

ORDINANCE NO. 8-07

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF ORANGE AMENDING CHAPTER 2.10 OF
THE ORANGE MUNICIPAL CODE RELATING TO
CAMPAIGN REFORM.**

WHEREAS, the City is authorized to adopt local contribution limits and other campaign regulations to the extent that do not conflict with state or federal law; and

WHEREAS, the City Council finds that due to recent court decisions that provisions of the Campaign Reform Law need to be modified; and

WHEREAS, the City Council finds that the intent and spirit of the campaign contribution limits can be evaded by the funneling of campaign contributions through various other committees and organizations; and

WHEREAS, the contribution limits currently in place were adopted in 1992 and are in need of modification.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE
DOES ORDAIN AS FOLLOWS:**

Chapter 2.10 entitled "Campaign Reform" is deleted in its entirety and replaced with ordinance attached hereto as **Exhibit A**, which is incorporated herein by this reference.

SECTION II:

Should any section, subsection, clause, or provision of this Ordinance for any reason be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this Ordinance; it being hereby expressly declared that this Ordinance, and each section, subsection, sentence, clause and phrase hereof would have been prepared, proposed, approved and ratified irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional. This Ordinance shall be prospective in application from its effective date.

SECTION III:

A summary of this Ordinance shall be published and a certified copy of the full text of this Ordinance shall be posted in the Office of the City Clerk at least five (5) days prior to the City Council meeting at which this Ordinance is to be adopted. A summary

of this Ordinance shall also be published once within fifteen (15) days after this Ordinance's passage in a newspaper of general circulation, published, and circulated in the City of Orange. The City Clerk shall post in the Office of the City Clerk a certified copy of the full text of such adopted Ordinance along with the names of those City Council members voting for and against the Ordinance in accordance with Government Code Section 36933. This Ordinance shall take effect thirty (30) days from and after the date of its final passage.

ADOPTED this 10th day of April, 2007

(d)(5)

Carolyn V. Cavecche, Mayor, City of Orange

ATTEST:

(d)(5)

Mary E. Murphy, City Clerk, City of Orange

STATE OF CALIFORNIA)
COUNTY OF ORANGE)
CITY OF ORANGE)

I, MARY E. MURPHY, City Clerk of the City of Orange, California, do hereby certify that the foregoing Ordinance was introduced at the regular meeting of the City Council held on the 27th day of March, 2007, and thereafter at the regular meeting of said City Council duly held on the 10th day of April, 2007, was duly passed and adopted by the following vote, to wit:

AYES: COUNCILMEMBERS: Smith, Murphy, Cavecche, Dumitru, Bilodeau
NOES: COUNCILMEMBERS: None
ABSENT: COUNCILMEMBERS: None
ABSTAIN: COUNCILMEMBERS: None

(d)(5)

Mary E. Murphy, City Clerk, City of Orange

Exhibit "A"

Chapter 2.10
Campaign Reform

Sections:

2.10.010 Name.

2.10.020 Purpose.

2.10.030 Relation to Political Reform Act of 1974.

2.10.040 Definitions.

2.10.050 Contribution Limitations.

2.10.060 Aggregation of Contributions.

2.10.070 Election Cycles.

2.10.080 Prohibition on Multiple Campaign Committees.

2.10.090 Contributions From Committees.

2.10.100 Slate Mailers

2.10.110 Loans and Extensions of Credit to City Candidates and Elective City Officers and their Controlled Committees.

2.10.120 Solicitation of Contributions from Persons who have City Business Dealings.

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2.10.140 Disclosure of Occupation and Employer.

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2.10.170 Violations Constitute a Misdemeanor.

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2.10.190 Late Filing Fees.

