

Sent to Council: 7/17/09



Memorandum

**TO: HONORABLE MAYOR
AND CITY COUNCIL**

**FROM: Lee Price, MMC
City Clerk**

**SUBJECT: EARLY DISTRIBUTION OF
PROPOSED REVISIONS TO TITLE 12
OF THE SAN JOSE MUNICIPAL CODE
AS IT RELATES TO THE CITY'S
CAMPAIGN FINANCE REGULATIONS
AND THE ELECTIONS COMMISSION**

DATE: July 17, 2009

**EARLY DISTRIBUTION ITEM FOR
CITY COUNCIL MEETING AUGUST 11, 2009**

Please see the attached memorandum and draft ordinance for consideration by the City Council on August 11, 2009. This item is being released early because significant changes are being proposed to Title 12 of the City's Municipal Code as it relates to the Elections Commission and the Campaign Finance Regulations. Early distribution will provide a greater opportunity for public outreach as well as give you each additional time to consider the draft ordinance.

A handwritten signature in blue ink, appearing to read "Lee Price".

Lee Price, MMC
City Clerk



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lee Price, MMC
City Clerk

**SUBJECT: PROPOSED REVISIONS TO TITLES 2 DATE: July 17, 2009
AND 12 OF THE SAN JOSE MUNICIPAL
CODE RELATED TO THE CITY'S
CAMPAIGN FINANCE REGULATIONS
AND THE ELECTIONS COMMISSION**

RECOMMENDATION

As recommended by the Elections Commission, approve an ordinance amending parts of Title 2 and Title 12 of the San José Municipal Code related to the Campaign Finance Regulations and the Elections Commission.

BACKGROUND:

On October 10, 2006, the City Council referred to the City Attorney and the Elections Commission consideration of various actions related to independent committees including recommendations to review provisions of Title 12 of the Municipal Code. On January 24, 2007, the Rules and Open Government Committee referred to the Elections Commission a recommendation from the Mayor's Transition Committee to re-initiate the contribution limits on independent expenditures.

The Elections Commission deferred work on the two referrals until the Ninth Circuit Court of Appeals issued a ruling on the *COMPAC v. City of San José* appeal. Since the October 14, 2008 ruling, directing the trial court to dismiss the case, the Elections Commission considered amendments to campaign finance regulations, among other provisions. On July 8, 2009, the Elections Commission approved the attached draft ordinance and directed staff to present the recommendations to the City Council. The proposed revisions are summarized as follows:

Campaign Finance Regulations:

- Amends Section 12.06.040 to expand the definition of "Committee";
- Amends Section 12.06.050 to clarify the definition of "Contribution";
- Amends Section 12.06.080 to expand the definition of "Election";
- Amends Section 12.06.130 to clarify the definition of "Independent Expenditure";
- Amends Section 12.06.170 to clarify the definition of "Political Reform Act"

- Amends Section 12.06.260 to clarify prohibited contributions by cardrooms
- Suspends Sections 12.06.310 – 12.06.330 until the United States Court of Appeals for the Ninth Circuit issues a decision in *Long Beach Area Chamber of Commerce v. City of Long Beach*;
- Amends Sections 12.06.910 and 12.06.920 to clarify campaign disclosure requirements;
- Amends Chapter 12.06 to add new sections requiring disclosure of “Electioneering Communications”

Elections Commission:

- Amends Section 2.08.1620 to clarify the term of Commissioners;
- Amends Section 2.08.1630 to clarify the prohibition against holding public office while serving on the Elections Commission and to add the prohibition against being employed by or having a contractual relationship with a candidate for City office while serving on the Elections Commission;
- Amends Section 12.04.060 to clarify that an Elections Commissioner may impose an order or penalty for a violation of Title 12 if he or she certifies that he or she has heard or read the testimony at the hearing on the complaint and reviewed all the evidence in the record;
- Amends Section 12.08.040 to add a requirement that City officials and employees must maintain the confidentiality of a complaint, investigative file or information before the Elections Commission until the evaluator presents the report and recommendations to the Commission

ANALYSIS

The intent of this memorandum is to continue and ensure public outreach. A supplemental memorandum will be provided by the City Attorney and City Clerk providing more in-depth analysis of the proposed changes. The supplemental memo will be distributed as part of the Council Agenda packet for the August 11, 2009 regular meeting.

