

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 12.06.210, 12.06.310 AND 12.06.540 OF THE SAN JOSE MUNICIPAL CODE TO INCREASE CONTRIBUTION LIMITS AND IMPOSE AN ANNUAL INCREASE ON CONTRIBUTION LIMITS BASED ON THE CONSUMER PRICE INDEX; AMENDING SECTIONS 12.06.230, 12.06.310 AND 12.06.320 TO CLARIFY THE CONTRIBUTIONS REGULATED; AND REPEALING SECTIONS 12.06.270 AND 12.06.280 TO ELIMINATE REDUNDENCY

WHEREAS, since the 1980s, the City of San José has imposed limitations on campaign contributions to candidates, candidate-controlled committees and independent committees; and

WHEREAS, the intent of the City Council is and has been to place realistic and enforceable limits on the amount individuals and independent committees may contribute to political campaigns in municipal office elections for the purpose of preventing the perception by the public that campaign contributors exercise undue or improper influence over elected officials; and

WHEREAS, the intent of the City Council is and has been to prevent the circumvention of contribution limits to candidates for City Council and Mayor and their controlled committees by large individual contributions to independent committees engaged in activity to influence City Council and Mayoral elections; and

WHEREAS, the National Institute on Money in State Politics concluded in a report dated August 1, 2007 that “independent expenditures are the largest loophole contributors use to circumvent limits on direct campaign contributions”; and

WHEREAS, the California Fair Political Practices Commission concluded in a report dated June 2008 that “independent expenditures have thwarted the will of the people

and dramatically undermined California's campaign finance laws and that there is no question that the influence of independent expenditures is at the highest point ever in California's history"; and

WHEREAS, the City's longstanding contribution limits have been effective in preventing corruption and the appearance of corruption and in maintaining the integrity of the electoral process; and

WHEREAS, the current contribution limits, which have not been increased for nearly 20 years, should be increased now; and

WHEREAS, the City will continue to limit contributions to independent committees in furtherance of its and its residents' significant interests in preventing circumvention of the contribution limits applicable to candidates and their controlled committees and maintaining the integrity of the electoral process; and

WHEREAS, it is in the public interest to ensure that donors do not make large contributions and independent committees do not receive or solicit unlimited campaign contributions to be used to influence the election of the offices of Mayor and City Council; and

WHEREAS, it is the intent of the City Council to limit only contributions to independent committees and not expenditures by independent committees;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Section 12.06.210 of Part 2 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.210 Campaign Contribution Limitations

- A. Until December 31, 2010, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
1. One hundred dollars (\$100) for the primary election;
 2. One hundred dollars (\$100) for the general election, if any;
 3. One hundred dollars (\$100) for any special election.
- B. Beginning January 1, 2011, the total campaign contribution made by any person to any council candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
1. Two hundred dollars (\$200) for the primary election;
 2. Two hundred dollars (\$200) for the general election, if any;
 3. Two hundred dollars (\$200) for any special election.
- C. Until December 31, 2010, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:
1. Two hundred fifty dollars (\$250) for the primary election;
 2. Two hundred fifty dollars (\$250) for the general election, if any;
 3. Two hundred fifty dollars (\$250) for any special election.
- D. Beginning January 1, 2011, the total campaign contribution made by any person to any mayoral candidate and any controlled committee of that candidate, other than the candidate in aid of himself or herself, may not exceed:

1. Five hundred dollars (\$500) for the primary election;
 2. Five hundred dollars (\$500) for the general election, if any;
 3. Five hundred dollars (\$500) for any special election.
- E. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the City Clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 -1984 = 100) for all urban consumers in the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the City Clerk must multiply the contribution limits established in sections C and D by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the City Clerk will then increase the corresponding contribution limit(s) established in sections C and/or D by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the City Council adopt a resolution specifying the adjusted contribution limit(s). In the event the City Council adopts a resolution specifying the contribution limits, the City Clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the Clerk shall use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

- F. If the candidate voluntarily elects to participate in the voluntary campaign expenditure limitation program, the alternative campaign contribution limitations set forth in Part 5 will apply in lieu of sections A, B, C and D.

SECTION 2. Section 12.06.230 of Part 2 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.230 Anonymous Contributions

- A. No person may make nor may any person solicit or accept any anonymous contribution, gift, subscription, loan, advance, deposit, pledge or promise of money or anything of value for a clearly identified candidate for San José City Council or Mayor.
- B. All anonymous contributions must be surrendered to the Director of Finance for deposit in the general fund of the City, earmarked to defray the costs of municipal elections.

SECTION 3. Section 12.06.270 of Part 2 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby repealed.

SECTION 4. Section 12.06.280 of Part 2 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby repealed.

SECTION 5. Section 12.06.310 of Part 3 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.310 Contribution Limitations to Independent Committees

- A. Until December 31, 2010, no person may make nor may any person accept any contribution to or on behalf of an independent committee making (1) a

contribution to a clearly identified candidate for San Jose city council or mayor; or (2) an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San Jose City Council or Mayor which will cause the total amount contributed by the person to the independent committee to exceed two hundred fifty dollars (\$250) per election.