2.10.200 Payment of Fines and Penalties

2.10.210 Injunctive Relief.

2.10.220 Statute of Limitations.

2.10.230 Interpretation of Chapter.

2.10.240 Amendments and Additional Requirements.

2.10.010 Name.

This chapter shall be known and may be cited as the "City of Orange Campaign Reform Law". (Ords. 4-96; 18-92)

2.10.020 Purpose.

The purposes of this chapter are to: (1) preserve the integrity of the City's election process through public disclosure of Contributions; (2) to maintain public trust in City government and its elected officials; (3) to encourage participation in City elections; (4) to ensure the neutrality and appearance of neutrality by the City in

elections; (5) to prevent corruption or the appearance thereof that can be caused by large contributions; and (6) to prevent evasion of Contribution limits by the funneling or laundering of Contributions. (Ord. 8-07; 13-02)

2.10.030 Relation to Political Reform Act of 1974.

This chapter is intended to supplement the Political Reform Act of 1974. Unless the term is specifically defined in this chapter, or the contrary is stated or clearly appears from the context, words and phrases shall have the same meaning as those set forth in the Political Reform Act and as it may be amended from time to time. (Ords. 4-96; 18-92)

2.10.040 Definitions.

- A. "City Candidate" means any person who is or was a candidate for Mayor, member of the City Council, City Clerk or City Treasurer of the City of Orange.
- B. "Elective City Officer" means any person who is Mayor, a member of the City Council, City Clerk, or City Treasurer of the City of Orange, whether appointed or elected.
- C. "Appointed City Official" means any person who is an appointed member of a City Board, Commission or Committee.
- D. "Contribution(s)" means money, in kind services, goods, extensions of credit, certain loans or other things of value and as is further defined in the Political Reform Act of 1974 and title 2, California Code of Regulations, Section 18530.7.
- E. "City Candidate Committee" means the controlled committee of a City Candidate for the office of City Council, City Clerk or City Treasurer of the City of Orange. (Ords. 8-07; 4-96; 18-92)

2.10.050 Contribution Limitations.

- A. No person shall make, and no City Candidate or treasurer of a controlled committee of a City Candidate shall solicit or accept any Contribution aggregating more than: (1) \$1,000 per mayoral election cycle; (2) \$1,000 per City Council, City Clerk, or City Treasurer election cycle; (3) \$500 per recall election cycle; or (4) \$1,000 per special election cycle.
- B. The Contribution limitations set forth in Section 2.10.050.A shall also apply to any committee which is formed for the purpose of making expenditures in support of or opposition to the recall of an Elective City Officer, and to Contributions received by such Elective City Officer, during a recall election cycle as defined in Section 2.10.070.C of this chapter.
- C. The Contribution limitations of this section shall not apply to a City Candidate's contribution of his or her separate or community property funds to his or her own City Candidate Committee or campaign. Contributions by a spouse from separate property shall be subject to the limitations set forth in this section. (Ords. 8-07; 13-02; 4-96; 18-92)

2.10.060 Aggregation of Contributions.

For purposes of the limitations in this chapter, the following shall apply:

A. All Contributions made by a sponsored committee to a City Candidate or Elective City Officer or to their committees shall be aggregated in equal proportion with personal Contributions made by the sponsor(s) of the committee.

B. Contributions by committees or persons shall be aggregated whenever such committee or person directs or controls the Contribution either directly or through an intermediary or other committee.

C. Two or more entities shall be treated as one person when any of the following circumstances apply:

1. The entities share the majority of members of their boards of directors;

2. The entities share two or more officers;

3. The entities are owned or controlled by the same majority shareholder or shareholders;

4. The entities are in a parent-subsidary relationship; and

5. Any business that is a sole proprietorship and the individual who is the sole proprietor.

D. Contributions from business entities (partnerships, corporations, sole proprietorships, etc.) shall be aggregated with Contributions from individuals if such individual owns a 50% or more share or interest in such business entity or controls in any way a decision on whether the candidate receives contributions from the business entity regardless of the percentage of ownership. Any individual who falls within the application of this subsection shall disclose to the City Candidate or his/her treasurer at the time the Contribution is made to the City Candidate, their relative ownership interest in any business entity.

