



AGENDA REPORT

SAN CLEMENTE CITY COUNCIL MEETING
Meeting Date: June 21, 2022

Agenda Item 10C

Approvals:

City Manager EB

Dept. Head _____

Attorney [Signature]

Finance [Signature]

Department: City Clerk
Prepared By: Joanne Baade, City Clerk [Signature]
Scott Smith, City Attorney

Subject: ***URGENCY ORDINANCE ENACTING LOCAL CAMPAIGN CONTRIBUTION LIMITS AND POLICY REGARDING CONTRACTOR DISCLOSURE OF POLITICAL CONTRIBUTIONS***

Fiscal Impact: Yes. If Council adopts campaign contribution limits for elective City office candidates that vary from the State's default limit (that is currently set at \$4,900 per source per election), then the City, as opposed to the Fair Political Practices Commission, would be required to enforce its contribution limits. Adding the Contractor Disclosure Form to City contracts, RFPs, and bid processes would require minimal additional staff time.

Summary: Local Contribution Limit Ordinance

AB 571 (Local Campaign Contribution Limits) was approved by the Governor on October 8, 2019 and became operative on January 1, 2021. AB 571 gave cities the discretion to either set contribution limits of their own choosing (including unlimited contribution limits) or default to the State's contribution limit. At the Council meeting of September 1, 2020, Council determined to not set a local campaign contribution limit, thereby defaulting to the State limit. The current default limit is \$4,900 per election per source, but increases every two years to account for inflation.

At its meeting of May 25, 2022, Council directed that the possibility of amending San Clemente's contribution limit be agendized for its meeting of June 7, 2022 to enable Council to consider establishing a contribution limit of \$500 per source per election. At its meeting of June 7, 2022, Council directed Staff to include a provision allowing the contribution limit to be adjusted according to the Consumer Price Index (CPI). Additionally, Council requested that contribution limits of both \$500 and \$1,000 be included in brackets in both the draft urgency ordinance and conventional ordinance to enable Council to easily choose between the two amounts.

In accordance with Council's directions, a draft urgency ordinance is attached to this report which, if adopted, would amend the City's contribution limits, allow for CPI increases in the limit and provide definitions and other technical terms to implement these limits. Adoption of this urgency ordinance would enable the campaign regulations to be in place before the November 8, 2022 General Municipal Election season begins in earnest. A back-up conventional ordinance is also recommended to stand in the event the urgency ordinance is challenged or set aside for any reason.

Below are factors that Council may wish to include in its consideration of whether or not to modify the City of San Clemente's contribution limit threshold:

- 1. The City would assume responsibility for enforcing contribution limits that vary from the State's default contribution limits.** The California Fair Political Practices Commission (FPPC) enforces contribution limits that align with the State's contribution limit. Because the City Council previously voted to default to the State's contribution limit, enforcement is currently the responsibility of the FPPC. If the City were to now adopt contribution limits that are either higher or lower than the State default limit, then the City would be responsible for enforcing its self-imposed limits. As outlined in the attached draft ordinances, enforcement would involve the retainer of a third-party attorney/investigator and could result in litigation when merited.
- 2. Campaign contribution limits would not apply to Independent Expenditures, Ballot Measure Committees or Committees Seeking an Officer's Recall.** A local campaign contribution limit can only apply to *direct* contributions made to the candidate or to the candidate's controlled committee. The United States Supreme Court, in its 2010 decision in *Citizens United v. Federal Election Commission*, held that the risk of actual or perceived "pay to play" corruption is a compelling enough governmental concern to reduce First Amendment freedoms and allow limits on direct contributions to a candidate or their controlled committee. The court further determined, however, that the risk of "pay to play" corruption is not the same for independent expenditure committees (IEC) and, hence, limiting their ability to collect and spend money for campaign purposes would violate their First Amendment rights to free speech. In sum, as long as an IEC (i) doesn't give any money directly to a candidate or the candidate's controlled committee, (ii) isn't coordinating with, or acting at the behest of, a candidate or the candidate's controlled committee, and (iii) files the required disclosure paperwork, the amounts that it collects and spends for campaign purposes cannot be limited. Likewise, such limitations may not apply to ballot measure committees or committees seeking an officer's recall because the Court found that there is not enough risk of "pay to play" corruption to justify restricting the First Amendment freedoms of these committees. The attached draft ordinances recognize these Constitutional exceptions.

