

DRAFT

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 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; (3) 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; (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 PART 1 OF CHAPTER 12.06 OF TITLE 12 TO EXPAND THE DEFINITION OF "COMMITTEE"; (6) AMENDING SECTION 12.06.050 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO CLARIFY THE DEFINITION OF "CONTRIBUTION"; (7) AMENDING SECTION 12.06.080 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO EXPAND THE DEFINITION OF "ELECTION"; (8) AMENDING SECTION 12.06.130 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO CLARIFY THE DEFINITION OF "INDEPENDENT EXPENDITURE"; (9) AMENDING SECTION 12.06.170 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO CLARIFY THE DEFINITION OF "POLITICAL REFORM ACT"; (10)

AMENDING SECTION 12.06.260 OF PART 1 OF CHAPTER 12.06 OF TITLE 12 TO CLARIFY PROHIBITED CONTRIBUTIONS BY CARDROOMS; (11) SUSPENDING SECTIONS 12.06.310 – 12.06.330 OF PART 3 OF CHAPTER 12.06 OF TITLE 12; (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; (13) 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 may serve up to two four-year terms for a maximum of eight years.
- B. Terms of members 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 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 constitute a quorum of the commission, and the concurring vote of at least three members will be required to take any action.
- B. The votes of at least three members of the commission 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 Part 1 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 will adopt, by resolution, regulations and procedures for investigations and hearings to be conducted by the commission.
- B. The commission 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 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 will appropriate funds anticipated to be needed to fund the evaluator for a period of two 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.
- F. Except as provided in this section, the evaluator 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 will take no further action on the complaint with regard to the employee.
- G. Any city employee who is a candidate for city office will be treated as any other candidate for purposes of Chapter 12.06.
- H. 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 must not participate in investigations or reviews of complaints.

SECTION 5. 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" means any person or combination of persons who, directly or indirectly, does any of the following:

- A. Receives contributions totaling one thousand dollars (\$1,000) or more in a calendar year; or
- B. Makes independent expenditures totaling one thousand dollars (\$1,000) or more in a calendar year; or
- C. Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of a candidate or controlled committee.

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 Part 1 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" 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 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" means any regular municipal or special municipal election.

SECTION 8. Section 12.06.130 of Part 1 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.130 Independent expenditure.

"Independent expenditure" means 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.

SECTION 9. Section 12.06.170 of Part 1 of Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended to read as follows:

12.06.170 Political Reform Act.

"Political Reform Act" 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 Part 2 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. 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 independent committee receiving contributions or making expenditures in an election in the City of San Jose must file with the city clerk campaign disclosure statements in the form and at the times required by Chapter 12.06 and the Political Reform Act. The campaign disclosure statements must show the total amount of contributions accepted and expenditures made, including independent expenditures. The campaign disclosure statements may be completed on 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. The campaign disclosure statements must contain a declaration by the candidate or controlled committee treasurer that the candidate or committee has not accepted nor solicited any campaign contribution in excess of the 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 Jose must itemize 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 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. 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 Jose, 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 2 business days, copies of campaign disclosure statements filed by the committee with its regular filing official for the previous twelve 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 campaign disclosure statements must be filed with the city clerk in the form and at the times required by Chapter 12.06, the California Political Reform Act and the California Fair Political Practices 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.

- F. If any person files a campaign disclosure statement after any deadline imposed by this chapter, the city clerk must fine the person \$10.00 per day after the deadline until the statement is received. 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 Jose.

12.06.920 Duties of the city clerk.

- A. The city clerk must, five days prior to the election, prepare a report to be published in the San José Mercury News. The report should contain the total contributions and expenditures for each of the candidates and for each 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 must ensure that the report is published in the San José Mercury News two days before the election.

- B. In the event the city clerk has reason to believe a late contribution has not been reported, the clerk must notify the Elections Commission.

SECTION 13. 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.

- 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 Jose and is disseminated, broadcast, or otherwise published within 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 or San Jose, or attacks or opposes a candidate for Mayor or City Council of the City or San Jose, (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 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 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 independent committee'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 independent committee 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 independent committee receiving the payment must disclose on the Electioneering Communication Disclosure 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 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