PUBLIC OUTREACH/INTEREST

The Elections Commission conducted an open and public Study Session on April 8, 2009. The purpose of the Study Session was to discuss the City’s current campaign finance regulations relating to contribution limits generally, contribution limits on independent expenditure committees and segregation of contributions to independent expenditure committees. In addition, the Commission was interested in examining inflation adjustments on contribution limits and options for greater disclosure of contributions. Stakeholders (including campaign committees who have participated in San José elections and have filed campaign statements with the City Clerk, campaign lawyers and campaign consultants as well as other interested parties) were invited to participate in the discussion and/or submit written comments.

Based on the public testimony received at the Study Session, a subcommittee of the Elections Commission was formed and met to develop recommendations to the full Commission.

HONORABLE MAYOR AND CITY COUNCIL

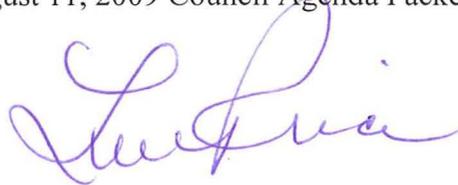
Subject: Draft Ordinance amending Title 12 as it relates to Campaign Finance Regulations and the Elections Commission
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The Elections Commission also met on May 13, June 10, and July 8 to discuss proposed revisions to the campaign finance regulations. All meetings were open to the public and adequately noticed. In addition, the Office of the City Clerk specifically provided notice of the Elections Commission's proposed revisions to stakeholders. For a list of the stakeholders who received notice of the Elections Commission's proposals, please see Attachment #1.

If the ordinance is adopted, the City Attorney and City Clerk will provide additional outreach and education to the public (including candidates and the stakeholders' group listed above) to ensure that the new regulations are adequately disseminated.

CONCLUSION:

The proposed ordinance recommended by the Elections Commission is being posted on the City's website and distributed to stakeholders to ensure that those who could be impacted by the revisions have ample notice. A supplemental memorandum from the City Attorney and City Clerk analyzing the proposed ordinance will be distributed for the August 11, 2009 Council Agenda Packet.



LEE PRICE, MMC
City Clerk

For questions please contact Lee Price, City Clerk, at (408) 535-1260

Attachments: #1 – List of Stakeholders
#2 – Draft Ordinance

Attachment #1

List of Stakeholders Notified of Elections Commission's Proposals

AEC Professionals, Inc
Association of Retired San José Police Officers and Firefighters PAC
American International Group
BFGC Architects Planners, Inc.
California Clean Money Campaign
Californians for Electoral Reform
Citizens for a Stronger Safer San José
Coalition for Responsible Airport
Committee to Protect Fire and Police Services, Yes on Measure B
Hanson, Bridgett, Marcus, Vlahos, Rudy, LLP
Tom Mertens, former Elections Commissioner
Nielsen, Merksamer, Parrinello, Mueller & Naylor, LLP
Nelson/Allison Planned Parenthood Advocates
New America Foundation
Ash Pirayou, Esq.
Bianca Pirayou, Esq.
Terry Reilly, former Elections Commissioner
Retired San José Police Officers Association
San Jose Firefighters, IAFF Local 230
San José POA Political Issues Committee
San José/Silicon Valley Chamber of Commerce
San José/Silicon Valley Chamber of Commerce PAC (COMPAC)
Santa Clara County Democratic Central Committee
Santa Clara County Republican Party
South Bay Labor Council
Alex Stuart, Esq.
James Sutton, Esq.
Working Partnerships USA