B. Beginning January 1, 2011, no person may make nor may any person accept any contribution to or on behalf of an independent committee making (1) a contribution to a clearly identified candidate for San Jose city council or mayor; or (2) an expenditure in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San Jose City Council or Mayor which will cause the total amount contributed by the person to the independent committee to exceed five hundred dollars (\$500) per election.

C. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the City Clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 -1984 = 100) for all urban consumers in the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the City Clerk must multiply the contribution limits established in section B by the percentage increase for the base period. If the

calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the City Clerk will then increase the corresponding contribution limit(s) established in section B by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the City Council adopt a resolution specifying the adjusted contribution limit(s). In the event the City Council adopts a resolution specifying the contribution limits, the City Clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the Clerk shall use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

- D. If an independent committee will be contributing to or making expenditures in campaigns in addition to City of San José council or mayoral campaigns, it shall segregate, from all other contributions, the contributions received which are to be used for (1) contributions to a clearly identified candidate for San José City Council or Mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José City Council or Mayor. Where an independent committee has segregated contributions which are to be used for (1) contributions to a clearly identified candidate for San José City Council or Mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José City Council or Mayor, contributors to that committee may contribute more than the applicable contribution limit established in section A, B or C so long as no portion of the contribution in excess of the applicable contribution limit established in section A, B or C is used for (1) contributions to a

clearly identified candidate for San José City Council or Mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José City Council or Mayor.

- E. To the extent an independent committee segregates, from all other contributions, the contributions received which are to be used for (1) contributions to a clearly identified candidate for San José City Council or Mayor; or (2) expenditures made in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate, or, taken as a whole and in context, unambiguously urges a particular result in an election for a candidate for San José City Council or Mayor, as required by section D, this section is not intended to prohibit or regulate contributions to independent committees used for elections other than a San José mayoral or council election.

SECTION 6. Section 12.06.320 of Part 3 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.320 Contributions and Expenditures by Independent Committees

- A. Independent committees are "persons" for purposes of the contribution limitations to city council and mayoral candidates. Any expenditure by an independent committee for a clearly identified candidate for San José City Council or Mayor which is not an "independent expenditure" is deemed to be a contribution to that candidate, subject to the limitations of this Chapter.
- B. Each independent committee making contributions or independent expenditures in a council or mayoral election which does not participate in elections other than for City offices shall file the reporting statements required by Section 12.06.910.

For each expenditure or contribution, the committee shall report what amount or portion was of benefit to a particular candidate.

SECTION 7. Section 12.06.540 of Part 5 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.540 Campaign Contribution Limits

Candidates who participate in the voluntary campaign expenditure limits program are entitled to collect contributions in the following amounts:

- A. Until December 31, 2010, the total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than two hundred fifty dollars (\$250) in the aggregate.
- B. Beginning January 1, 2011, the total contributions per election made by any person to any council candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than five hundred dollars (\$500) in the aggregate.
- C. Until December 31, 2010, the total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than five hundred dollars (\$500) in the aggregate.
- D. Beginning January 1, 2011, the total contributions per election made by any person to any mayoral candidate participating in the voluntary campaign expenditure limits program or to the controlled committee of that candidate must not exceed a total of more than one thousand dollars (\$1,000) in the aggregate.

- E. Beginning September 1, 2013, and thereafter on September 1st of each odd numbered year, the City Clerk must determine whether the cost of living, as shown on the Consumer Price Index (CPI) for all items (with a base period of 1982 -1984 = 100) for all urban consumers in the San Francisco-Oakland-San Jose area as published by the U.S. Department of Labor, Bureau of Statistics, has increased during the "base period" as defined in this section. The base period for the first adjustment (September 1, 2013) will be the CPI reported for the months of December 2010 and June 2013. For the second adjustment (September 1, 2015), the base period will be the CPI reported for the months of June 2013 and June 2015. The base period for subsequent adjustments will be June to June for odd numbered years. If the CPI has increased for the applicable base period, the City Clerk must multiply the contribution limits established in sections C and D by the percentage increase for the base period. If the calculation results in an amount that is higher than the previously established contribution limit(s) when rounded to the nearest one hundred (100) dollars, the City Clerk will then increase the corresponding contribution limit(s) established in sections C and/or D by the percentage increase rounded to the nearest one hundred (100) dollars and recommend that the City Council adopt a resolution specifying the adjusted contribution limit(s). In the event the City Council adopts a resolution specifying the contribution limits, the City Clerk will publish the contribution limits no later than December 1st of each odd numbered year, beginning on December 1, 2013. In the event the CPI is no longer published, the Clerk shall use as a reference another index published by either the State of California or a federal department or agency that is charged with the responsibility of measuring the cost of living in the geographical area that includes the City of San José.

RD:LH
10/30/2009

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

AYES:

NOES:

ABSENT:

DISQUALIFIED:

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk