

ORDINANCE NO. 737

AN ORDINANCE OF THE CITY OF POWAY, CALIFORNIA, REPEALING
CHAPTER 2.28 OF THE POWAY MUNICIPAL CODE AND ADDING A NEW
CHAPTER 2.28 OF THE POWAY MUNICIPAL CODE REGULATING CAMPAIGN
CONTRIBUTIONS AND REPORTING IN MUNICIPAL ELECTIONS

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

Section 1: Chapter 2.28 of the Poway Municipal Code is hereby repealed.

Section 2: Chapter 2.28, "Campaign Contributions and Expenditures," is hereby added
to Title 2 of the Poway Municipal Code to read as follows:

Chapter 2.28
CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

2.28.010 Intent and purpose.

It is the intent of the City Council in enacting the ordinance codified in this chapter to place realistic and enforceable limits on the amount individuals may contribute to political campaigns in municipal elections, as well as to supplement the requirements of State law with regard to the making and reporting of campaign contributions and expenditures, for the purpose of preventing the exercise by campaign contributors of potential undue or improper influence over elected officials and to inform the public of the sources and objects of campaign contributions and expenditures. The City Council finds that municipal elections are municipal affairs and that the regulation of campaign expenditures and contributions in municipal elections is not preempted by general State law and is the proper subject of municipal regulation under authority granted to cities by Article XI, Section 7 of the California Constitution and Government Code Section 81013. The contribution limitations of this chapter shall not apply to ballot measure elections or to that portion of a recall election in which the electorate determines whether or not to recall an officeholder, but shall apply to all candidate elections, including the candidate election portion of a consolidated recall election. It is the intent of the City Council that this chapter be interpreted in a manner consistent with Constitutional requirements. Should any provision of this chapter be determined to be invalid for any reason, the remainder shall be severed therefrom and shall remain in full force and effect.

2.28.020 Definitions.

For the purposes of this chapter, the words and phrases used herein shall have the meanings respectively ascribed to them by the Political Reform

Act of 1974, as amended, Government Code Sections 82000 et seq., except as follows:

A. "Charitable organization" shall mean any bona fide charitable, educational, civic, religious, or similar tax exempt nonprofit organization.

B. "Committee" shall have the meaning set forth in Government Code Section 82013 as amended from time to time, except that all dollar limits set forth therein shall be "\$100.00 or more."

C. "Contribution" shall have the meaning set forth in Government Code Section 82015, as amended from time to time, except that the exclusion set forth therein for costs of a meeting or fund-raising event in the home or office of the occupant shall be limited to costs of "\$100.00 or less."

D. "Election" means any City general, special, initiative, referendum or recall election.

E. "Entity" means any corporation, company, association, or other organization other than an individual or a political party.

F. "Independent committee" means any committee which receives contributions or makes expenditures for the purpose of influencing or attempting to influence a City election which is neither controlled by a candidate nor coordinates its expenditures with the expenditures of a candidate or a committee controlled by a candidate.

G. "Individual" means a sole human being.

H. "Political party" means any organization qualified to participate in any primary election in the State of California as set forth in California Elections Code section 5100, or such law as may replace section 5100.

2.28.030 Limitations.

A. Contributions Generally.

1. Except as expressly provided in this section, no individual or political party (including any controlled committee or independent committee) shall make, nor shall any person solicit or accept, any contribution in aid of and/or in opposition to the nomination or election of a candidate which will cause the total amount contributed to (a) the candidate and any controlled committee of such candidate, or to (b) any independent committee, by such individual or political party in a single election to exceed \$100.00.

2. The prohibition of subsection (A)(1) of this section shall not apply to any independent committee which receives contributions to be expended in the elections of more than one city.

3. The \$100.00 limitation of subsection (A)(1) of this section is not a limitation upon expenditures and shall not limit the expenditures by any candidate or any committee.

4. Spouses are two separate individuals for purposes of the contribution limitation of subsection (A)(1) of this section.