RD:LH
07/14/09

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE (1) AMENDING SECTION 2.08.1620 OF PART 16 OF CHAPTER 2.08 OF TITLE 2 OF THE SAN JOSE MUNICIPAL CODE TO CLARIFY THE TERM OF COMMISSIONERS; (2) AMENDING SECTION 2.08.1630 TO CLARIFY THE PROHIBITION AGAINST HOLDING PUBLIC OFFICE WHILE SERVING ON THE ELECTIONS COMMISSION AND TO ADD THE PROHIBITION AGAINST BEING EMPLOYED BY OR HAVING A CONTRACTUAL RELATIONSHIP WITH A CANDIDATE FOR CITY OFFICE WHILE SERVING ON THE ELECTIONS COMMISSION; (3) AMENDING SECTION 12.04.060 OF CHAPTER 12.04 OF TITLE 12 TO CLARIFY THAT AN ELECTIONS COMMISSIONER MAY IMPOSE AN ORDER OR PENALTY FOR A VIOLATION OF TITLE 12 IF HE OR SHE CERTIFIES THAT HE OR SHE HAS HEARD OR READ THE TESTIMONY AT THE HEARING ON THE COMPLAINT AND REVIEWED ALL THE EVIDENCE IN THE RECORD; (4) AMENDING SECTION 12.04.080 TO ADD A REQUIREMENT THAT CITY OFFICIALS AND EMPLOYEES MUST MAINTAIN THE CONFIDENTIALITY OF A COMPLAINT, INVESTIGATIVE FILE OR INFORMATION BEFORE THE ELECTIONS COMMISSION UNTIL THE EVALUATOR PRESENTS THE REPORT AND RECOMMENDATIONS TO THE COMMISSION; (5) AMENDING SECTION 12.06.040 OF CHAPTER 12.06 TO EXPAND THE DEFINITION OF "COMMITTEE"; (6) AMENDING SECTION 12.06.050 TO CLARIFY THE DEFINITION OF "CONTRIBUTION"; (7) AMENDING SECTION 12.06.080 TO EXPAND THE DEFINITION OF "ELECTION"; (8) AMENDING SECTION 12.06.130 TO CLARIFY THE DEFINITION OF "INDEPENDENT EXPENDITURE"; (9) AMENDING SECTION 12.06.170 TO CLARIFY THE DEFINITION OF "POLITICAL REFORM ACT"; (10) AMENDING SECTION 12.06.260 TO CLARIFY PROHIBITED CONTRIBUTIONS BY CARDROOMS; (11) SUSPENDING SECTIONS 12.06.310 – 12.06.330 (12) AMENDING SECTIONS 12.06.910 AND 12.06.920 TO CLARIFY CAMPAIGN DISCLOSURE REQUIREMENTS;

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Council Agenda: 8-11-09
Item No.:

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DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

**(13) AMENDING PART 10 OF CHAPTER 12.06 TO
REQUIRE DISCLOSURE OF ELECTIONEERING
COMMUNICATIONS AND MAKING OTHER TECHNICAL
CHANGES**

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 2.08.1620 of Chapter 2.08 of Title 2 of the San José Municipal Code is hereby amended to read as follows:

2.08.1620 Term

- A. Members of the commission shall may serve up to two (2) four (4)-year terms for a maximum of eight (8) years.
- B. Terms of members shall will expire in years in which there are no regular municipal elections.
- C. A member may be appointed to a term of less than four (4) years if the City Council determines that it is in the best interest of the Commission that the member serve a shorter term in order to provide for appropriate staggered terms to preserve a continuity of membership on the Commission.
- D. A member who is appointed to serve an unexpired term will serve to the end of the former incumbent's term.
- E. If a member has been appointed to serve a term of less than two (2) years, the member may be reappointed to serve on the commission for up to two (2) consecutive additional terms.

SECTION 2. Section 2.08.1630 of Chapter 2.08 of Title 2 of the San José Municipal Code is hereby amended to read as follows:

2.08.1630 Special Eligibility Requirements

- A. Each member of the Commission must be a qualified elector of the City and have some demonstrated familiarity and experience with campaign laws. The Commission's membership should be representative of the community.
- B. No member will be employed by the City or have any direct and substantial financial interest in any business, work or official action taken by the City.
- C. While serving on the Commission, no member will hold any ~~other~~ elected public office.
- D. No member will participate as a candidate in any election to public office for a period of one (1) year both before and after tenure on the Commission.
- E. While serving on the Commission, no member will publicly endorse any candidate for City office nor engage in any political or campaign activity on behalf of any candidate for City office.
- F. While serving on the Commission, no member will be employed by or have any contractual relationship with any candidate for City office.

SECTION 3. Section 12.04.060 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.04.060 Quorum

- A. Three (3) members ~~shall~~ constitute a quorum of the Commission, and the concurring vote of at least three (3) members ~~shall~~ will be required to take any action.

- B. The votes of at least three (3) members of the Commission ~~who concurred in the finding of a violation of this title~~ are required to impose any order or penalty for a violation of this Title. In order to vote to impose any order or penalty for a violation of this Title, every commissioner must certify that he or she has heard (either in person or by listening to a recording) or read a transcript of the testimony at the hearing on the complaint and reviewed all the evidence in the record.