The City Attorney was able to follow up on the Council's question from the last meeting about any legal constraints on the City's ability to apply different contribution limits to corporate or controlled committees, as opposed to individual contributors. The City Attorney recognized that although some agencies may so differentiate, *Citizens United* requires the City to make some factual determination about some particular, distinct need to regulate corporate or committee contributions more harshly. That case – which is really a series of plurality opinions – held that laws that burden political speech are subject to strict scrutiny under the First Amendment, which level of scrutiny requires the City to show that contribution limits further a compelling interest and are narrowly tailored to achieve that interest. Any differentiation among individual, corporate, and/or committee contributions would require similar justification. The *Citizens United* decision and many subsequent decisions upholding campaign contribution limits have recognized

elimination of political corruption (also known as “pay-to-play”) as a compelling interest. However, the *Citizens United* Court criticized bans on corporate contributions because they discriminated based on the type of “speaker.” This reasoning also suggests that federal law would disfavor a differentiation in contribution limits based on the “speaker’s” identity (individual, corporate, or committee) without some particular basis for those distinctions. Specifically, the “narrowly tailored” prong would require that the City enactment be based on some factual determination that corporate or committee contributions – as opposed to individual contributions of the same amount – are more likely to create “pay-to-play” corruption. The record for this enactment does not contain this level of substantiation for distinct limits.

Contractor Disclosure of Political Contributions

At its May 25, 2022 meeting, the Council also asked that staff prepare a report and City Policy requiring that contracts disclose, independent of state reporting requirements, political contributions to City Council candidates made during the 12 months preceding a bid or proposal. Receipt of political contributions does not disqualify local officials from making decisions relating to the source of those contributions. However, State and local campaign reporting laws require that political candidates and contributors file certain public disclosure documents in accordance with statutory timelines. These reporting deadlines may pre-date the award of contracts for public works and professional services, so it cannot be guaranteed that the public will be made aware of contractors’ contributions to Council candidates before those awards.

This Policy requires that contractors submitting bids or proposals to the City include with their bid or proposal a current disclosure of any contributions made to Councilmembers in the 12 months preceding their submittal. This will ensure that those disclosures are available to the public at the time of contract award, whether or not statutorily required disclosures have been made during that period. Staff will need to revise the City’s contract material to include this disclosure form.

Recommended Actions:

If Council desires to establish Local Campaign Contribution Limits that vary from the State’s default limits, the City Clerk recommends that Council do so through adoption of the below ordinances. If Council wishes to require disclosure of contractor political contributions, the City Clerk recommends that Council adopt Policy and Procedure No. 201-15.

1. Adopt AN URGENCY ORDINANCE OF THE CITY OF SAN CLEMENTE ADDING SECTION 2.04.100 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS, with the incorporation of campaign contribution limits of either \$500 or \$1,000 per source per election and allowing for CPI increases.

2. Introduce AN ORDINANCE OF THE CITY OF SAN CLEMENTE ADDING SECTION 2.04.100 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS, with the incorporation of campaign contribution limits of either \$500 or \$1,000 per source per election and allowing for CPI increases.
3. Adopt Policy and Procedure No. 201-15 (Disclosure of Political Contributions), effective June 21, 2022.

Attachments:

1. Draft Urgency Ordinance
2. Draft Conventional Ordinance
3. Draft Campaign Contribution Disclosure Policy

Notification: None.

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URGENCY ORDINANCE NO. _____

AN URGENCY ORDINANCE OF THE CITY OF SAN CLEMENTE ADDING SECTION 2.04.100 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS

WHEREAS, Assembly Bill No. 571 ("AB 571") imposed a default campaign contribution limit upon cities and counties effective January 1, 2021; and

WHEREAS, California Government Code Section 85702.5 permits the City of San Clemente to act by either ordinance or resolution to establish its own campaign contribution limits that differ from those described in Government Code Sections 85301 and 83124; and

WHEREAS, transparency in local elections regarding financial contributions and influence are important to promoting the election process and to ensure a fair Council election process for all candidates; and

WHEREAS, with the beginning of the 2022 election cycle there is now an urgent need to take immediate action to enact the campaign finance provisions herein so that they may be effective to govern the November 8, 2022 General Municipal Election;

WHEREAS, to protect the public safety, health, and welfare, the City Council may adopt this Urgency Ordinance to set local campaign contribution limitations and require reasonable campaign finance disclosure for City Council elections as an urgency measure in accordance with Government Code section 36937, subdivision (b) by a four-fifths vote of the City Council.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The recitals above containing a declaration of the facts constituting the need to take immediate action by urgency measure are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. CEQA. The City Council finds that the proposed amendments to the San Clemente Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. Code Amendment. Section 2.04.100 is hereby added to the San Clemente Municipal Code to read in full as follows:

CHAPTER 2.04 – CITY COUNCIL

2.04.010 – City Council Campaign Finance Limitations and Regulations.

A. Intent.

It is the intent of the City Council of the City of San Clemente in enacting this section to place realistic and Constitutionally enforceable limits on the amount which may be contributed to candidates' political campaigns in City elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, to develop a broader base of political efficacy within the community, to provide full and fair enforcement of all the provisions of this Section, and to encourage the public to participate as candidates in elections by simplifying the local regulations as much as possible in matters adequately regulated by State law. This Section is intended to supplement the Political Reform Act of 1974, as amended and in the event of a conflict between that Act and this Section, that Act shall prevail. This Section is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Section 81013 of the California Government Code.

B. Definitions.

1. "Candidate" means an individual who:

- a. is listed on the ballot;
- b. who has qualified to have write-in votes on that individual's behalf counted by election officials; or
- c. who has begun to circulate nominating petitions or authorized others to circulate nominating petitions on the individual's behalf for nomination for or election to any elective City office; or
- d. who receives a contribution or makes an expenditure or gives consent for any other person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to any elective City office, whether or not the specific elective office for which the candidate will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not the candidate has announced the candidacy or filed a declaration of candidacy at such time.

"Candidate" includes any individual running to replace an incumbent City officer who is the subject of a recall election but does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971. An individual who becomes a candidate retains status as a

candidate until such time as that status is terminated pursuant to the Political Reform Act of 1974 (Government Code Section 84214, or successor statute.

2. "City election" means any general or special election, including a vacancy or recall election held within the City for elective City office or on a City measure. Each general or special election is a separate election for purposes of this Section.

3. "City measure" means any proposition for the issuance of funding or refunding of bonds of the City, voter approval of local taxes or other revenue matters, or any other question or proposition submitted to the voters of the City at any election held throughout the entire City. "City measure" includes any measure which is submitted to a popular vote at an election by action of the City Council or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum, or recall procedure, whether or not it has qualified for the ballot.

4. "Enforcement authority" under this Section, means that special counsel appointed by the City Manager in consultation with the City Attorney pursuant to Subsection (G).

5. "Person" means any individual or entity, including without limitation a firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

Except as otherwise stated herein, the terms of this Section shall have those definitions provided in the Political Reform Act of 1974 ((Government code Section 81000, et. seq. or in the regulations adopted by the California Fair Political Practices Commission to implement the Act.

C. Campaign Finance Disclosure/Electronic Filing.

1. Each candidate and committee must file campaign statements, statements of economic interest, reports, or other documents in the time and manner required by the Political Reform Act of 1974, as amended (Government Code Section 84100, et seq.). Except as set forth herein, compliance with the requirements of the Act are deemed to be in compliance with this Section.

2. Reportable contributions shall include, without limitation, money paid, loaned, contributed, or otherwise furnished to the candidate or any committee for the use of such candidate or such committee in aid of the candidate's election, or for the qualification, passage, or defeat of any city measure. Said disclosure shall include the name of the contributing person or entity and all other information required to be disclosed by the Political Reform Act of 1974, as amended.

3. All candidates and committees required to file campaign statements, reports, or other documents as referenced herein shall do so for all campaign expenditures made, to aid or oppose, either directly or indirectly, a candidate's election or the qualification and/or passage of any city measure. Reportable expenditures shall include, without limitation, expenditures made by a candidate, candidate-controlled committee, political party or independent expenditure committee.

4. Any elected officer, candidate, committee or other person required to file campaign statements, reports or other documents required by the Political Reform Act of 1974, as amended, shall file those statements, reports or other documents in person, online or electronically with the city clerk.

5. In any instance in which an original campaign statement, report or other document must be filed with the California Secretary of State or Fair Political Practices Commission and a copy of that statement, report or other document is required to be filed with the city clerk, the filer may, but is not required to, file the copy electronically.

6. If the city clerk's electronic system is not capable of accepting a particular type of statement, report or other document, an elected officer, candidate, committee or other person shall file that document with the city clerk in an alternative format.

D. Limits on Campaign Contributions

1. No person, other than the candidate, is permitted to make to a candidate or candidate-controlled committee, and no candidate-controlled committee treasurer may solicit or accept, any campaign contribution which will cause the total amount contributed by such person with respect to a single city election to exceed [Insert either Five Hundred Dollars (\$500.00) or One Thousand Dollars (\$1,000.00).]

This contribution limit shall be reviewed and, if necessary, adjusted in January at two (2) year intervals beginning in 2024 by the City Clerk to reflect annual changes in the Consumer Price Index (CPI) over the previous two (2) year period. The City Clerk shall use the annual percent change in the Consumer Price Index for All Urban Consumers (CPI-U) in the selected local area of Los Angeles - Riverside - Orange County, CA, to determine the appropriate rate of increase, if any. The City Clerk shall compute the adjustment for each year separately, adding the adjustment for each year to the prior year's limit and then rounding the total adjusted amount to the nearest ten dollar (\$10.00) increment for the two (2) year period.

2. A candidate for elective office shall have no more than one candidate-controlled committee and one checking account into which all campaign contributions shall be deposited and out of which all expenditures shall be made.

This paragraph shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

3. A person may not make a contribution for any other person under an assumed name or under the name of any other person.

4. The limit in paragraph (1) shall not be deemed to prohibit contributions or loans from a candidate to his/her own candidate-controlled committee in accordance with State law or to limit the amount of his/her own money or property a candidate may contribute, loan to, or expend on behalf of the candidate's own campaign. Contributions by the spouse of a candidate from such spouse's separate property shall be subject to the limit set forth in paragraph (1).

5. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the qualification and/or passage of one or more city measures. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

6. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the recall of an incumbent City officer, but shall apply to all candidates and their controlled committees seeking election to replace the incumbent City officer. The disclosure requirements for all committees set forth in Subsection (C) shall apply.

7. The limit in paragraph (1) shall not apply to political contributions made to and expenditures made by an independent expenditure committee in support of or in opposition to a city measure, or in support of or opposition to the election of a candidate for city office, if the contributions and expenditures were not made at the direction or control of the candidate or his or her controlled committee. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

8. The limit in paragraph (1) shall not apply to political contributions made prior to the effective date of this Section.

9. If a candidate or the treasurer of a candidate-controlled committee is offered a contribution which would violate this limitation, the candidate or treasurer must refuse the contribution. If, however, a contribution which is in violation of this section is deposited into the campaign trust account, the candidate or treasurer must report in writing within five days of the receipt of the contribution to the City Clerk the facts surrounding such payment or contribution and, to the extent permitted by applicable law, return the contribution.

E. Suppliers of goods and services – Disclosure of records required

No person who supplies goods or services or both goods and services to a candidate or any committee for use in connection with the campaign of a candidate or for or against a city measure may refuse to divulge or disclose to the enforcement authority that person's record of any expenditures made by the candidate or committee in payment for such goods or services or both.

F. Duties of the City Clerk

In addition to other duties required of the City Clerk under the terms of this Section, the City Clerk must:

1. Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission to implement the Political Reform Act of 1974, as amended. These forms and manuals must be furnished to all candidates and committees, and to all other persons required to report;
2. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of State law and this Section;
3. Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by State law and this Section;
4. Report apparent violations of this Section and applicable State law to the enforcement authority;
5. Compile and maintain a current list of all statements or parts of statements filed with the city clerk's office pertaining to each candidate and each city measure;
6. Cooperate with the City Attorney and enforcement authority in the performance of the duties of the enforcement authority as prescribed in this Section and applicable State laws and to determine the appropriate enforcement.

G. Enforcement authority – Duties, complaints, legal actions, investigatory powers.

1. The City Attorney must not investigate or prosecute any alleged violation of this Section, but will defend the constitutionality and legality of this Section in any civil proceeding in which the City or the City Council is a party.
2. Review of complaints of violation of this Section and criminal prosecution thereof may be commenced only by the enforcement authority appointed by the City Manager. The enforcement authority is authorized to commence and prosecute civil litigation to compel compliance with this Section or to

enjoin conduct in violation of this Section. Prior to each election, the City Manager, in consultation with the City Attorney, will appoint an enforcement authority for that election. If the appointment of an additional enforcement authority becomes necessary or appropriate, the City Manager, in consultation with the City Attorney, will appoint such additional enforcement authority as may be required. No enforcement or prosecution or action of the enforcement authority is subject to the review or control of the City Council or the City Attorney. The City Council shall appropriate sufficient funds from the City's treasury to retain the services of the enforcement authority and to permit him/her to fully investigate any alleged violations of this Section and, if necessary, to take action to enforce this Section.

3. Any resident of the City who believes that a violation of this Section has occurred may file a written complaint requesting investigation of such violation by the enforcement authority. The complainant shall file the complaint with the City Clerk under penalty of perjury and include proof that the complainant is a resident of the City. Anonymous or non-resident complaints will not be reviewed and/or investigated. The complaint shall state a full recitation of all facts that are alleged to constitute a violation of this Section. If a complaint does not comply with these requirements, the City Clerk shall return the complaint to the complainant, with an explanation as to why it is insufficient for filing. Within five working days after accepting the complaint for filing, the City Clerk shall forward it to the enforcement authority.
4. The enforcement authority shall, within thirty (30) calendar days of receiving the complaint, make a determination of whether there is probable cause to believe that a violation occurred. If no probable cause is determined to exist, the complaint shall be dismissed summarily and interested parties shall be notified of the dismissal in writing.
5. If the enforcement authority determines there is probable cause to believe that a violation of this Section has occurred, the enforcement authority may refer the matter to the District Attorney for criminal prosecution or may conduct an investigation and commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this Section. No enforcement, prosecution or legal action by the enforcement authority shall be subject to the review or control of the City Council or City Attorney.
6. The enforcement authority shall not investigate or take any further action regarding any alleged violation which has been referred to the District Attorney or which is already the subject of a complaint filed with the Fair Political Practices Commission, until the investigation of that complaint is complete.

