

ORDINANCE NO.

AN ORDINANCE AMENDING CHAPTER 2-2 OF THE CITY CODE RELATING TO CONTRIBUTIONS AND EXPENDITURES IN CITY ELECTIONS; AND CREATING A PENALTY.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. City Code Section 2-2-2 (*Definitions*), Subsection (5) is amended to read:

§ 2-2-2 DEFINITIONS.

(5) CANDIDATE means:

- (a) a candidate for mayor or city council; ~~[of the City. All references to CANDIDATE shall include the]~~
- (b) a candidate's ~~[principal]~~ campaign committee~~[, whether or not the candidate acts as treasurer for reporting purposes]; and~~
- (c) related to Article 4 (*Independent Expenditures*), a person who has, or has had during an election or runoff election, authority to act on behalf of the candidate or candidate's campaign.

PART 2. City Code Section 2-2-5 (*Penal Provisions*) is amended to read:

§ 2-2-5 OFFENSES AND PENALTY ~~[PENAL PROVISIONS]~~.

- (A) Except as provided in Subsection (B), a person who knowingly violates this chapter or a provision of City Charter Article III, Section 8 (*Limits on Campaign Contributions and Expenditures*) commits a Class C misdemeanor punishable in accordance with Section 1-1-99 (*Offenses; General Penalty*) by a fine not to exceed \$500. Each expenditure, contribution or other action in violation of this chapter constitutes a separate offense.
- (B) This section does not apply to Article 2 (*Voluntary Limitations on Contributions and Expenditures*), except as otherwise specifically provided in that article.
- (C) The remedies authorized under this chapter are cumulative of other remedies available under state and federal law. ~~[All criminal offenses described in this~~

chapter shall be punishable as Class C misdemeanors under the City's authority as a home rule city under the laws of Texas.]

PART 3. City Code Chapter 2-2, Article 2 (*Voluntary Limitations on Contributions and Expenditures*), Sections 2-2-6 to 2-2-12 is renumbered as Sections 2-2-11 to 2-2-17.

PART 4. City Code Chapter 2-2, Article 3 (*Disclosures and Filing Procedures for Contribution and Expenditure Reports*), Sections 2-2-13 to 2-2-19 is renumbered as Sections 2-2-21 to 2-2-27.

PART 5. City Code Chapter 2-2, Article 4 (*Independent Expenditures*), Sections 2-2-20 to 2-2-21 is renumbered as Sections 2-2-31 to 2-2-32.

PART 6. City Code Chapter 2-2, Article 5 (*Officeholder Accounts*), Sections 2-2-22 to 2-2-26 is renumbered as Sections 2-2-41 to 2-2-45.

PART 7. City Code Chapter 2-2, Article 6 (*Miscellaneous*), Sections 2-2-27 to 2-2-30 is renamed as *Restrictions on Contributions* and renumbered as Sections 2-2-51 to 2-2-54.

PART 8. City Code Chapter 2-2, Article 7 (*Austin Fair Campaign Finance Fund*), Sections 2-2-31 to 2-2-35 is renumbered as Sections 2-2-61 to 2-2-65.

PART 9. City Code Chapter 2-2, Article 1 (*General Provisions*) is amended to add a new Section 2-2-6 to read:

§ 2-2-6 CANDIDATE GUIDE.

(A) The city clerk shall prepare a candidate guide to current city election provisions, including:

- (1) the City Charter, Article III, Section 8 (*Limits on Campaign Contributions and Expenditures*);
- (2) City Code Chapter 2-2 (*Campaign Finance*);
- (3) copies of reporting forms required by state law;
- (4) copies of reporting and disclosure forms required by this chapter.

(B) The city clerk shall make the candidate guide available cost-free in hard copy at least six months before a City election. The city clerk may also make the guide available online in an electronic format that is readily reproduceable.

PART 10. City Code Subsection 2-2-11(D) (formerly Subsection 2-2-6(D)) (*Voluntary Campaign Contract*) is amended to read:

1 **§ 2-2-11 [2-2-6] VOLUNTARY CAMPAIGN CONTRACT.**

2 (D) Only candidates who enter into campaign contracts with the City will be able
3 to qualify for matching public funds from the Austin Fair Campaign Finance
4 Fund under Article 7 of this Chapter (Austin Fair Campaign Finance Fund)
5 [~~Sections 2-2-31 (Establishment) through 2-2-35 (Other Consideration For~~
6 ~~Campaign Contract)~~].

