

ORDINANCE NO. 28213

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING SECTIONS 12.04.110 AND 12.04.120 OF CHAPTER 12.04 OF TITLE 12 OF THE SAN JOSE MUNICIPAL CODE TO INCREASE THE TOTAL AMOUNT OF PENALTIES WHICH MAY BE IMPOSED BY THE SAN JOSE ELECTIONS COMMISSION; MAKING TECHNICAL CHANGES TO SECTIONS 12.06.030, 12.06.180, 12.06.290 AND 12.06.610 OF CHAPTER 12.06 AND AMENDING CHAPTER 12.06 OF TITLE 12 BY ADDING A NEW PART 10 TO SET OUT REQUIREMENTS FOR CAMPAIGN COMMUNICATIONS AND MASS MAILING DISCLOSURES AND DISCLAIMERS

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

SECTION 1. Section 12.04.110 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.04.110 Civil Penalties

- A. Civil penalties shall be imposed by resolution of the Commission.
- B. Except as otherwise specified in Title 12, the Commission may impose penalties of up to Five Thousand Dollars (\$5,000) for each violation or three times the amount which a person or respondent failed to report properly or unlawfully contributed, expended, gave or received, whichever is greater.
- C. If any civil penalty imposed by the Commission is not timely paid, the City Clerk shall refer the debt to the Director of Finance for collection.

SECTION 2. Section 12.04.120 of Chapter 12.04 of Title 12 of the San José Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.04.120 Campaign Contribution Violations

A. In determining if penalties should be imposed for violations of Chapter 12.06 and the amount of any such penalties, the commission shall consider all the relevant circumstances surrounding the case, including:

1. The severity of the violation;
2. The presence or absence of any intention to conceal, deceive, or mislead;
3. Whether the violation was deliberate, negligent or inadvertent;
4. Whether the violation was an isolated incident or pervasive enough to indicate a pattern of disregard for this Chapter;
5. Whether the respondent has a prior record of violations of City law relating to campaign finance, lobbying, conflicts of interest, or governmental ethics;
6. The degree to which the respondent cooperated with the investigation;
7. Whether or not corrective actions were taken, if appropriate, in accordance with the provisions of this Chapter.

B. A candidate or committee failing to file a late contribution report pursuant to Section 12.06.910 shall be required to pay a penalty in an amount imposed by the Commission pursuant to Section 12.04.110, but not less than one thousand dollars (\$1,000).

- C. The City Clerk or City Attorney may put persons on notice of a potential violation of the requirements of Chapter 12.06, whether or not a complaint is filed with the Commission.

SECTION 3. Section 12.06.030 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:

12.06.030 Candidate

“Candidate” shall mean an individual who:

- A. Is listed on the ballot; or
- B. Has qualified to have write-in votes on his or her behalf counted by election officials for nomination or election to any elective City office; or
- C. Has given his or her consent for any other person to receive a contribution or make an expenditure with the intention of bringing about his or her nomination for or election to any elective City office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy; or
- D. Has filed a form “Statement of Intention” to be a candidate with the City Clerk.

SECTION 4. Section 12.06.180 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:

12.06.180 Statement of Intention to be a Candidate

The form "Statement of Intention" is a written statement, filed with City Clerk in accordance with Government Code Section 85200 and regulations thereunder, declaring intention to be a candidate for a specific elective City office.

SECTION 5. Section 12.06.290 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:

12.06.290 Campaign Contribution Collection Period

- A. No person shall solicit or accept any campaign contribution or deposit any contributions for any campaign into any municipal campaign bank account except during the Campaign Contribution Period.

- B. The Campaign Contribution Period for the primary municipal election for Council or Mayor shall:
 - 1. Begin on the one hundred eightieth (180th) day before the primary municipal election.
 - 2. End at midnight on the seventeenth (17th) day prior to the primary municipal election.

- C. The Campaign Contribution Period for the run-off municipal election for Council or Mayor shall:
 - 1. Begin on the day after the primary municipal election for that office.
 - 2. End at midnight on the seventeenth (17th) day prior to a run-off municipal election for that office.

- D. Any contribution which is received outside of the Campaign Contribution Period for an election shall not be accepted or deposited but shall be returned to the contributor or donor within five (5) business days.

SECTION 6. Section 12.06.610 of Chapter 12.06 of Title 12 of the San Jose Municipal Code is hereby amended to be numbered, entitled and to read as follows:

12.06.610 Campaign Contribution Collection Period – Campaign Disclosure

- A. The Campaign Contribution Collection Periods for the special municipal election and a special municipal runoff election shall:
1. Begin on the date that the special municipal election is set by the City Council and begin the day after the special municipal election for any runoff election.
 2. End at midnight on the 7th day prior to the election and the 7th day prior to any runoff election.
- B. Each candidate and each committee shall file, as a public record with the City Clerk, cumulative itemized campaign statements completed on campaign statement forms required to be filed by the regulations of the Fair Political Practices Commission by no later than the 5th day prior to the special municipal election and the 5th day prior to any special municipal runoff election.

SECTION 7. Chapter 12.06 of Title 12 of the San José Municipal Code is hereby amended by adding a new Part 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 12 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 12 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 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 12-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.

PASSED FOR PUBLICATION of title this 18th day of December, 2007, by the following vote:

AYES: CAMPOS, CHU, CONSTANT, CORTESE, LICCARDO,
NGUYEN, OLIVERIO, PYLE, WILLIAMS; REED

NOES: NONE

ABSENT: CHIRCO

DISQUALIFIED: NONE

CHUCK REED
Mayor

ATTEST:

LEE PRICE, MMC
City Clerk