

Chapter 2.75 - ELECTION CAMPAIGN REGULATIONS

Footnotes:

--- (3) ---

Editor's note— *As per § 2 of Ord. No. 2020-2482, adopted May 19, 2020, this chapter shall become effective January 1, 2021.*

2.75.010 - Purpose and intent.

It is the purpose and intent of the city council in enacting this chapter:

- A. To place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in city elections.
- B. To preserve an orderly political forum in which individuals may express themselves effectively.
- C. To prevent the exercise by campaign contributors of potential undue or improper influence over elected officials.
- D. To promote participation in government and foster trust that the democratic process is not subverted by affluent special interest groups.
- E. To provide for the full and fair enforcement of the provisions of this chapter.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.020 - Definitions.

For the purposes of this chapter, the words and phrases used herein shall have the meanings ascribed to them by the Political Reform Act of 1974, Government Code Section 82000 et seq., except as follows:

- A. "Candidate" applies to persons seeking an elective city office.
- B. "City election" means any primary, general, or special election, including recall election, held within the City of National City, for elective city office.
- C. "Committee" means a candidate's controlled committee or a committee formed primarily to support or oppose a candidate, or a city general purpose committee active only in the city.
- D. "Contribution" shall have the same meaning as set forth in Government Code Section 82015, but with respect to an election for city office, except that the exclusion set forth therein for costs of a meeting or fund-raising event in the home or office of the occupant shall be limited to costs of one thousand dollars or less.
- E. "Controlled committee" means 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.
- F. "Electioneering" means the visible display or audible dissemination of information that advocates for or against any candidate.

- G. "Elective city office" means member of the city council, including the mayor.
- H. "Enforcement authority" means the special counsel, officer, agent, or entity designated by action of the city attorney to enforce the provisions of this chapter. Nothing in this chapter shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney from enforcing the provisions of this chapter where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.
- I. "Expenditure" means 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.
- J. "General purpose committee" shall have the same meaning as set forth in Government Code Section 82027.5.
- K. "Independent committee" means 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.
- L. "Individual" means a natural person, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, labor union, committee, and any other organization or group of persons acting in concert, who meets the definition set forth in Government Code Section 82047. "Individual" does not include a political party committee, a political action committee, or an independent committee.
- M. "Political action committee" means an organization that pools campaign contributions from members and donates those contributions to campaigns for or against candidates or ballot measures.
- N. "Party committee" means the state central committee or county central committee of an organization that meets the requirements for recognition as a political party pursuant to Section 5100 or 5151 of the Elections Code.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.030 - Campaign contributions—Limitations and exclusions.

- A. Contributions by individuals to candidates or controlled committees. No individual shall make any contribution to a candidate and/or the candidate's controlled committee, with respect to any single city election, which will cause the total amount contributed by such individual to the candidate and the candidate's controlled committee, when combined, to exceed one thousand dollars in a calendar year.
- B. Acceptance or solicitation by candidates or controlled committees from individuals. No candidate or controlled committee, including the candidate's campaign treasurer, shall solicit or accept any contribution from any individual with respect to any single city election, which will cause the total amount contributed by such individual to the candidate and the candidate's controlled committee, when combined, to exceed one thousand dollars in a calendar year.