E. No committee that supports or opposes a City Candidate shall have as a majority of its officers, individuals who serve as the majority of officers on any other committee that supports or opposes the same City Candidate. No such committee shall act in concert with or solicit or make Contributions on behalf of any other such committee. This subdivision shall not apply to treasurers of committees if these treasurers do not participate in or control in any way a decision on whether the candidate or candidates receive Contributions.

F. Monetary and non-monetary Contributions as defined in this chapter shall be aggregated.

G. Contributions by children under eighteen (18) years of age who are not emancipated, shall be treated as Contributions by their parent(s) or legal guardian(s) in equal amounts, unless only one parent or guardian has legal custody in which event such contribution shall be attributed solely to such person. (Ords. 8-07; 14-01; 4-96; 18-92)

2.10.070 Election Cycles.

A. Mayor Elections. For the purposes of this chapter, Contributions made at any time between January 1st following a mayoral election year to December 31st of the next mayoral election year, shall be aggregated in determining whether the Contribution limits of this chapter have been violated.

B. City Council, City Clerk and City Treasurer Elections. For the purposes of this chapter, Contributions made at any time between January 1st following a City Council, City Clerk and/or City Treasurer election year to December 31st of the next election year for each such office shall be aggregated in determining whether the Contribution limits of this chapter have been violated.

C. Recall Elections. For the purposes of this chapter, Contributions made at any time after a committee has been formed, pursuant to the provisions of the Political Reform Act, in support of a recall election, or after the City Clerk has approved a recall petition for circulation and gathering of signatures, whichever occurs first, shall be considered Contributions during a recall election cycle. A recall election cycle shall end whenever any of the following occur:

1. The recall proponents fail to return signed petitions to the City Clerk within the time limits set forth in the California Elections Code.

2. All committees formed in support of the recall have been terminated pursuant to the provisions of the Political Reform Act.

3. Ten days after a recall election has been held.

D. Special Elections. For the purposes of this chapter, Contributions made at any time between the period commencing on the date the City Council calls a special election for any City elected office and concluding on the 60th day following the special election, shall be aggregated in determining whether the Contribution limits of this chapter have been violated. (Ords. 8-07; 16-98; Ords. 4-96; 18-92)

2.10.080 Prohibition on Multiple Campaign Committees.

A City Candidate or an Elective City Officer shall have no more than one City Candidate Committee for each elective City office that shall have only one bank account out of which all qualified campaign and office holder expenses related to that City office shall be paid. This section does not prevent a City Candidate or an Elective City Officer from establishing another campaign committee solely for the purpose of running for a State, Federal, Local or other City office or from transferring campaign funds into an interest bearing account or other securities provided that all campaign expenses are paid from the City Candidate Committee. (Ords. 8-07; 4-96; 18-92)

2.10.090 Contributions from Committees.

A. Contributions Transferred From Committees. Contributions from candidate controlled committees to a City Candidate Committee are prohibited except as provided in Section 2.10.090C.

B. No committee controlled by a City Candidate or Elective City Officer shall make any Contribution to any other committee supporting or opposing a City Candidate for office.

C. Contributions Transferred Between Controlled Committees by the Same City Candidate. If a City Candidate has more than one controlled committee, any transfers into the City Candidate's City Candidate Committee shall be governed by the following rules:

1. Transferred Contributions shall be deemed contributed during the election cycle in which they are transferred to the receiving City Candidate Committee.

2. Transferred Contributions shall be attributed to each contributor on a last in-first out basis and shall be aggregated with any Contributions made by such contributor directly to the City Candidate Committee and shall be subject to the Contribution limits of this chapter.

3. A City Candidate shall submit an executed affidavit at the time he or she files the applicable campaign disclosure statement stating that he or she has notified each contributor to which a transferred Contribution is attributed that the transfer has taken place. The notice to the contributor shall specify the amount of the transfer and shall be filed along with the affidavit. Any Contributions that are not accompanied with both the affidavit and a copy of the contributor notice within 30 days of the filing of the applicable campaign disclosure statement shall be returned to the transferor committee or forfeited to the City's general fund within 10 calendar days of written notification of such failure.

4. No Contributions received by the transferor committee after the date the City Candidate files his or her Candidate Intention (Form 501) may be transferred into that City Candidate's Committee.

D. No person or committee shall accept or make any Contribution that is conditioned upon all or part of the Contribution being transferred to a City Candidate Committee or otherwise violates Government Code Section 84301. Any Contributions received in violation of this subsection shall be paid by the City Candidate to the City's general fund within 60 days of discovery of the violation. (Ords. 8-07; 4-96; 18-92)

2.10.100 Slate Mailers

A. The provisions of Government Code Section 82048.4(c) are not incorporated and shall not be used in the interpretation of this chapter.

B. If a slate mailer is not produced and/or distributed at the behest of a City Candidate, then it is an independent expenditure and is not subject to the contribution limitations of this chapter.

C. The following provisions shall apply only to slate mailers in which more than 25% of the surface area of the slate mailer (exclusive of the area used for address and postage) expressly advocates or opposes the election of an individual City Candidate.

1. If a third party pays funds to the slate mailer organization that are used for the production and/or distribution of a slate mailer (hereafter, "slate mailer cost") at the behest of a City Candidate, then:

a. The slate mailer cost is a contribution from the third party to the City Candidate to the extent the attributable slate mailer cost exceeds the amount paid by the City Candidate or the controlled committee of the City Candidate, up to the total of the funds provided by the third party and shall be subject to the contributions limitations of this chapter.

b. The attributable slate mailer cost that exceeds the total of the funds paid by the third party and the City Candidate or the controlled committee of the City Candidate is a contribution from the slate mailer organization to the City Candidate and shall be subject to the contribution limitations of this chapter.

2. If a slate mailer is produced or distributed without any contribution from a third party, then the attributable slate mailer cost is a contribution from the slate mailer organization to the City Candidate to the extent the attributable slate mailer cost exceeds the amount paid to the slate mailer organization by the City candidate or the controlled committee of the City Candidate and shall be subject to the contribution limitations of this chapter.

3. If a slate mailer expressly opposes the election of a City Candidate, and the slate mailer is produced and/or distributed at the behest of an opposing City Candidate ("the opponent"), then:

a. If a third party has paid the slate mailer organization to oppose the City candidate:

i. the attributable slate mailer cost is a contribution from the third party to the opponent to the extent it exceeds any payment to the slate mailer organization from the opponent or the controlled committee of the opponent up to the total amount paid to the slate mailer organization by the third party to oppose the City Candidate and shall be subject to the contribution limitations of this chapter; and

ii. the attributable slate mailer cost that exceeds the total of the funds paid by the third party to oppose the City Candidate and by the opponent or the controlled committee of the opponent is a contribution from the slate mailer organization to the opponent and subject to the contribution limitations of this chapter.

b. If no third party has paid the slate mailer organization to oppose the City Candidate, then the attributable slate mailer cost is a contribution from the slate mailer organization to the opponent to the extent the attributable slate mailer cost exceeds the amount paid by the opponent or the controlled committee of such opponent to the slate mailer organization and is subject to the contribution limitations of this chapter.

D. "Attributable slate mailer cost" is computed by multiplying the total cost of production and/or distribution of the slate mailer by a fraction, the numerator of which is the number of square inches of the mailer that expressly advocates or opposes the election of a City Candidate, and the denominator of which is the number of square inches of the mailer devoted to all candidates and/or measures.

E. A slate mailer is produced and/or distributed at the behest of a City Candidate:

1. If the City Candidate, or the City Candidate's controlled committee, or the City Candidate's or committee's agent or consultant pays any of the costs for the slate mailer, or provides any information or photographs used in the mailer, or consults or confers with the slate mailer organization in any manner regarding the content, timing, or distribution of the slate mailer; or

2. Under any of the circumstances described in Section 18225.7(a) and Section 18225.7(b) of Title 2 of the California Code of Regulations, as those sections exist as of June 1, 2002.