7. The enforcement authority has such investigative powers as are necessary for the performance of duties described in this Section and may demand and be furnished records of campaign contributions and expenditures of any person or committee at any time. In the event that production of such records is refused, the enforcement authority may commence litigation to complete such production.
8. The enforcement authority is immune to liability for its enforcement of this Section.
9. Any action alleging violation of this Section must be commenced within two years of the time the alleged violation occurred.

H. Penalties

1. Any person who knowingly or willfully violates any provisions of this Section is guilty of a misdemeanor.
2. If any person is found to have violated Subsection (D), whether by civil, criminal or administrative enforcement action, the amount of funds received constituting such violation shall be paid by the candidate or committee that received such funds to the City Manager for deposit into the City's general fund. If any person is found to have violated any other sub-chapter of this Section, the fine imposed in connection with such violation shall be in the amount of \$250.00 for the first 30 days after said violation, \$500.00 for the next 30 days after said violation and \$1,000.00 for any period in excess of 60 days following said violation, and shall be paid to the City Manager for deposit into the City's general fund.
3. If any candidate is convicted of a violation of any provision of this Section by a court of competent jurisdiction, the court shall be authorized, to the maximum extent allowed by State law, to declare the candidate's election void or, if the candidate has already assumed office, to remove the candidate from office and declare such office vacant, to be filled in accordance with applicable State law. The Court shall also be authorized to declare the candidate/officer ineligible to hold any City office, up to the maximum amount of time allowed by State law for the offense.

I. Rules of Construction

This Section will be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any person in any procedure taken under this Section which does not directly affect the jurisdiction of the City to control campaign contributions and expenditures voids the effect of this Section."

SECTION 4. Publication. The City Clerk shall certify to the adoption of this Urgency Ordinance and cause it, or a summary of it, to be published once within 15 days of

adoption in a newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this Urgency Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

SECTION 5. Records. The documents and materials associated with this Urgency Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 910 Calle Negocio, San Clemente, CA 92673.

SECTION 6. Severability. If any provision of this Urgency Ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Urgency Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this Urgency Ordinance irrespective of the invalidity of any portion thereof.

SECTION 7. Effective Date. This Urgency Ordinance shall become effective immediately upon its adoption.

APPROVED AND ADOPTED this ____ day of _____, 2022.

Gene James, Mayor

ATTEST:

Laura Campagnolo, Legislative Administrator

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, Laura Campagnolo, Legislative Administrator of the City of San Clemente, California, hereby certify that Urgency Ordinance No. _____, the reading in full thereof unanimously waived, was duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this _____ day of _____, _____.

LEGISLATIVE ADMINISTRATOR
of the City of San Clemente,
California

APPROVED AS TO FORM:

CITY ATTORNEY

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF SAN CLEMENTE ADDING SECTION 2.04.100 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE SAN CLEMENTE MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS

WHEREAS, Assembly Bill No. 571 ("AB 571") imposed a default campaign contribution limit upon cities and counties effective January 1, 2021; and

WHEREAS, California Government Code Section 85702.5 permits the City of San Clemente to act by either ordinance or resolution to establish its own campaign contribution limits that differ from those described in Government Code Sections 85301 and 83124; and

WHEREAS, transparency in local elections regarding financial contributions and influence are important to promoting the election process and to ensure a fair Council election process for all candidates; and

WHEREAS, with the beginning of the 2022 election cycle it is necessary to enact the campaign finance provisions herein so that they may be effective to govern the November 8, 2022 General Municipal Election; and

WHEREAS, in adopting this Ordinance, is the City Council's intention to promote transparency and ensure a fair election process by setting local campaign contribution limitations and requiring reasonable campaign finance disclosure for City Council elections; and

WHEREAS, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN CLEMENTE DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council as if fully set forth herein.

SECTION 2. CEQA. The City Council finds that the proposed amendments to the San Clemente Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. Code Amendment. Section 2.04.100 is hereby added to the San Clemente Municipal Code to read in full as follows:

CHAPTER 2.04 – CITY COUNCIL

2.04.010 – City Council Campaign Finance Limitations and Regulations.

A. Intent.

It is the intent of the City Council of the City of San Clemente in enacting this section to place realistic and Constitutionally enforceable limits on the amount which may be contributed to candidates' political campaigns in City elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, to develop a broader base of political efficacy within the community, to provide full and fair enforcement of all the provisions of this Section, and to encourage the public to participate as candidates in elections by simplifying the local regulations as much as possible in matters adequately regulated by State law. This Section is intended to supplement the Political Reform Act of 1974, as amended and in the event of a conflict between that Act and this Section, that Act shall prevail. This Section is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Section 81013 of the California Government Code.