7 **PART 11.** City Code Subsection 2-2-13(E) (formerly Subsection 2-2-8(E)) (*Candidates'*
8 *Contribution Limits*) is amended to read:

9 **§ 2-2-13 [2-2-8] CANDIDATES' CONTRIBUTION LIMITS.**

10 (E) Notwithstanding the contribution limits set out in this section, a candidate for
11 mayor or city council may contribute to his or her own campaign any amounts
12 up to the applicable five percent expenditure limits set out in Section 2-2-12
13 [~~2-2-7~~] (*Candidates' Expenditure Limitations*).

14 **PART 12.** City Code Subsection 2-2-16(B) (formerly Subsection 2-2-11(B)) (*Other*
15 *Enforcement and Sanctions*) is amended to read:

16 **§ 2-2-16 [2-2-11] OTHER ENFORCEMENT AND SANCTIONS.**

17 (B) This article shall be enforceable as a matter of contract law in the courts of the
18 state of Texas. Except for a violation of the required notice provisions of
19 Section 2-2-14 [2-2-9] (*Disclosure of Compliance with Chapter*), this article is
20 not intended to create criminal liability.

21 **PART 13.** City Code Subsection 2-2-21(A) (formerly Subsection 2-2-13(A)) (*Additional*
22 *Information Required on all Contribution and Expenditure Reports Filed with the City*),
23 is amended to read:

24 **§ 2-2-21 [2-2-13] ADDITIONAL INFORMATION REQUIRED ON ALL**
25 **CONTRIBUTION AND EXPENDITURE REPORTS FILED WITH**
26 **THE CITY.**

27 In addition to the information required under the Texas Election Code, contribution
28 and expenditure reports filed with the City by candidates, office holders and political
29 committees involved in City elections shall include the following information:

30
31 (A) for all individual contributions of \$200 [~~\$250~~] or more in a reporting period,
32 disclosure of the occupation of the contributor and the name of the
33 contributor's employer;

PART 14. City Code Section 2-2-22 (formerly Section 2-2-14) (*Fundraising and Bundling by Intermediaries*) is amended to read:

§ 2-2-22 [2-2-14] FUNDRAISING AND BUNDLING BY INTERMEDIARIES.

Candidates and officeholders shall include in their contribution and expenditure reports the name and address of any person who solicits and obtains contributions on their behalf, during a reporting period, of \$200 [~~\$100~~] or more per person from five or more individuals. This disclosure requirement shall not apply to individuals who raise funds in an aggregate amount of \$5,000 or less for a candidate or officeholder through a fundraising event in that individual's residence.

PART 15. City Code Subsection 2-2-24(B) (formerly Section 2-2-16(B)) (*Returned Contributions*) is amended to read:

§ 2-2-24 [2-2-16] RETURNED CONTRIBUTIONS.

In returning a contribution, a candidate, officeholder or candidate's committee shall comply with the following requirements:

- (B) copies of returned checks, refund checks and any related correspondence must be retained by the campaign treasurer in accordance with Section 2-2-28 [~~2-2-30~~] (*Retention of Records*); and

PART 16. City Code Chapter 2-2, Article 3 (*Disclosures and Filing Procedures for Contribution and Expenditure Reports*) is amended to repeal Section 2-2-27 (formerly Section 2-2-19) (*Offense*) and add a new Section 2-2-27 to read:

§ 2-2-27 DISCLOSURE OF LOANS FROM A CANDIDATE OR OFFICEHOLDER AND EXPENDITURES FROM THE FUNDS OF A CANDIDATE OR OFFICEHOLDER.

If a candidate for City office or an officeholder loans personal funds to his or her campaign or makes expenditures from personal funds in support of his or her campaign, the amount so loaned or expended shall be reported as follows:

- (A) Beginning on the date an individual becomes a candidate in a city election and continuing until midnight on the tenth day before a city election, a candidate shall report all such new loans or expenditures cumulating to \$25,000 or more within seven business days after the total reaches \$25,000. Thereafter additional loans or expenditures cumulating \$25,000 or more shall also be reported within seven business days each time the total reaches \$25,000.

1 (B) During the period beginning at midnight on the 10th day before a City election
2 and continuing until midnight on the day before the election, a candidate shall
3 report all such previously unreported loans or expenditures cumulating to
4 \$25,000 or more within twenty-four hours after the total reaches \$25,000.
5 Thereafter, additional loans or expenditures totaling \$25,000 or more shall also
6 be reported within twenty-four hours each time the total reaches \$25,000.

7 (C) Reports to the city clerk required by this section shall be filed electronically on
8 forms to be developed and made available by the city clerk. Upon receipt of a
9 report filed under this section, the city clerk shall post it on the city clerk's
10 campaign finance report website within one business day.