5. a. Joint funding of campaign expenditures by two or more committees shall not be deemed a contribution by any such committee to any candidate provided that each such committee contributes equal amounts to each such expenditure.

b. Any such joint expenditure shall cause any theretofore independent committee participating therein to be deemed a controlled committee of any and all candidates for whose benefit such joint expenditure is made.

c. Any independent committee which becomes a controlled committee by reason of subsection (A)(5)(b) of this section shall be deemed a controlled committee for purposes of the \$100.00 limitation on contributions to the committee, effective retroactive to the date upon which the first contribution to such committee was received by such committee.

6. The \$100.00 limitation of subsection (A)(1) of this section shall not apply to a candidate in aid of himself or herself, or to any committee which makes expenditures solely for the purpose of advocating the adoption or defeat of a ballot measure or to any committee advocating or opposing the recall of an officeholder. Said limitation shall apply to the candidate election portion of a recall.

7. Subject to subsections (A)(5)(b) and (c) of this section, the \$100.00 limitation of subsection (A)(1) of this section shall not apply to any independent committee composed solely of:

a. One individual; or

b. One other person organized principally for a purpose other than participating in or influencing an election or elections.

8. No person shall make a contribution anonymously or under an assumed name. No person shall make a contribution on behalf of another person, whether as agent, intermediary, or otherwise.

9. Contributions are not permitted to be retained by a candidate or any committee when received from anonymous sources or from persons who do not consent to having their name made known. Any such contributions shall be refunded to the donor (if known) or (if unknown) shall be turned over to the City Clerk and deposited to the City's treasury, in any event within 72 hours of receipt.

10. No committee shall make any expenditures to influence or attempt to influence the voters in a City election if such committee has not complied with the contribution limitations imposed by this chapter upon such committees' receipt of funds.

B. Prohibited Activities.

1. No person or entity, other than an individual or political party, shall make a contribution to any candidate or committee; provided, however, that this section shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the qualification for the ballot or adoption of one or more City measures.

2. No officer, employee, agent or attorney or other representative of a person covered by this subsection shall aid, abet, advise, or participate in a violation of this section.

3. No person shall knowingly accept a payment or contribution made in a violation of this section.

4. If a committee treasurer is offered a contribution which would be in excess of the limitation, the treasurer must refuse the contribution. If, however, a contribution is deposited into the campaign trust account which is in violation of this section, the treasurer shall report in writing within five days of learning of the illegal nature of the contribution to the City Clerk the facts surrounding such contribution. Any such contribution so deposited shall be paid promptly, from available campaign funds, if any, to the City, and shall be deposited in the general fund of the City.

2.28.040 Identification of expenditures by independent committees.

Independent committees which make expenditures for or against a candidate shall indicate clearly on any material published, displayed or broadcast the name of the independent committee and the fact that the material was paid for by an independent committee, and the true name of any person on whose behalf the expenditure is made if made as the agent or intermediary of another. Every independent committee shall comply with all of the reporting requirements imposed on candidates and committees by this chapter, including both the contributions and the expenditures made by such committee.

2.28.050 Election campaign accounts.

A. Election Campaign Account. Each candidate's campaign treasurer and every committee, whether composed of the candidate alone, another single individual, or otherwise, that receives or expends more than \$200.00, shall open a checking account at a State or Federally chartered bank or savings and loan association. The account shall be identified as

the election campaign account. The account number of each such account shall be provided to the City Clerk in writing within 10 days of the opening of such account. Any committee that receives or expends more than \$200.00 shall file with the City Clerk a statement of organization in substantially the form required by State law not later than 10 days following the opening of the election campaign account.

B. Deposit of Contributions. All campaign contributions accepted by a campaign treasurer or committee shall be deposited within five days of receipt into the election campaign account by the campaign treasurer, committee or authorized agent thereof.