SECTION 4. Section 12.04.080 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.04.080 Investigations

- A. The City Council ~~shall~~ will adopt, by resolution, regulations and procedures for investigations and hearings to be conducted by the Commission.

- B. The Commission ~~shall~~ will have the authority to investigate complaints alleging violations of this Title, in accordance with the regulations and procedures adopted by resolution of the City Council.

- C. A complaint filed with the Commission may be investigated only if the complaint identifies the specific alleged violation which forms the basis for the complaint and contains sufficient facts to warrant a formal investigation.

- D. The Council ~~shall~~will retain an independent and neutral evaluator, selected by the Commission, to review and investigate complaints and to make recommendations to the Commission. The Council ~~shall~~will appropriate funds anticipated to be needed to fund the evaluator for a period of two (2) years.
- E. No complaint, investigative file or information contained therein may be disclosed by a City official, City employee, the evaluator or investigator to any person other than a Respondent or Respondent's representative, the City Attorney or District Attorney, a court, a law enforcement agency or otherwise as necessary to the conduct of an investigation before the evaluator presents the report and recommendations to the Commission.
- EF. Except as provided in ~~F.~~below this Section, the evaluator ~~shall~~will refer any complaint where the respondent, is a classified or unclassified employee appointed by a City Council appointee to the appointing authority for investigation and action. The Elections Commission ~~shall~~will take no further action on the complaint with regard to the employee.
- EG. Any City employee who is a candidate for City office ~~shall~~will be treated as any other candidate for purposes of Chapter 12.06.
- GH. The City Attorney's Office may provide legal advice to the Commission related to noncomplaint matters or general interpretations of the Municipal Code or relevant state or federal law, but ~~shall~~must not participate in investigations or reviews of complaints.

SECTION 5. Section 12.06.040 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.040 Committee

"Committee" ~~shall means~~ any person or combination of persons who, directly or indirectly, ~~receives contributions or makes expenditures or contributions for the purpose of influencing or attempting to influence the action of the voters in a municipal election for or against the nomination or election of one or more candidates if~~ does any of the following:

- A. ~~Contributions~~ Receives contributions received totaling one thousand dollars (\$1,000) or more in any calendar year; or
- B. ~~Makes Independent~~ independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- C. ~~Makes Contributions~~ contributions made totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of a candidates and or controlled committees total ten thousand dollars or more in a calendar year.

A person or combination of persons that becomes a committee will retain its status as a committee until such time as that status is terminated.

SECTION 6. Section 12.06.050 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.050 Contribution

- A. "Contribution" ~~shall means:~~

1. Any payment, loan, forgiveness or postponement of a loan, payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes.
 2. An expenditure benefiting a candidate or committee made at the behest of a candidate, controlled committee or elected officeholder is a contribution to the candidate, committee or elected officeholder unless full and adequate consideration is received for making the expenditure.
- B. Contributions include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person, if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; and the transfer of anything of value.
- C. The payment of salary, reimbursement for personal services or other compensation by an employer to an employee who spends any of his or her compensated time rendering services for political purposes related to a City candidate or committee is a contribution or an expenditure if:
1. The employee renders services at the request or direction of the employer; or

2. The employee, with the consent of the employer, is relieved of any normal working responsibilities related to his or her employment in order to render the personal services, unless the employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity.

D. Payments made by an individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be directly or indirectly repaid to him or her, or independent expenditures made by independent committees are not deemed to be contributions for purposes of this Chapter.

SECTION 7. Section 12.06.080 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.080 Election

"Election" shall mean any regularly scheduled municipal or special municipal election. Recall elections are not considered elections for purposes of this chapter.

SECTION 8. Section 12.06.130 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.130 Independent Expenditure

A. "Independent expenditure" shall mean an expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or the qualification, passage or defeat of a clearly identified measure, or taken as a whole and in context, unambiguously urges a

particular result in an election, but which is not made to or at the behest of the affected candidate or controlled committee. ~~An expenditure that is made to or at the behest of a candidate or controlled committee is not an "independent expenditure".~~

~~B. Any expenditure in aid or in opposition to a council or mayoral candidate which is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to the limitations of this chapter.~~

SECTION 9. Section 12.06.170 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.170 Political reform-Reform actAct

~~"Political reform-Reform actAct" is the California Political Reform Act of 1974 (Government Code Sections 81000 et seq., as amended). Unless a particular word or phrase is otherwise specifically defined in this Chapter, or the contrary is stated, the definitions set forth in the Political Reform Act will govern the construction, meaning, and application of words and phrases used in this Chapter.~~

SECTION 10. Section 12.06.260 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.260 Prohibited Contributions - Cardrooms

A. No cardroom, cardroom owner, officer of a cardroom, key management employee of a cardroom, spouse of a cardroom owner or spouse of a cardroom officer shall make any contribution to candidates or controlled committees under this Chapter.

- B. Cardroom and cardroom owner are as defined in Section 6.22.020 of Title 6 of this Code.
- C. A key management employee of a cardroom is any person who has the authority to hire or fire other employees.

SECTION 11. Sections 12.06.310, 12.06.320 and 12.06.330 of Part 3 of Chapter 12.06 of Title 12 of the San José Municipal Code are hereby suspended and will remain suspended until the United States Court of Appeals for the Ninth Circuit issues a decision in *Long Beach Area Chamber of Commerce v. City of Long Beach*, Court of Appeals Docket Nos. 07-55691, 07-56190, 07-56081 or December 31, 2010, whichever is later.

SECTION 12. Section 12.06.910 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.910 Statements and Reporting Requirements

- A. Each candidate, controlled committee and ~~each independent committee~~ receiving contributions or making expenditures in an election in the City of San José, ~~except committees whose sole purpose is to support or oppose a ballot measure, shall must file, as a public record with the City Clerk, cumulative itemized reports~~ campaign disclosure statements in the form and at the times required by specified herein Chapter 12.06 and the Political Reform Act. The campaign disclosure statements must showing the total amounts of contributions accepted and expenditures made, including independent expenditures made. The ~~required~~ campaign disclosure statements may be completed on campaign

~~statement forms required to be filed by the regulations of the fair~~ Fair political Political practices Practices commission Commission so long as such forms are completed in sufficient detail to comply with the requirements of this Chapter. ~~Such~~ The campaign disclosure statements shall ~~must~~ contain a declaration by the candidate or controlled committee treasurer that the candidate or committee has ~~neither~~ not accepted nor solicited any campaign contribution in ~~excess of~~ violation of the requirements and limitations of this Chapter.

- B. When listing contributions, each candidate and controlled committee receiving contributions or making expenditures in an election in the City of San José ~~The listing of contributions shall~~ must include ~~itemize~~ all contributions accepted during the campaign contribution collection periods specified in this Chapter including all amounts less than one hundred dollars (\$100).
- C. The first and second campaign statements ~~shall~~ must be filed at the times prescribed for pre-election statements by the Political Reform Act as well as any other times prescribed in Chapter 12.06, for candidates, controlled committees and independent committees for whom the City Clerk is the regular filing official. ~~The second statement shall in addition include all contributions accepted through the end of campaign contribution collection period specified in Section 12.06.290.~~ If the City Clerk is not the regular filing official for an independent committee receiving contributions and making expenditures in an election in the City of San José, the independent committee must file campaign statements with the City Clerk in accordance with this Chapter.
- D. Once an independent committee whose primary filing officer is not the City Clerk has filed a campaign disclosure statement with the City Clerk, the committee must also file with the City Clerk, within two (2) business days, copies of

campaign disclosure statements filed by the committee with its regular filing official for the previous twelve (12) months.

E. Once an independent committee whose primary filing officer is not the City Clerk has filed a campaign disclosure statement with the City Clerk, from that date forward, that committee's ~~Thereafter, semi-annual~~ campaign disclosure statements shall ~~must~~ be filed with the City Clerk in the form and at the times required by the regulations of the ~~Chapter 12.06, the California Political Reform Act and the California fair~~ Fair political ~~Political practices~~ Practices ~~commission~~ Commission until the committee terminates or has not received contributions or made expenditures, including independent expenditures, in an election in the City of San José for four (4) years.