11 **PART 17.** City Code Section 2-2-32 (formerly Section 2-2-21) (*Special Reporting of*
12 *Expenditures Not by a Candidate*) is amended to read:

13 **§ 2-2-32 [~~2-2-21~~] SPECIAL REPORTING OF EXPENDITURES NOT BY A**
14 **CANDIDATE.**

15 (A) Seven day disclosure report.

16 (1) Every person other than a candidate or a candidate's committee who
17 makes an expenditure or expenditures in an aggregate amount exceeding
18 \$500 [~~\$2,500~~] during any calendar year for the purpose of promoting the
19 election or defeat of any candidate or candidates in a city election shall
20 file a report with the city clerk within seven business days after making
21 such independent expenditure or expenditures, on a form prescribed by
22 the city clerk, a report stating the name and address of the individual or
23 political committee making the expenditures; the name(s) of each
24 candidate or candidates whose election or defeat the expenditure
25 advocates; the name(s) and street addresses of the person or persons to
26 whom the expenditure or expenditures were made; and the total amount,
27 purpose and date of each expenditure and whether the expenditure was
28 an independent expenditure under this chapter.

29 (2) A [~~In addition, any~~] person making an [~~such~~] independent expenditure or
30 expenditures shall simultaneously file with the city clerk a sworn
31 statement that the expenditure or expenditures were made without the
32 prior consent of the affected candidate or candidates, and without
33 strategic communication.

34 (3) A person required to file a report with the city clerk under § 2-2-32(A)
35 shall simultaneously mail or deliver a copy of the report to every

1 candidate whose election or defeat is promoted by the independent
2 expenditure.

3 (B) Twenty-four hour reports.

4 (1) Beginning on the tenth day before an election and ending at 5:00 p.m. on
5 the day before election day, individuals or political committees making
6 independent expenditures that singly or in the aggregate exceed \$500
7 [\$2,500] shall report the expenditures within 24 hours ~~[by telecopy or by~~
8 ~~hand delivery]~~ to the city clerk. The report must include the name and
9 address of the individual or political committee making the
10 expenditures; the name(s) of each candidate or candidates whose
11 election or defeat the expenditure advocates; the name(s) and street
12 addresses of the person or persons to whom the expenditure or
13 expenditures were made; and the total amount, purpose and date of each
14 expenditure and whether the expenditure was an independent
15 expenditure.

16 (2) A person making an independent expenditure or expenditures shall
17 simultaneously file a sworn statement with the city clerk that the
18 expenditure or expenditures were made without the prior consent of the
19 affected candidate or candidates, and without strategic communication.

20 (3) A person required to file a report with the city clerk under § 2-2-
21 32(B)(1) shall simultaneously mail or deliver a copy of the report to
22 every candidate whose election or defeat is promoted by the independent
23 expenditure.

24 (C) Reports to the City Clerk. Reports to the city clerk required by this section
25 shall be filed electronically on forms to be developed and made available by
26 the city clerk. Upon receipt of a report filed under this section, the city clerk
27 shall post it on the city clerk's campaign finance report website within one
28 business day. [Penalty. Any person other than a candidate or candidate's
29 committee who fails to report an independent expenditure or who reports an
30 expenditure as "independent" which is not an "independent expenditure" shall
31 have committed a violation. The unlawful expenditure shall be deemed a
32 contribution. A knowing violation of this section is an offense.]

33 **PART 18.** City Code Subsection 2-2-42(E) (formerly Subsection 2-2-23(E))
34 (*Acceptance of Contributions to Officeholder Accounts*) is amended to read:

35 **§ 2-2-42 [2-2-23] ACCEPTANCE OF CONTRIBUTIONS TO OFFICEHOLDER**
36 **ACCOUNTS.**

- 1 (E) During the 180 ~~[270]~~ days before a City election for an officeholder's
2 position, an incumbent officeholder may accept contributions for campaign
3 or officeholder purposes; provided that an officeholder who has been in
4 office at least one year may accept contributions under this division prior to
5 the 180-day ~~[270-day]~~ period if another candidate has on file with the city
6 clerk a designation of campaign treasurer as a candidate for that office.

