

ORDINANCE NO. _____

AN ORDINANCE AMENDING CITY CODE CHAPTER 2-2 RELATING TO CAMPAIGN FINANCE; AND CREATING AN OFFENSE.

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

PART 1. City Code Section 2-2-1 (*Declaration of Policy and Legislative Findings*) is amended to add a new Subsection (H) and to renumber the remaining subsections accordingly:

(H) The public should have timely access to accurate information regarding the sources of funding for direct campaign expenditures in City elections in order to enable voters to make informed decisions and give proper weight to different speakers and messages.

PART 2. Subsections (7) and (8) of City Code Section 2-2-2 (*Definitions*) are amended to read:

(7) CONTRIBUTION means a direct or indirect transfer of money, goods, services, or any other thing of value, including a pledge or an agreement or other obligation incurred, whether legally enforceable or not, to make a transfer. The term does not include an expenditure required to be reported under Section 305.006(b) [~~35.006(b)~~], Texas Government Code. In-kind labor, as defined in this chapter, is not a contribution.

(8) ELECTION or CITY ELECTION means the process by which an individual (whether opposed or unopposed) seeks election to City office, or [~~excluding~~] an election for a ballot measure.

PART 3. City Code Section 2-2-31 (*Definitions*) is repealed and replaced as follows:

§ 2-2-31 DEFINITIONS.

In this article:

(A) DIRECT CAMPAIGN EXPENDITURE means an expenditure for an electioneering communication or for express advocacy, as those terms are defined in this Article, that is made:

- (1) independently of any candidate and any candidate's campaign committee;
- (2) without prior consent, cooperation, strategic communication, or consultation between:

1 (a) any candidate, any candidate's campaign staff, any candidate's
2 campaign committee, or an agent or employee of any candidate
3 or any candidate's campaign committee; and

4 (b) the person or entity making the expenditure, or that person's
5 agent or employee; and

6 (3) without prior sharing of material information regarding the
7 communication's content, intended audience, timing, or method of
8 dissemination between:

9 (a) any candidate, any candidate's campaign staff, any candidate's
10 campaign committee, or an agent or employee of any candidate
11 or any candidate's campaign committee; and

12 (b) the person or entity making the expenditure, or that person's
13 agent or employee.

14 (B) ELECTIONEERING COMMUNICATION means a communication
15 that:

16 (1) costs, or is part of a series of communications that in the aggregate
17 cost, more than \$500;

18 (2) refers to:

19 (a) a clearly identified candidate by:

20 (i) containing the candidate's name, nickname, or image; or

21 (ii) making an unambiguous reference to the candidate or to
22 the candidate's status as a candidate, challenger, or
23 incumbent; or

24 (b) a clearly identified ballot measure, by containing:

25 (i) the measure's number;

26 (ii) a description of the measure; or

27 (iii) an unambiguous reference to the measure;

28 (3) is disseminated by publication, broadcast, Internet, a mass mailing, a
29 telephone bank, or a billboard;

30 (4) is made later than the 61st day before the date of an election in which
31 the candidate or the ballot measure appears on the ballot; and

32 (5) is capable of reaching at least:

33 (a) 5,000 people eligible to vote in the election; or

34 (b) two percent of the number of registered voters eligible to vote
35 in the election.

1 (C) ELECTION REPORTING CYCLE means the two-year period beginning on
2 the date following the most recent City general election.

3 (D) EXPRESS ADVOCACY means a communication, activity, goods,
4 services, or any other thing of value that refers to a clearly identified
5 candidate or ballot measure that:

6 (1) expressly advocates the election or defeat of the candidate, or passage
7 or defeat of the ballot measure, including using such language as
8 "Vote for," "Re-elect," "Cast your ballot against," "Cast you ballot
9 for," "Defeat," "Vote Down," or "No More Funds for X;" or

10 (2) is susceptible to no reasonable interpretation other than as an appeal to
11 vote for or against a specific candidate or ballot measure.

