placed at the Council dais for each Council Member.
- o Any other alternative not described by staff.

FISCAL IMPACT

There is no fiscal impact associated with this item.

ALTERNATIVES

Alternative 1: The Council can introduce and adopt the ordinance and provide direction on the policy items discussed in the report.

Alternative 2: The Council may introduce and adopt the ordinance with modifications deemed appropriate by Council. The Council can provide direction on the policy matters discussed in the report.

Alternative 3: Any other alternative not proposed by staff.

CAMPAIGN DISCLOSURE

Not Applicable.

ATTACHMENTS

None.