

DRAFT

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN JOSE 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; AMENDING SECTION 2.08.1630 OF PART 16 OF CHAPTER 2.08 OF TITLE 2 OF THE SAN JOSE MUNICIPAL CODE 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; AMENDING SECTION 12.04.060 OF PART 1 OF CHAPTER 12.04 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE 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; AMENDING SECTION 12.06.040 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO EXPAND THE DEFINITION OF "COMMITTEE"; AMENDING SECTION 12.06.080 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO EXPAND THE DEFINITION OF "ELECTION"; SUSPENDING SECTIONS 12.06.310 – 12.06.330 OF PART 3 OF CHAPTER 12.06 OF TITLE 12; AMENDING SECTIONS 12.06.910 AND 12.06.920 OF PART 9 OF CHAPTER 12.06 OF TITLE 12 TO CLARIFY CAMPAIGN DISCLOSURE REQUIREMENTS; AMENDING CHAPTER 12.06 OF TITLE 12 TO REPEAL PART 10 AND ADD A NEW PART 10 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 Part 16 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 four-year terms for a maximum of eight 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 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 years, the member may be reappointed to serve on the commission for up to two consecutive additional terms.

SECTION 2. Section 2.08.1630 of Part 16 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 Part 1 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 members ~~shall~~ constitute a quorum of the commission, and the concurring vote of at least three members ~~shall~~ will be required to take any action.

- B. The votes of at least three 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 12.06.040 of Part 1 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 mean~~ s any person 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:

- A. Contributions received total one thousand dollars or more in ~~any~~ calendar year;
or
- B. Independent expenditures total one thousand dollars or more in a calendar year;
or
- C. Contributions made to or at the behest of a candidates ~~and or controlled~~ committees ~~s~~ total ten thousand dollars or more in a calendar year.

SECTION 5. Section 12.06.080 of Part 1 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~~ means s any regularly ~~scheduled~~ municipal or special municipal election.
~~Recall elections are not considered elections for purposes of this chapter.~~

SECTION 6. 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.

SECTION 7. Sections 12.06.910 and 12.06.920 of Part 9 of Chapter 12.06 of Title 12 of the San José Municipal Code are 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 Jose, 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, the California Political Reform Act and the California Fair Political Practices Commission. The campaign disclosure statements must showing the total amounts of contributions accepted and expenditures, including independent expenditures, made. ~~The required statements may be completed on campaign statement forms required to be filed by the regulations of the fair political practices commission so long as such forms are completed in sufficient detail to comply with the requirements of this chapter. Such statements shall contain a declaration by the candidate or committee~~

~~treasurer that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of this chapter.~~

B. When listing contributions, each candidate, controlled committee and independent committee receiving contributions or making expenditures in an election in the City of San Jose ~~The listing of contributions shall~~ must include all contributions accepted during the campaign contribution collection periods specified in this chapter including all amounts less than one hundred dollars.

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. ~~The second statement shall in addition include all contributions accepted through the end of campaign contribution collection period specified in Section 12.06.290.~~

D. 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 Jose for 4 years.

E. 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 2 business days, copies of campaign disclosure statements filed by the committee with its regular filing official for the previous twelve months.

12.06.920 Duties of the city clerk.

- A. The city clerk ~~shall~~must, five days prior to the election, prepare a report to be published in the San José Mercury News. The report ~~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 Jose. The clerk ~~shall~~must ensure that ~~cause~~ the report ~~to be~~is published two 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~~must notify the ~~ethics board~~Elections Commission.

SECTION 8. Sections 12.06.1000, 12.06.1010, 12.06.1020 and 12.06.1030 of Part 10 of Chapter 12.06 of Title 12 of the San José Municipal Code are hereby repealed and replaced by a new Part 10 to be numbered, entitled and to read as follows:

Part 10

Electioneering Communications

12.06.1000 Electioneering Communication.

“Electioneering communication” means any form of communication, for which payment is made, that either expressly advocates the nomination, election or defeat of a specific candidate for Mayor or City Council of the City of San Jose or is the functional equivalent of express advocacy, in that the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate for Mayor or City Council of the City of San Jose, and is disseminated, broadcast, or otherwise published within 90 calendar days of an election for which the candidate is on the ballot.

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 person who paid for the communication in a typeface that is easily legible, contrasts with the background, and is no less than 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 person who 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 person who makes a payment or a promise of payment totaling \$1,000 or more for an electioneering communication must file with the City Clerk an "Electioneering Communication Disclosure Report" disclosing the person's name, address, occupation, and employer, and the amount of the payment. The report must be filed within 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 person has received a payment or a promise of a payment from another person totaling \$100 or more specifically for the purpose of making the electioneering communication, the person receiving the payment must disclose on the Electioneering Communication Disclosure Report the other person's name, address, occupation, and employer, 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 or more individuals in direct conversation unless the communications are made by telephone and at least one of the individuals is compensated for the purposes of making the telephone 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 Jose 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
City Clerk