12 **PART 4.** City Code Section 2-2-32 (*Reporting of Direct Campaign Expenditures*) is
13 amended to read:

14 **§ 2-2-32 REPORTING OF DIRECT CAMPAIGN EXPENDITURES.**

15
16 (A) A person who makes one or more direct campaign expenditures in a City
17 election that in the aggregate exceed \$500~~;~~ shall report:

18 (1) the full name and address of the person who makes the expenditure;

19 (2) if the person who makes the expenditure is an individual, the
20 individual's occupation and employer;

21 (3)~~(1)~~ the full name and address of the person to whom each
22 expenditure is made;

23 (4)~~(2)~~ the date and amount of each expenditure;

24 (5)~~(3)~~ the purpose and description of each expenditure;

25 (6)~~(4)~~ in the case of an expenditure for express advocacy, the name of
26 each candidate, including the office held and office sought as
27 applicable, whose election or defeat the expenditure advocates,
28 or each ballot measure the passage or defeat of which the
29 expenditure advocates; ~~and~~

30 (7)~~(5)~~ in the case of an expenditure for an electioneering
31 communication, the name of each candidate, including the
32 office held and office sought as applicable, to whom the
33 communication refers ~~[referred]~~ or each ballot measure to
34 which the communication refers; and ~~[referred.]~~

35 (8) if the person making the expenditure has accepted a contribution from
36 another person during the current election reporting cycle:

1 (a) as specified in subsection (A)(8)(b), for each contributor who
2 made contributions in an aggregate amount of \$250 or more not
3 previously reported under this subsection during the current
4 election reporting cycle:

5 (i) the full name and address of the contributor;

6 (ii) if the contributor is an individual, the individual's
7 occupation and employer; and

8 (iii) the date and amount of each contribution received.

9 (b) Except as provided in subsection (A)(8)(c), a person shall report
10 a contribution received under subsection (A)(8)(a) if, at the time
11 of making the contribution, the contributor has reason to know
12 that the contribution may be used to make political
13 contributions or direct campaign expenditures or may be
14 comingled with other funds used to make political contributions
15 or direct campaign expenditures.

16 (c) A person is not required to report a contribution under
17 subsection (A)(8)(a) if:

18 (i) the contributor specified in writing that the contribution
19 was not to be used for political contributions or direct
20 campaign expenditures at the time that the contribution
21 was made to the person making the expenditure;

22 (ii) the person making the expenditure received the
23 contribution in a commercial transaction in the ordinary
24 course of any trade or business conducted by the person;
25 or

26 (iii) the person making the expenditure received the
27 contribution from investments made by the person.

28 (B) A person making a report required by subsection (A) shall include in the
29 report a sworn statement that each direct campaign expenditure was made
30 without prior consent, cooperation, strategic communication, consultation, or
31 sharing of material information regarding the communication's content,
32 intended audience, timing, or method of dissemination between an affected
33 candidate, the candidate's campaign staff, the candidate's campaign
34 committee, or an agent or employee of the candidate or the committee, and
35 the person making the expenditure, or that person's agent or employee.

36 (C) The report required by subsection (A) shall be made:

- 1 (1) if the expenditure is made before the 60th day before the date of the
2 election, no later than the fifth business day after the date of the
3 expenditure;
- 4 (2) if the expenditure is made on or after the 60th day before the date of
5 the election and before the ninth day before the date of the election, no
6 later than the second business day after the date of the expenditure; or
- 7 (3) if the expenditure is made on or after the ninth day before the date of
8 the election, no later than 5 p.m. on the first business day after the
9 date of the expenditure.

10 (D) A person making a report required by subsection (A) shall, in addition to the
11 required report, also provide to the city clerk a structured data file containing
12 the contents of the report. The data file must be provided to the city clerk no
13 later than the date that the associated report must be filed.

14 (E) The data file must comply with specifications and be on media determined by
15 the city clerk. A filer who provides a non-compliant data file to the clerk
16 shall resubmit the data in the required format. A data file that must be
17 resubmitted is timely filed if resubmitted no later than the next business day
18 after the date that the clerk notifies the filer that the data file is non-
19 compliant.

20 (F) Information reported under this section by [~~a candidate,~~] a political
21 committee[₅] or a person subject to Section 254.261 (*Direct campaign*
22 *expenditure exceeding \$100*) of the Texas Election Code[₅] must also be
23 reported on the [~~candidate's,~~] political committee's[₅] or person's next
24 campaign finance [contribution and expenditure] report, if required by state
25 law.

26 **PART 5.** City Code Section 2-2-33 (*Disclosure Statement Required*) is amended to add
27 new Subsections (B) – (F) to read:

28 **§ 2-2-33 DISCLOSURE STATEMENT REQUIRED.**

29
30 (A) In addition to any other disclosure statement required by law, a person
31 making the expenditure for a political advertisement, electioneering
32 communication, or express advocacy, paid for in whole or in part by a direct
33 campaign expenditure, must conspicuously disclose on the communication
34 the names of the five largest contributors who have each made contributions
35 in an aggregate amount of \$250 or more [donors in the preceding 12 months]
36 to the person making the direct campaign expenditure during the current
37 election reporting cycle.