- C. Contributions by candidates. The provisions of subsections A and B of this section shall not apply to contributions from a candidate to his or her controlled committee, nor to the expenditure by the candidate of his or her personal funds on behalf of his or her own candidacy.
- D. Contributions by political party committees, political action committees and independent committees to candidates or controlled committees. No political party committee, political action committee or independent committee, shall make any contribution to a candidate and/or the candidate's controlled committee, with respect to any single city election, which will cause the total amount contributed to the candidate and the candidate's controlled committee, when combined, to exceed two thousand dollars in a calendar year.
- E. Acceptance or solicitation by candidates or controlled committees from political party committees, political action committees and independent committees. No candidate or controlled committee, including the candidate's campaign treasurer, shall solicit or accept any contribution from any political party committee, political action committee, or independent committee, with respect to any single city election, which will cause the total amount accepted by such political party committee, political action committee, or independent committee to the candidate and the candidate's controlled committee, when combined, to exceed two thousand dollars in a calendar year.
- F. Family contributions. Contributions by spouses shall be treated as separate contributions and shall not be aggregated. Contributions by children under eighteen years of age shall be treated as contributions attributed equally to each parent or guardian.
- G. Applicability of section to candidate and committees. The provisions of this section are applicable to any contributions made to a candidate or controlled committee whether used by such candidate or controlled committee to finance a current campaign, to pay debts incurred in prior campaigns, or otherwise.
- H. Contributions by city contractors. No individual who contracts with the City of National City, either for the rendition of personal services or for the furnishing of any materials, supplies, or equipment to the city, or for the sale or lease of any land or building, to or from the city, shall make any contribution to a city candidate or controlled committee at any time between the commencement of negotiations for and (i) the completion of performance of such contract or (ii) the termination of negotiations for such contract, whichever occurs later.
- I. Contributions from city employees.
 - 1. It is unlawful for a candidate or a candidate's controlled committee, to solicit, directly or indirectly, a contribution from a city employee with knowledge that the person from whom the contribution is solicited is a city employee.
 - 2. This subsection shall not prohibit a candidate or a candidate's controlled committee from soliciting contributions from city employees if the solicitation is part of a solicitation made to a significant segment of the public that may include city employees, and the solicitation does not otherwise violate the provisions of this chapter.
 - 3. Nothing in this subsection prohibits a city employee from making a contribution to a candidate, and nothing in this subsection prohibits a candidate from accepting a contribution from a city employee.

4. As used in this subsection, the term "city employee" means any employee of the City of National City (cit its organizational subdivisions, agencies, offices, boards, or commissions.
- J. Aggregation of contributions from different individuals financed, maintained, or controlled by same individual. Contributions from different individuals, but which are financed, maintained, or controlled by the same individual, shall be aggregated for purposes of the contribution limits of subsections A and B of this section. All contributions made by an individual whose contribution activity is financed, maintained, or controlled by an individual, shall be deemed to be made by the same individual.
- K. A contribution drawn from a checking account or credit card account held by an individual doing business as a sole proprietorship is considered a contribution from that individual for purposes of this subsection, and may lawfully be received by a candidate for elected city office. A non-monetary contribution in the form of goods and services donated by an individual doing business as a sole proprietorship is considered a contribution from that individual for purposes of this subsection, and may lawfully be received by a candidate for elective city office.
- L. Adjustments for cost of living. The campaign contribution limits and contribution acceptance and solicitation limits specified in subsections A, B, C and D of this section shall be adjusted in February of each odd-numbered year commencing in 2023, for changes in the Consumer Price Index (CPI) over the previous two-year period. The city clerk shall apply the annual percent change in the CPI for all Urban Consumers (CPI-U) for the San Diego Metropolitan Area to determine the appropriate rate of increase or decrease. Adjustments made pursuant to this subsection shall be rounded to the nearest five dollars.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.040 - 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 the names of the persons or organizations who made the expenditures, the true names of any persons on whose behalf the expenditures were made, and that the expenditures were not authorized by a candidate or committee.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.050 - Retention of records.

The candidate, committee, or authorized agent thereof shall retain all campaign records for a period of three years after the election.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.060 - Electioneering.

It is unlawful for any person to participate in electioneering as a candidate, for a candidate, committee, or any other election campaign on city-owned property or at a city-hosted or city-sponsored event. This includes, but is not limited to, any of the following:

- A. A display of a candidate's name, likeness, or logo.
- B. A display of a ballot measure number, title, subject, or logo.
- C. Distribution of buttons, hats, pencils, pens, shirts, signs, or stickers containing electioneering information.
- D. Dissemination of audible electioneering information.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.070 - City measures—Exemptions.

This chapter shall not apply to contributions or expenditures by a person or committee on behalf of a committee supporting or opposing a city measure.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.080 - Duties of city clerk.

In addition to other duties of the city clerk under the terms of this chapter, the city clerk must:

- A. Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission (FPPC). These forms and manuals must 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 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 chapter and applicable state law to the enforcement authority;
- E. Compile and maintain a current list of all statements or parts of statements filed with the city clerk's office pertaining to each candidate and each measure;
- F. Cooperate with the city attorney and enforcement authority in the performance of the duties of the enforcement authority as prescribed in this chapter and applicable state laws.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.090 - Effect of receipt of funds on voting.

Within twelve months after receiving income totaling one thousand dollars or more from any source, no holder of elective city office shall make, participate in making, or attempt to influence, any government decision or action that will have a reasonably foreseeable material financial effect on any source of income that is distinguishable from

its effect on the public generally, or on a significant segment of the public, as defined in the Political Reform Act of 1974.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.100 - Enforcement authority.

- A. Role of city attorney. The city attorney shall not investigate or prosecute any alleged violations of this chapter, but shall defend the constitutionality and legality of this chapter in any civil proceedings in which the city or city council is a party.
- B. Role of special counsel. Review of complaints of violation of this chapter and criminal prosecution, shall be conducted only by special counsel who shall be the district attorney, the attorney general, or such other qualified and independent special counsel, or combination of the foregoing, as may be appointed by the city attorney. All special counsel shall have the authority to prosecute any and all municipal code violations of this chapter. However, special counsel other than the attorney general or district attorney, shall not have authority to prosecute matters exclusively within the powers of the attorney general or district attorney under Government Code Section 91001. Special counsel shall also conduct civil litigation to compel compliance with this chapter or to enjoin conduct in violation of this chapter, and shall conduct administrative enforcement under Section 2.75.120 of this chapter.
- C. Appointment of special counsel. At least ninety days prior to a city election, special counsel shall be appointed by the city attorney. Should the appointment of additional special counsel become necessary or appropriate, the city attorney may appoint such additional special counsel as may be required. The appointment of special counsel shall be in writing, and copies of the written appointment shall be provided to the city council, city manager, and city clerk. The cost of special counsel shall be paid from the city general fund. Any activity by the special counsel in accordance with this chapter, shall not be subject to review or control by the city attorney or city council.
- D. Initiation of investigations. Any person residing in the city who believes that a violation of this chapter has occurred, may file a written complaint requesting investigation of such violation by the special counsel. If the special counsel determines that there is reason to believe a violation of this chapter has occurred, the special counsel shall conduct an investigation and may commence such civil criminal, or administrative legal action as he or she deems necessary for the enforcement of this chapter.
- E. Investigative powers of special counsel. The special counsel shall have such investigative powers as are necessary for the performance of duties described in this article, and may be furnished records of campaign contributions and expenditures of any person or committee. In the event that production of such records is refused, the special counsel may commence civil litigation to compel such production.
- F. Immunity of special counsel. The special counsel shall be immune from liability for enforcement of this chapter.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.110 - Enforcement—Criminal or civil liability.

- A. Criminal and civil liability. Any knowing or willful violation of any provision of this chapter may be prosecuted as an infraction or misdemeanor, at the discretion of the prosecutor. In addition to any other penalty provided by law, any willful or knowing failure to report truthfully any contribution or expenditure, shall be punishable by a fine of not less than one thousand dollars. The campaign treasurer of any committee shall be both criminally and civilly liable for any violation of this article by the committee. In addition, the candidate shall be both criminally and civilly liable for any violation by a committee controlled by the candidate.
- B. Forfeiture of contributions. In any legal action brought under this chapter for injunctive relief or civil liability, where it is determined that a candidate or committee has accepted a contribution or contributions in excess of the applicable limits set forth in this chapter, the full amount of said contribution(s) shall be forfeited to the city's general fund. If funds are not available in the election campaign account for this purpose, the candidate or campaign treasurer shall be personally liable to pay said amount to the city's general fund.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.120 - Enforcement—Administrative.

- A. Additional to other remedies. The remedies provided for by this section are in addition to all other legal remedies, civil or criminal, which may be pursued by the city to address any violation of this chapter.
- B. Notice and order. Whenever the special counsel appointed pursuant to Section 2.75.100, determines that there is probable cause that a violation of one or more provisions of this chapter has occurred or exists, a written notice and order may be issued to the alleged violator.
- C. Contents of notice and order. The notice and order shall refer to the code section violated and describe how the sections are or have been violated, and the dates of all violations. The notice and order shall also state a date, time and place for a hearing which shall be held no fewer than ten days following service of the notice.
- D. Service of notice and order. The notice and order shall be served upon the alleged violator by personal service, or by certified mail, with postage prepaid and return receipt requested.
- E. Designation of hearing officer. The city attorney shall designate a hearing officer, who shall not be a city employee. The compensation of the hearing officer, if any, shall be paid by the city. The retention and compensation of the hearing officer shall not be directly or indirectly conditioned upon the outcome of the hearing.
- F. Violation established by preponderance of evidence. At the hearing, the hearing officer shall consider whether a preponderance of evidence demonstrates the existence of a violation.
- G. Conduct of hearing. Hearings shall be conducted in an expeditious manner to enable all interested parties to present relevant evidence. Formal rules of evidence shall not be applied. Time limits for presenting evidence, order of testimony, handling of exhibits, and similar matters, shall be determined at the discretion of the hearing officer. The alleged violator or any other interested persons may present

testimony or documentary evidence concerning the existence of the violations, and the alleged violator may cross-examine witnesses. The hearing officer may continue the hearing to obtain additional evidence, or for other good cause.

- H. Failure to attend hearing. Failure of the alleged violator to attend the hearing shall constitute an admission of the violation by the alleged violator and a failure to exhaust administrative remedies that may bar judicial review.
- I. Decision by hearing officer. After considering all the testimony and the evidence submitted at the hearing, the hearing officer shall issue a written decision, including findings regarding the existence of each violation, the reasons for the decision, and providing notice of the right to judicial review. The written decision shall be issued within thirty days of the conclusion of the hearing, and served on the alleged violator within ten days of its issuance. The decision shall be final upon service upon the alleged violator, subject only to judicial review as permitted by law.
- J. Imposition of penalty. If the hearing officer finds by a preponderance of the evidence that the alleged violator committed the violation, the hearing officer shall impose a penalty and a date the penalty and any costs of the hearing shall be due and payable by the violator.
- K. Amount of penalty. The administrative penalty for a violation of this chapter shall be a maximum one thousand dollars per violation, and the maximum total penalty shall not exceed ten thousand dollars. In determining the amount of penalty to be imposed, the hearing officer shall consider the following factors: duration of the violation, frequency of recurrence of the violation, seriousness of the violation, history of violations, good faith effort of the violator to correct the violation, economic effect of the violation on the violator, impact of the violation on the community and the city, and any other relevant factors that justice may require.
- L. Failure to pay penalty. Upon the failure of any person to pay the assessed administrative penalty by the date specified in the hearing officer's decision, the unpaid amount shall constitute a personal obligation of the violator. The city attorney shall collect the obligation by use of any appropriate legal means.
- M. Judicial review. Any person subject to the decision of the hearing officer, may obtain judicial review of the decision pursuant to the provisions of Government Code Section 53069.4.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.130 - Civil actions by residents.

- A. Any resident of the city may bring a civil action regarding the provisions of this chapter, as follows:
 - 1. To enjoin an actual or threatened violation;
 - 2. To compel compliance by a private person;
 - 3. To obtain declaratory relief.
- B. Any action brought under this Section 2.75.130, shall be commenced within six months of the time the alleged violation occurred.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)

2.75.140 - Time for commencement of actions.

Except as provided in Section 2.75.130, any action brought alleging violation of this chapter must be commenced within two years of the date of the alleged violation.

(Ord. No. 2020-2482, § 1, 5-19-2020, eff. 1-1-2021)