B. Definitions.

1. "Candidate" means an individual who:

- a. is listed on the ballot;
- b. who has qualified to have write-in votes on that individual's behalf counted by election officials; or
- c. who has begun to circulate nominating petitions or authorized others to circulate nominating petitions on the individual's behalf for nomination for or election to any elective City office; or
- d. who receives a contribution or makes an expenditure or gives consent for any other person to receive a contribution or make an expenditure with a view to bringing about the individual's nomination or election to any elective City office, whether or not the specific elective office for which the candidate will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not the candidate has announced the candidacy or filed a declaration of candidacy at such time.

"Candidate" includes any individual running to replace an incumbent City officer who is the subject of a recall election but does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971. An individual who becomes a candidate retains status as a

candidate until such time as that status is terminated pursuant to the Political Reform Act of 1974 (Government Code Section 84214, or successor statute).

2. "City election" means any general or special election, including a vacancy or recall election held within the City for elective City office or on a City measure. Each general or special election is a separate election for purposes of this Section.
3. "City measure" means any proposition for the issuance of funding or refunding of bonds of the City, voter approval of local taxes or other revenue matters, or any other question or proposition submitted to the voters of the City at any election held throughout the entire City. "City measure" includes any measure which is submitted to a popular vote at an election by action of the City Council or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum, or recall procedure, whether or not it has qualified for the ballot.
4. "Enforcement authority" under this Section, means that special counsel appointed by the City Manager in consultation with the City Attorney pursuant to Subsection (G).
5. "Person" means any individual or entity, including without limitation a firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

Except as otherwise stated herein, the terms of this Section shall have those definitions provided in the Political Reform Act of 1974 ((Government code Section 81000, et. seq. or in the regulations adopted by the California Fair Political Practices Commission to implement the Act.

C. Campaign Finance Disclosure/Electronic Filing.

1. Each candidate and committee must file campaign statements, statements of economic interest, reports, or other documents in the time and manner required by the Political Reform Act of 1974, as amended (Government Code Section 84100, et seq.). Except as set forth herein, compliance with the requirements of the Act are deemed to be in compliance with this Section.
2. Reportable contributions shall include, without limitation, money paid, loaned, contributed, or otherwise furnished to the candidate or any committee for the use of such candidate or such committee in aid of the candidate's election, or for the qualification, passage, or defeat of any city measure. Said disclosure shall include the name of the contributing person or entity and all other information required to be disclosed by the Political Reform Act of 1974, as amended.

3. All candidates and committees required to file campaign statements, reports, or other documents as referenced herein shall do so for all campaign expenditures made, to aid or oppose, either directly or indirectly, a candidate's election or the qualification and/or passage of any city measure. Reportable expenditures shall include, without limitation, expenditures made by a candidate, candidate-controlled committee, political party or independent expenditure committee.

4. Any elected officer, candidate, committee or other person required to file campaign statements, reports or other documents required by the Political Reform Act of 1974, as amended, shall file those statements, reports or other documents in person, online or electronically with the city clerk.

5. In any instance in which an original campaign statement, report or other document must be filed with the California Secretary of State or Fair Political Practices Commission and a copy of that statement, report or other document is required to be filed with the city clerk, the filer may, but is not required to, file the copy electronically.

6. If the city clerk's electronic system is not capable of accepting a particular type of statement, report or other document, an elected officer, candidate, committee or other person shall file that document with the city clerk in an alternative format.

D. Limits on Campaign Contributions

1. No person, other than the candidate, is permitted to make to a candidate or candidate-controlled committee, and no candidate-controlled committee treasurer may solicit or accept, any campaign contribution which will cause the total amount contributed by such person with respect to a single city election to exceed [Insert either Five Hundred Dollars (\$500.00) or One Thousand Dollars (\$1,000.00).]

This contribution limit shall be reviewed and, if necessary, adjusted in January at two (2) year intervals beginning in 2024 by the City Clerk to reflect annual changes in the Consumer Price Index (CPI) over the previous two (2) year period. The City Clerk shall use the annual percent change in the Consumer Price Index for All Urban Consumers (CPI-U) in the selected local area of Los Angeles - Riverside - Orange County, CA, to determine the appropriate rate of increase, if any. The City Clerk shall compute the adjustment for each year separately, adding the adjustment for each year to the prior year's limit and then rounding the total adjusted amount to the nearest ten dollar (\$10.00) increment for the two (2) year period.

2. A candidate for elective office shall have no more than one candidate-controlled committee and one checking account into which all campaign contributions shall be deposited and out of which all expenditures shall be made.

This paragraph shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

3. A person may not make a contribution for any other person under an assumed name or under the name of any other person.