F. A non-refundable deposit made to a slate mailer organization shall not be considered a payment within the meaning of subsections E.1 or E.2 above if: (a) the deposit is made by, or on behalf of, a City Candidate who is not opposed in the City election; or (b) if the

deposit is made as consideration for an agreement whereby the slate mailer organization obligates itself to not produce a slate mailer in which more than 25% of the surface area of the slate mailer (exclusive of the area used for address and postage) expressly advocates or opposes the election of the City Candidate by, or for whom, the deposit is made.

2.10.110 Loans to City Candidates and Elective City Officers and their Controlled Committees.

A. Loans

1. A loan shall be considered a Contribution from the maker and the guarantor of the loan and shall be subject to the Contribution limitations of this chapter.
2. Every loan to a City Candidate or Elective City Officer or their controlled committees shall be by written agreement which shall be filed with the candidate's or committee's campaign statement on which the loan is first reported. If the loan is from a City Candidate to his or her City Candidate Committee, the City Candidate shall identify the original source of the loan (i.e., personal funds, bank, credit card, etc.)
3. The proceeds of a loan made to a City Candidate or Elective City Officer by a commercial lending institution in the regular course of business on the same terms available to members of the public shall not be subject to the Contribution limitations of this chapter if the loan is made directly to the City Candidate or Elective City Officer or his or her controlled committee. The guarantors of such a loan shall remain subject to the Contribution limits of this chapter.
4. Notwithstanding Section 2.10.100A.3 a City Candidate or Elective City Officer shall not have a personal outstanding loan to his or her City Candidate Committee which in the aggregate exceeds \$100,000.

B. Extensions of Credit.

An extension of credit consists of a receipt of goods or services pursuant to an agreement between the provider of the goods and/or services and a City Candidate or City Candidate Committee and where payment is not made until a later date and as is more specifically defined in Title 2, California Code of Regulations Section 18530.7. (Ords. 8-07; 14-01; 4-96; 18-92)

2.10.120 Solicitation of Contributions from Persons who have City Business Dealings.

No appointed City Official or City employee shall solicit, direct or receive a Contribution from any person, or his or her agent, who has a proceeding involving legislative or administrative action pending before such appointed City Official or City employee or has had such a matter pending during the preceding twelve (12) months. This section does not apply to an appointed City Official or City

employee who is a City Candidate acting in furtherance of his or her own controlled committee. (Ords. 4-96; 18-92)

2.10.130 Transmittal of Campaign Contributions on City Property.

No person shall receive, deliver or make a Contribution or campaign payment from any City property from which the business of the City is conducted. This includes, City Hall, the Senior Center, City fire stations, police stations, libraries, community service building, gymnasiums or any other City building that the City occupies as a place for the conduct of City business. This does not include City property that are traditional public forums, such as sidewalks, outdoor areas of parks, streets, etc. (Ords. 8-07; 4-96; 18-92)

2.10.140 Disclosure of Occupation and Employer.

No Contribution cumulating \$100 or more shall be accepted by a City Candidate or Elective City Officer unless the disclosure information required by the Political Reform Act, including the name, address, occupation and employer of the contributor or, if self employed, name of business, is on file in the records of the recipient of the Contribution. Any Contributions that are not disclosed in accordance with this section shall be returned to the contributor immediately or if the contributor cannot be ascertained, forfeited to the City's general fund. (Ords. 8-07; 4-96; 18-92)

2.10.150 Reporting of Cumulative Contributions.

Contributions received during an election cycle that are subject to aggregation and result in a cumulative total of \$100 or more shall be itemized along with the cumulative total of such Contributions on campaign disclosure forms filed during the election cycle that they are received. (Ord. 8-07; 4-96)

2.10.160 Timely Return of Excess Contributions.

Contributions which are in excess of the limitations imposed by this chapter shall be returned to the contributor within 7 days of discovery. A written disclosure shall be filed with the City Clerk within 72 hours of making the return, stating the contributor's name, the date of return and the amount of the return. Excess Contributions not returned in accordance with this subsection shall be forfeited to the City's general fund.

2.10.170 Violations Constitute a Misdemeanor.

Any person who violates any provision of this chapter or any person who causes or solicits any other person to violate any provision of this chapter, or who aids and abets any other person in the violation of any provision of this chapter is guilty of a misdemeanor. In addition to any fines or imprisonment that may be imposed for a misdemeanor conviction, any City Candidate who is convicted of a misdemeanor shall forfeit and be liable to the City's general fund for the value of

any Contributions paid or received in violation of this Chapter. (Ords. 8-07; 4-96; 18-92)

2.10.180 Civil Actions.

A. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action brought by the City Attorney. Violations shall be punishable by a penalty of \$1,000 and the value of any Contributions paid or received in violation of this chapter shall be paid to the City's general fund, except as provided in subsections E. and F. below.

B. If two or more persons are responsible for any violation, they shall be jointly and severally liable.

C. Before filing a civil action pursuant to this subdivision, persons other than the City Attorney must first file with the City Attorney a written request for the City Attorney to commence the action. The request shall contain a statement of the grounds for believing a cause of action exists. Within thirty (30) days of receipt of the request, the City Attorney shall conduct an initial inquiry into the merits of the complaint. If the City Attorney determines in good faith that additional time is needed to examine the matter further, the complaining party shall be notified and the City Attorney shall automatically receive an additional sixty (60) days in order to determine the merits of the complaint. At the end of sixty (60) days, the City Attorney shall inform the complaining party whether the City Attorney intends to file a civil action or is conducting a criminal investigation. If the civil action or criminal charges are brought within thirty (30) days thereafter, no other action may be brought unless the action brought by the City Attorney is dismissed without prejudice.

D. In determining the amount of liability, the court may take into account the seriousness of the violation and the degree of culpability of the defendant.

E. If a judgment is entered against the defendant(s) in an action, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be deposited into the City's general fund. In an action brought by the City Attorney, the entire amount shall be paid to the City's general fund.

F. The term "City Attorney" as used in this section shall mean and refer to the City Attorney, the District Attorney of Orange County, or such other legal counsel as appointed by the City Attorney. If such a case is referred and accepted by the District Attorney or other legal counsel, any civil recovery pursuant to this section may be shared in such manner as agreed by the City and such counsel. (Ords. 4-96; 18-92) (Ords. 8-07; 4-96; 18-92)

2.10.190 Late Filing Fees

Pursuant to Government Code Section 91013 and this section, the City Clerk may impose a penalty of \$10 per day against any City Candidate who files any campaign statement or amendment thereof, report or other document required by this chapter or state law after any deadline imposed by this chapter or state law. Amendments to campaign statements

shall be considered filed after the deadline if filed more than 10 business days after a written or oral request by the City Clerk. Late penalties shall be deposited into the City's general fund.

2.10.200 Payment of Fines and Penalties.

Campaign funds may not be used to pay for fines and penalties imposed pursuant to this chapter. (Ord. 8-07)

2.10.210 Injunctive Relief.

Any person residing in the jurisdiction, including the City Attorney, may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this chapter. (Ords. 4-96; 18-92)

2.10.220 Statute of Limitations.

Civil actions and/or criminal prosecutions for violations of any provision of this chapter shall be commenced within four years after the date on which the violation occurred. (Ords. 4-96; 18-92)

2.10.230 Interpretation of Chapter.

This chapter should be liberally construed to accomplish its purposes. (Ords. 4-96; 18-92)

2.10.240 Amendments and Additional Requirements.

The City Council may review the Contribution limitations contained in this chapter at any time and determine whether such limitations shall be increased, decreased, or remain the same. In the event the City Council determines that such limitations should be amended, it shall do so by holding a public hearing and adopting an ordinance reflecting such amendments. (Ords. 8-07; 4-96; 18-92)