38 (B) Except as provided by subsections (C) and (D), a person shall disclose a
39 contributor's name as set forth in subsection (A) if, at the time of making the

1 contribution, the contributor had reason to know that the contribution might
2 be used to make political contributions or direct campaign expenditures or
3 might be commingled with other funds used to make political contributions
4 or direct campaign expenditures.

5 (C) A contributor's name is not subject to disclosure if:

6 (1) the contributor specified that the contribution was not to be used for
7 political contributions or direct campaign expenditures at the time that
8 the contributor made the contribution to the person making the
9 expenditure;

10 (2) the person making the expenditure received the contribution in a
11 commercial transaction in the ordinary course of any trade or business
12 conducted by the person; or

13 (3) the person making the expenditure received contribution from
14 investments made by the person.

15 (D) The disclosure requirements of this section do not apply to:

16 (1) bumper stickers, pins, buttons, pens, apparel, and similar small items
17 upon which the names cannot be conveniently printed; or

18 (2) circulars or flyers that cost in the aggregate less than \$500 to publish
19 and distribute.

20 (E) The disclosure required by this section shall be clear and conspicuous:

21 (1) on printed material, the disclosure shall be printed in sufficient type
22 and size to be clearly readable, in two highly contrasting colors such
23 as dark text on a light background, but in no case smaller than eight
24 point font; and

25 (2) on other forms of communication, including internet advertisement,
26 television, and radio, the disclosure shall provide the reader, viewer,
27 or listener with actual notice of the disclosure.

28 (F) A disclosure is not clear and conspicuous if it is difficult to read, view, or
29 hear, or if the placement is easily overlooked.

30 **PART 6.** City Code Chapter 2-2 (*Campaign Finance*) is amended to add new Sections
31 2-2-34 and 2-2-35 to read:

32 **§ 2-2-34 REPORTING OF COVERED TRANSFERS.**

33 (A) In this section, "covered transfer" means any contribution by a person to
34 another person if the first person:

35 (1) designates, requests, or suggests that the contribution be used for:
36

- (a) direct campaign expenditures; or
 - (b) making a transfer to another person for the purpose of making or paying for direct campaign expenditures;
- (2) made the contribution in response to a solicitation or other request for a contribution for:
- (a) the making of or paying for direct campaign expenditures; or
 - (b) making a contribution to another person for the purpose of making or paying for direct campaign expenditures; or
- (3) engaged in discussions with the recipient of the contribution regarding:
- (a) the making of or paying for direct campaign expenditures; or
 - (b) making a contribution to another person for the purpose of making or paying for direct campaign expenditures.

(B) The term “covered transfer” does not mean:

- (1) a contribution made by a person if that person prohibited, in writing, the use of that contribution for political contributions, direct campaign expenditures, or covered transfers;
- (2) a contribution made by a person in a commercial transaction in the ordinary course of any trade or business conducted by that person; or
- (3) a contribution made by a person in the form of an investment made by that person.

(C) A person who makes one or more covered transfers, in a City election, that in the aggregate exceed \$500 shall report:

- (1) the full name and address of the person who makes the transfer;
- (2) if the person who makes the transfer is an individual, the individual’s occupation and employer;
- (3) the full name and address of the person to whom each transfer is made;
- (4) the date and amount of each transfer;
- (5) the purpose and description of each transfer;
- (6) in the case of a transfer made for a direct campaign expenditure for express advocacy, if known at the time that the transfer is reported, the name of each candidate, including the office held and office sought as applicable, whose election or defeat the expenditure advocates, or each ballot measure the passage or defeat of which the expenditure advocates;

1 (7) in the case of a transfer made for an electioneering communication, if
2 known at the time that the transfer is reported, the name of each
3 candidate, including the office held and office sought as applicable, to
4 whom the communication refers or each ballot measure to which the
5 communication refers; and

6 (8) if the person making the transfer has accepted a contribution from
7 another person during the current election reporting cycle:

8 (a) as specified in subsection (C)(8)(b), for each contributor who
9 made contributions in an aggregate amount of \$250 or more not
10 previously reported under this subsection during the current
11 election reporting cycle:

12 (i) the full name and address of the contributor;

13 (ii) if the contributor is an individual, the individual's
14 occupation and employer; and

15 (iii) the date and amount of each contribution received.