4. The limit in paragraph (1) shall not be deemed to prohibit contributions or loans from a candidate to his/her own candidate-controlled committee in accordance with State law or to limit the amount of his/her own money or property a candidate may contribute, loan to, or expend on behalf of the candidate's own campaign. Contributions by the spouse of a candidate from such spouse's separate property shall be subject to the limit set forth in paragraph (1).

5. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the qualification and/or passage of one or more city measures. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

6. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the recall of an incumbent City officer, but shall apply to all candidates and their controlled committees seeking election to replace the incumbent City officer. The disclosure requirements for all committees set forth in Subsection (C) shall apply.

7. The limit in paragraph (1) shall not apply to political contributions made to and expenditures made by an independent expenditure committee in support of or in opposition to a city measure, or in support of or opposition to the election of a candidate for city office, if the contributions and expenditures were not made at the direction or control of the candidate or his or her controlled committee. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

8. The limit in paragraph (1) shall not apply to political contributions made prior to the effective date of this Section.

9. If a candidate or the treasurer of a candidate-controlled committee is offered a contribution which would violate this limitation, the candidate or treasurer must refuse the contribution. If, however, a contribution which is in violation of this section is deposited into the campaign trust account, the candidate or treasurer must report in writing within five days of the receipt of the contribution to the City Clerk the facts surrounding such payment or contribution and, to the extent permitted by applicable law, return the contribution.

E. Suppliers of goods and services – Disclosure of records required

No person who supplies goods or services or both goods and services to a candidate or any committee for use in connection with the campaign of a candidate or for or against a city measure may refuse to divulge or disclose to the enforcement authority that person's record of any expenditures made by the candidate or committee in payment for such goods or services or both.

F. Duties of the City Clerk

In addition to other duties required of the City Clerk under the terms of this Section, the City Clerk must:

1. Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission to implement the Political Reform Act of 1974, as amended. These forms and manuals must be furnished to all candidates and committees, and to all other persons required to report;
2. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of State law and this Section;
3. Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by State law and this Section;
4. Report apparent violations of this Section and applicable State law to the enforcement authority;
5. Compile and maintain a current list of all statements or parts of statements filed with the city clerk's office pertaining to each candidate and each city measure;
6. Cooperate with the City Attorney and enforcement authority in the performance of the duties of the enforcement authority as prescribed in this Section and applicable State laws and to determine the appropriate enforcement.

G. Enforcement authority – Duties, complaints, legal actions, investigatory powers.

1. The City Attorney must not investigate or prosecute any alleged violation of this Section, but will defend the constitutionality and legality of this Section in any civil proceeding in which the City or the City Council is a party.
2. Review of complaints of violation of this Section and criminal prosecution thereof may be commenced only by the enforcement authority appointed by the City Manager. The enforcement authority is authorized to commence and prosecute civil litigation to compel compliance with this Section or to

enjoin conduct in violation of this Section. Prior to each election, the City Manager, in consultation with the City Attorney, will appoint an enforcement authority for that election. If the appointment of an additional enforcement authority becomes necessary or appropriate, the City Manager, in consultation with the City Attorney, will appoint such additional enforcement authority as may be required. No enforcement or prosecution or action of the enforcement authority is subject to the review or control of the City Council or the City Attorney. The City Council shall appropriate sufficient funds from the City's treasury to retain the services of the enforcement authority and to permit him/her to fully investigate any alleged violations of this Section and, if necessary, to take action to enforce this Section.

3. Any resident of the City who believes that a violation of this Section has occurred may file a written complaint requesting investigation of such violation by the enforcement authority. The complainant shall file the complaint with the City Clerk under penalty of perjury and include proof that the complainant is a resident of the City. Anonymous or non-resident complaints will not be reviewed and/or investigated. The complaint shall state a full recitation of all facts that are alleged to constitute a violation of this Section. If a complaint does not comply with these requirements, the City Clerk shall return the complaint to the complainant, with an explanation as to why it is insufficient for filing. Within five working days after accepting the complaint for filing, the City Clerk shall forward it to the enforcement authority.
4. The enforcement authority shall, within thirty (30) calendar days of receiving the complaint, make a determination of whether there is probable cause to believe that a violation occurred. If no probable cause is determined to exist, the complaint shall be dismissed summarily and interested parties shall be notified of the dismissal in writing.
5. If the enforcement authority determines there is probable cause to believe that a violation of this Section has occurred, the enforcement authority may refer the matter to the District Attorney for criminal prosecution or may conduct an investigation and commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this Section. No enforcement, prosecution or legal action by the enforcement authority shall be subject to the review or control of the City Council or City Attorney.
6. The enforcement authority shall not investigate or take any further action regarding any alleged violation which has been referred to the District Attorney or which is already the subject of a complaint filed with the Fair Political Practices Commission, until the investigation of that complaint is complete.