F. If any person files a campaign disclosure statement after any deadline imposed by this Chapter, the City Clerk must fine the person ten dollars (\$10.00) per day until the statement is received, starting the day after the filing deadline, until the statement is filed; however, no liability may exceed the cumulative amount of reported contributions or expenditures, or \$100, whichever is greater. The City Clerk may reduce or waive the fine if it is determined that the late filing was not willful and that enforcement will not further the purposes of this Chapter. The City Clerk will deposit funds collected under this Section in the General Fund of the City of San José.

SECTION 13. Section 12.06.920 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.920 Duties of the City Clerk

- A. The City Clerk shall ~~shall~~must, five (5) days prior to the election, prepare a report to be published in the San José Mercury News. The report shall ~~shall~~should contain the total contributions and expenditures for each of the candidates and for each ~~independent-committee receiving contributions or making expenditures, including independent expenditures, in an election for Mayor or City Council of the City of San José.~~ The Clerk shall ~~shall~~must ensure that ~~cause the report to be is published in the San José Mercury News two (2) days prior to before~~ the election.
- B. In the event the City Clerk has reason to believe a late contribution has not been reported, the Clerk shall ~~shall~~must notify the ~~ethics board~~Elections Commission.

SECTION 14. Part 10 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

Part 10
Campaign Communications

12.06.1000 Disclosure Requirements for Candidate Mass Mailings

- A. ~~In addition to the requirements set forth in California Government Code Section 84305, any candidate or committee for City elective office that pays for a mass mailing with funds raised for the candidate's campaign must print, display or incorporate the following words in not less than twelve point type and in a color or print which contrasts with the background so as to be easily legible anywhere within the communication or mailing: "Paid for by" immediately followed by the name, address and city of that candidate or committee. A post office box may be stated in lieu of a street address if the candidate's address is a matter of public record with the City Clerk. If the sender of a mass mailing is a controlled~~

~~committee, the name of the person controlling the committee shall also be included. If an acronym is used to specify a committee name, the full name of any sponsoring organization of the committee must be included in the campaign communication disclosure required by this Section.~~

~~B. For the purposes of this Part 10, "mass mailing" will be defined as set forth in the California Political Reform Act (Gov. Code Sections 81000 *et seq.*), provided that the mass mailing advocates for or against one or more candidates for City elective office.~~

~~C. The requirements set forth in this Part 10 do not apply to member communications distributed by an organization that is not a political party provided that such communications do not constitute general public advertising such as, but not limited to, broadcasting, billboards, and newspaper advertisements.~~

12.06.1010 Disclosure Requirements – Independent Expenditures for Mass Mailings

~~Any person who makes independent expenditures for a mass mailing which support or oppose any candidate for City elective office must place the following statement on the mailing in typeface no smaller than twelve points:~~

~~Notice to Voters
(Required by the City of San Jose)
This mailing is not authorized or approved by
any candidate for City office
or by any election official. It is paid for by
(name and committee identification number).
(address, city, state).
Total cost of this mailing is (amount).~~

12.06.1020 Disclosure Requirements – Campaign Advertisements

A. ~~Any campaign advertisement that urges support for or opposition to one (1) or more candidates for City elective office must include a disclosure statement identifying the person who paid for the advertisement. Such disclosure statement must, at a minimum, contain the following words, “paid for by _____ (insert the name of the person who paid for the communication)” and appear at least once on the advertisement.~~

1. ~~Any disclosure statement required by this Section to be in printed form must be printed in a type and color so as to be easily legible to the intended public. Such disclosure statement must be printed in at least twelve-point type and in a color or print that contrasts with the background so as to be easily legible to the intended public.~~

2. ~~Any disclosure statement required by this Section to be in spoken form must be spoken at the same volume and speed as the rest of the communication so as to be clearly audible and understood by the intended public and otherwise appropriately conveyed for the hearing impaired.~~

B. ~~For purposes of this Section, the term “campaign advertisement” means:~~

1. ~~More than two hundred (200) substantially similar pieces of campaign literature distributed within a calendar month, including but not limited to mailers, flyers, facsimiles, pamphlets, and door hangers;~~

2. ~~Posters, yard or street signs, billboards, and similar items;~~

3. ~~Television, cable, satellite and radio broadcasts; and~~

4. ~~_____ Newspaper, magazine, and similar advertisements.~~

~~**12.06.1030 Disclosure Requirements – Recorded Telephone Messages**~~

- A. ~~Any recorded telephone message distributed to five hundred (500) or more individuals or households must include the following statement: “paid for by _____ (insert name of person who paid for the recorded telephone message).” Statements required pursuant to this Section must be audible and played at the same volume and speed as the rest of the recorded telephone message.~~
- B. ~~Any person paying for a recorded telephone message must maintain a transcript of the message and a record of the distributed calls for each message.~~