7 **PART 19.** City Code Section 2-2-52 (formerly Section 2-2-28) (*Restriction on*
8 *Contributions at City Hall or Council Chambers*) is amended to read:

9 **§ 2-2-52 [2-2-28] RESTRICTION ON CONTRIBUTIONS AT CITY-OWNED**
10 **BUILDINGS OR FACILITIES ~~[CITY HALL OR COUNCIL~~**
11 **~~CHAMBERS]~~.**

- 12 (A) Except as provided in Subsection (B), a [No] person shall not make a
13 contribution to a candidate or officeholder and a [no] candidate or
14 officeholder shall not solicit or accept a contribution at a City-owned
15 building or facility, except at a City-owned building or facility that is
16 available for rental to the general public and that is rented for a campaign
17 related event at the time the contribution is made. [in the City Hall located at
18 124 West Eight Street, city council chambers, or other structures designated
19 by the city council as City Hall or city council chambers.]
- 20 (B) This section does not prohibit [restriction shall not apply to acceptance of]
21 contributions mailed to a candidate or officeholder [officeholders] at a City
22 mailing address. [A knowing violation of this section is an offense.]

23 **PART 20.** City Code Section 2-2-54 (formerly Section 2-2-30) (*Retention of Records*) is
24 renumbered as Section 2-2-28 and amended to read:

25 **§ 2-2-28 [2-2-30] RETENTION OF RECORDS.**

26 A candidate or officeholder subject to this chapter must maintain copies of checks,
27 bank statements and deposit slips for a period of five years after the close of the reporting
28 period to which such records are applicable. These records must be made available to the
29 Ethics Review Commission ~~[of the City]~~, upon request within the five year retention
30 period. ~~[A knowing violation of this section is an offense.]~~

31 **PART 21.** City Code Chapter 2-2, Article 6 (*Restrictions on Contributions*) is amended
32 to add a new Section 2-2-54 to read:

33 **§ 2-2-54 RESTRICTIONS ON CONTRIBUTIONS TO AND EXPENDITURES**
34 **BY SPECIFIC-PURPOSE POLITICAL COMMITTEE.**

(A) Except as provided in Subsections (C), a specific-purpose political committee supporting or opposing a candidate in a city election may not:

(1) accept a contribution in excess of the contribution limit established in City Charter Article III, Section 8(A)(1) (*Limits on Campaign Contributions and Expenditures*); or

(2) accept an aggregate contribution total in excess of the amount set by City Charter Article III, Section 8(A)(3) (*Limits on Campaign Contributions and Expenditures*) from sources other than natural persons eligible to vote in a postal zip code completely or partially within the Austin city limits.

(B) A specific-purpose political committee supporting or opposing a candidate in a City election that receives a contribution prohibited by Subsection (A) may not accept the contribution and must refuse and return the contribution not later than the end of the reporting period during which the contribution is received. If a specific-purpose political committee subject to this section has received an aggregate contribution total in excess of the amount set by Subsection (A)(2), it may not make an expenditure in a City election until it has returned the contributions in excess of the allowed amount.

(C) This subsection does not limit a specific-purpose political committee's aggregate contribution total from natural persons eligible to vote in a postal zip code completely or partially within the Austin city limits.

PART 22. City Code Chapter 2-2, Article 6 (*Restrictions on Contributions*) is amended to add a new Section 2-2-55 to read:

**§ 2-2-55 RESTRICTIONS ON USE OF EXISTING FUNDS FROM
POLITICAL COMMITTEES, CANDIDATES, AND
OFFICEHOLDERS.**

(A) Except as provided in Subsections (B), a City election candidate may not use a political contribution to make a campaign expenditure for City office if the contribution was accepted while the candidate:

(1) was a candidate for an office other than a City office; or

(2) held an office other than a City office, unless the person had become a candidate for city office.

(B) This section does not apply to a contribution raised in compliance with the timing, dollar amount and source restriction in this Chapter and City Charter,

Article III, Section 8 (*Limits on Campaign Contributions and Expenditures*),
calculated on a last-in, first-out basis, which means that the last funds received
are eligible for consideration for campaign expenditures.

PART 23. City Code Chapter 2-2, Article 6 (*Restrictions on Contributions*) is amended
to add a new Section 2-2-56 to read:

§ 2-2-56 RESTRICTIONS ON CREATION OF CAMPAIGN COMMITTEE.

A candidate may only authorize one campaign committee.

PART 24. City Code Section 2-2-45 (formerly Section 2-2-26) (*Offense*) is repealed.

PART 25. City Code Subsection 2-2-53(C) (formerly Subsection 2-2-29 (C))
(*Restrictions on Contributions by Lobbyists*) is repealed.

PART 26. This ordinance takes effect on _____, 2008.

PASSED AND APPROVED

_____, 2008 §
 §
 §
_____, 2008 §

Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Gentry
City Clerk