7. The enforcement authority has such investigative powers as are necessary for the performance of duties described in this Section and may demand and be furnished records of campaign contributions and expenditures of any person or committee at any time. In the event that production of such records is refused, the enforcement authority may commence litigation to complete such production.
8. The enforcement authority is immune to liability for its enforcement of this Section.
9. Any action alleging violation of this Section must be commenced within two years of the time the alleged violation occurred.

H. Penalties

1. Any person who knowingly or willfully violates any provisions of this Section is guilty of a misdemeanor.
2. If any person is found to have violated Subsection (D), whether by civil, criminal or administrative enforcement action, the amount of funds received constituting such violation shall be paid by the candidate or committee that received such funds to the City Manager for deposit into the City's general fund. If any person is found to have violated any other sub-chapter of this Section, the fine imposed in connection with such violation shall be in the amount of \$250.00 for the first 30 days after said violation, \$500.00 for the next 30 days after said violation and \$1,000.00 for any period in excess of 60 days following said violation, and shall be paid to the City Manager for deposit into the City's general fund.
3. If any candidate is convicted of a violation of any provision of this Section by a court of competent jurisdiction, the court shall be authorized, to the maximum extent allowed by State law, to declare the candidate's election void or, if the candidate has already assumed office, to remove the candidate from office and declare such office vacant, to be filled in accordance with applicable State law. The Court shall also be authorized to declare the candidate/officer ineligible to hold any City office, up to the maximum amount of time allowed by State law for the offense.

I. Rules of Construction

This Section will be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any person in any procedure taken under this Section which does not directly affect the jurisdiction of the City to control campaign contributions and expenditures voids the effect of this Section."

SECTION 4. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a

newspaper of general circulation printed and published within the City of San Clemente, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

SECTION 5. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at City Hall, 910 Calle Negocio, San Clemente, CA 92673.

SECTION 6. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

SECTION 7. Effective Date. This Ordinance shall become effective 30 days after its adoption.

APPROVED AND ADOPTED this ____ day of _____, 2022.

Gene James, Mayor

STATE OF CALIFORNIA)
COUNTY OF ORANGE) ss.
CITY OF SAN CLEMENTE)

I, Laura Campagnolo, Legislative Administrator of the City of San Clemente, California, hereby certify that Ordinance No. _____ having been regularly introduced at the meeting of _____, was again introduced, the reading in full thereof unanimously waived, and duly passed and adopted at a regular meeting of the City Council held on the ____ day of _____, _____, and said ordinance was adopted by the following vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of the City of San Clemente, California, this ____ day of _____, _____.

POLICY AND PROCEDURE

Subject: Disclosure of Political Contributions	Index: City Council
	Number: 201-15
Effective Date: June 21, 2022	Prepared by: City Attorney
	Approved by:

1.0 PURPOSE:

Receipt of political contributions does not disqualify local officials from making decisions relating to the source of those contributions. However, State and local campaign reporting laws require that political candidates and contributors file certain public disclosure documents in accordance with statutory timelines. These reporting deadlines may pre-date the award of contracts for public works and professional services, so it cannot be guaranteed that the public will be made aware of contractors' contributions to Council candidates before those awards.

This Policy requires that contractors submitting bids or proposals to the City include with that bid or proposal a current disclosure of any contributions made to Councilmembers in the 12 months preceding that submittal. This will ensure that those disclosures are available to the public at the time of contract award, whether or not statutorily required disclosures have been made during that period.

2.0 ORGANIZATIONS AFFECTED:

All departments and contractors

3.0 POLICY:

All bids or proposals for services submitted to the City shall include a written disclosure to the City declaring any political contributions of money, in-kind services, or loans made to any member of the City Council within the 12 months preceding the submittal. Contractors shall submit the disclosure prior to the contract being approved, renewed or extended by the City.

4.0 PROCEDURE:

It shall be the responsibility of staff drafting requests for bids or proposals to include in said request a disclosure statement form in substantially the form attached hereto. Said disclosure form shall be available for public inspection prior to contract award, renewal or extension of the contract or shall be contained in the

recommendation for such action when presented to the City Council. Bids or proposals lacking said disclosure shall be deemed incomplete.

CITY OF SAN CLEMENTE

DECLARATION OF POLITICAL CONTRIBUTIONS

Using the space provided below, please list any political contributions of money, in-kind services, or loans made to any member of the City Council within the last twelve (12) months by Contractor and all of Contractor's employees, including any employee(s) that applicant intends to assign to perform the work or services described in this Agreement:

To the best of my knowledge, I declare under penalty of perjury that the foregoing is true and was executed at:

City/County/State

Date

Name of Contractor

Print Name

Signature

NOTE: THIS DECLARATION IS INCLUDED AS PART OF THE AGREEMENT AND MUST BE SIGNED AND ATTACHED HERETO.