16 (b) Except as provided in subsection (C)(8)(c), a person shall report
17 contributions received under subsection (C)(8)(a) if, at the time
18 of making the contribution, the contributor has reason to know
19 that the contribution may be used to make political
20 contributions, direct campaign expenditures, or covered
21 transfers or may be comingled with other funds used to make
22 political contributions, direct campaign expenditures, or
23 covered transfers.

24 (c) A person is not required to report a contribution under
25 subsection (C)(8)(a) if:

26 (i) the contributor specified in writing that the contribution
27 was not to be used for political contributions, direct
28 campaign expenditures, or covered transfers at the time
29 that the contributor made the contribution to the person
30 making the transfer;

31 (ii) the person making the transfer received the contribution
32 in a commercial transaction in the ordinary course of any
33 trade or business conducted by the person; or

34 (iii) the person making the transfer received the contribution
35 from investments made by the person.

36 (D) The report required by subsection (C) shall be made:

- 1 (1) if the transfer is made before the 60th day before the date of the
2 election, no later than the fifth business day after the date of the
3 transfer;
- 4 (2) if the transfer is made on or after the 60th day before the date of the
5 election and before the ninth day before the date of the election, no
6 later than the second business day after the date of the transfer; or
- 7 (3) if the transfer is made on or after the ninth day before the date of the
8 election, no later than 5 p.m. on the first business day after the date of
9 the transfer.

10 (E) A person making a report required by subsection (C) shall, in addition to the
11 required report, also provide to the city clerk a structured data file containing
12 the contents of the report. The data file must be provided to the city clerk no
13 later than the date that the associated report must be filed.

14 (F) The data file must comply with specifications and be on media determined by
15 the city clerk. A filer who provides a non-compliant data file to the clerk
16 shall resubmit the data in the required format. A data file that must be
17 resubmitted is timely filed if resubmitted no later than the next business day
18 after the date that the clerk notifies the filer that the data file is non-
19 compliant.

20 (G) Information reported under this section by a political committee or a person
21 subject to Section 254.261 (*Direct campaign expenditure exceeding \$100*) of
22 the Texas Election Code must also be reported on the political committee's or
23 person's next campaign finance report, if required by state law.

24 (H) It is an affirmative defense to prosecution pursuant to section 2-2-34(C) that
25 the person who makes the transfer:

- 26 (1) prohibits, in writing, the use of that transfer for political contributions,
27 direct campaign expenditures, or covered transfers;
- 28 (2) makes the transfer in a commercial transaction in the ordinary course
29 of any trade or business conducted by that person; or
- 30 (3) is making an investment.

31 § 2-2-35 RETENTION OF RECORDS. 32

33 A person subject to this article shall:

- 34 (A) maintain copies of checks, bank statements, and deposit slips for a period of
35 five years after:

1 (1) the date of any report, made under Sections 2-2-32 (*Reporting of*
2 *Direct Campaign Expenditures*) or 2-2-34 (*Reporting of Covered*
3 *Transfers*), to which the records are applicable; or

4 (2) the date of any disclosure, made under Section 2-2-33 (*Disclosure*
5 *Statement Required*), to which the records are applicable; and

6 (B) make the records available to the Ethics Review Commission, on request,
7 within the five-year retention period.

8 **PART 7.** A person who makes one or more expenditures that are reportable under
9 Section 2-2-32 (*Reporting of Direct Campaign Expenditures*) must only report
10 contributions received after August 31, 2016. A person who makes one or more transfers
11 that are reportable under Section 2-2-34 (*Reporting of Covered Transfers*) must only
12 report covered transfers made and contributions received after January 31, 2017.

13 **PART 8.** Parts 1, 2, 3, 5, and Section 2-2-35 in Part 6 of this ordinance take effect
14 on _____, 2016. Part 4 of this ordinance takes effect on September 1, 2016.
15 Section 2-2-34 in Part 6 of this ordinance takes effect on February 1, 2017.
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20 **PASSED AND APPROVED**

21 _____, 2016

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Steve Adler
Mayor

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28 **APPROVED:** _____
29 Anne L. Morgan
30 City Attorney

ATTEST: _____
Jannette S. Goodall
City Clerk