Part 10

Electioneering Communications

12.06.1000 Electioneering Communication

- A. “Electioneering communication” means any form of communication, for which payment is made, that refers to a clearly identified candidate for Mayor or City Council of the City of San José and is disseminated, broadcast, or otherwise published within ninety (90) calendar days of an election for which the candidate is on the ballot.
- B. If Section A is held to be constitutionally insufficient by final judicial decision to support the regulation provided in this Part, then the term “electioneering

communication” means any form of communication, for which payment is made, which promotes or supports a candidate for Mayor or City Council of the City of San José, or attacks or opposes a candidate for Mayor or City Council of the City of San José (regardless of whether the communication expressly advocates a vote for or against a candidate), and which also is suggestive of no plausible meaning other than an exhortation to vote for or against a specific candidate.

12.06.1010 Disclosure of Electioneering Communications

- A. Every electioneering communication in printed form paid for by a candidate or controlled committee must include the words “paid for by” immediately followed by the name, street address and city of the candidate or controlled committee that paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than twelve (12) points in size. If an acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the electioneering communication disclosure required by this Section.
- B. Every electioneering communication in printed form paid for by an independent committee must place the following statement on the mailing in typeface no smaller than twelve (12) points:

Notice to Voters

(Required by the City of San José)

This mailing is not authorized or approved by any candidate for City office or by any election official. It is paid for by (name and committee identification number).

(Address, city, state).

Total cost of this mailing is (amount).

If an acronym is used to specify a committee name, the full name of any sponsoring person of the committee must be included in the electioneering communication disclosure required by this Section.

C. Every electioneering communication in spoken form must include the words "paid for by" immediately followed by the name of the candidate, controlled committee or independent committee that paid for the communication in a manner that is clearly audible and at the same general volume and speed as the rest of the communication.

D. Any independent committee that makes a payment or payments or a promise of a payment or payments that cumulatively total one thousand dollars (\$1,000) or more for an electioneering communication must file with the City Clerk a report on a form approved by the City Clerk disclosing the independent committee's name, address, occupation, and employer, and the amount of the payment. The report must be filed within twenty-four (24) hours of making the payment or the promise to make the payment, and must be accompanied by a legible copy of the electioneering communication if in printed form or a transcript of the electioneering communication if in spoken form.

E. Except as provided in this Section, if any independent committee has received a payment or a promise of a payment from another person totaling one hundred dollars (\$100) or more specifically for the purpose of making the electioneering communication, the independent committee receiving the payment must disclose on the report the name, address, occupation, and employer of the person who

made a payment or promise of a payment, the amount received and the date of the payment.

F. A person who receives or is promised a payment that is otherwise reportable under this Section is not required to report the payment if the person provides goods or services in the normal course of business and receives or is promised the payment in exchange for providing goods or services.

G. The communications subject to the provisions of this Section do not include:

1. News stories, commentaries or editorials disseminated, broadcast or otherwise published by newspaper, radio station, television station, internet site or any other recognized news medium unless the news medium is owned or controlled by any political party, political committee or candidate;
2. Member communications, except those made by a political party;
3. Communications made in the form of a slate mailer;
4. Communications paid for by a governmental entity;
5. Communications that occur during a candidate debate or forum;
6. Communications made solely to promote a candidate debate or forum made by or on behalf of the person sponsoring the debate or forum, provided that such communications do not otherwise discuss the positions or experience of a candidate;

7. Communications in which a candidate's name is required by law to appear and the candidate is not singled out in the manner of display;

8. Spoken communications between two (2) or more individuals in direct conversation unless at least one (1) of the individuals is compensated for the purposes of making the communication; or

9. Communications that appear on bumper stickers, pins, stickers, badges, ribbons and other similar memorabilia.

H. Any communication, other than a member communication, made at the behest of a candidate is a contribution to that candidate and is subject to the limits and prohibitions specified in Chapter 12.06 of the San José Municipal Code.

PASSED FOR PUBLICATION of title this ____ day of _____, 2009, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC

RD:LH
07/14/09

City Clerk