C. Expenditures. Campaign expenditures made after a checking account is required to be opened shall be made only by checks drawn against the election campaign account by the campaign treasurer, committee, or authorized agent.

1. No campaign treasurer, committee, or authorized agent shall draw checks against the election campaign account by the campaign treasurer, committee, or authorized agent.

2. Funds in the election campaign account shall not be considered for any purpose to be personal funds of a candidate, campaign treasurer, or any other person. The funds shall be held in trust.

3. For purposes of this section, an expenditure shall be deemed made by check drawn against the election campaign account if, (a) the maker of the expenditures is reimbursed by such check, and (b) the expenditure is reported by the candidate or committee, both within the time limits required for reporting as provided in PMC 2.28.060(A).

D. Access to Records by City Clerk. The City Clerk shall have full access during business hours to the bank's or savings and loan association's records concerning all election campaign accounts.

E. Disbursements of Unexpended Campaign Funds. If the final campaign statement for a candidate or any committee discloses an unexpended surplus, the candidate or committee shall before the end of the post-election reporting period, which is:

June 30 for elections held between January 1 and June 30;

December 31 for elections held between July 1 and December 31

disburse the whole of the surplus to a charitable organization provided, however, that the candidate or committee shall not claim the donation as a deduction from income for tax purposes. The candidate or committee, or authorized agent thereof, shall file a campaign statement with the City Clerk before the end of the post-election reporting period, verifying the

closure and listing the donees of all disbursements authorized by this section and the dollar amounts given to each donee. If the deadline is not met, the campaign funds will become "surplus" at the end of the post-election reporting period and may not be used to run for office.

F. Retention of Records. The candidate, committee or authorized agent thereof, shall retain all campaign records for a period of four years after the election.

2.28.060 Statements generally.

A. Required. Subject to Government Code Section 81009.5, each candidate and each committee, including all independent committees, shall file as a public record with the City Clerk, campaign statements showing the amounts of contributions received and expenditures made with respect to such election at the time required by the Political Reform Act of 1974, as amended. The statements are to be completed on campaign statement forms required to be filed by State law. Such statements shall contain a declaration by the candidate or committee chairperson that the candidate or committee has neither accepted nor solicited any campaign contribution in excess of the limitations of or in contravention of PMC 2.28.030. All such statements filed by independent committees shall, in addition to all other requirements, identify each candidate or measure for or against whom each reported expenditure was made. Statements filed by independent committees shall be required to report only those expenditures in connection with communications that expressly advocate the election or defeat of a clearly identified candidate or ballot measure.

B. Contributions. Each campaign statement shall show the total cumulative amount of contributions received during the period covered by the statement from persons who have given \$25.00 or less and the total cumulative amount of contributions received during the period covered by the statement from persons who have given a total of more than \$25.00. Each person who has contributed more than \$25.00 shall be listed by name, address, occupation, employer and amount contributed. The total amount received from anonymous sources and for persons who have not consented to publication shall be listed. In the event that any portion of the contributions was received in connection with a fundraiser event, then the statement shall list the gross receipts, the date and location of each event.

C. Expenditures Generally. Each campaign statement shall show the total amount of expenditures made during the period covered by the statement to persons who have received \$25.00. Each person who has received a total of more than \$25.00 shall be listed by name and address, together with a brief description of the purpose of the expenditures. Any expenditure made on behalf of another person, whether as agent or

intermediary or otherwise, shall be reported as such, including the true name of the individual on whose behalf the expenditure was made.

D. Exemption. Nothing in this section shall impose upon any committee which participates in elections in jurisdictions in addition to the City any filing requirements additional to or different from those set forth in Chapter 4 of the Political Reform Act of 1974, so long as Government Code Section 81009.5(b) prohibits the imposition of such different or additional requirements on such committees.

2.28.070 Reporting threshold amount.

A candidate or committee need not file a campaign statement if neither the cumulative receipts nor the cumulative expenditures exceed \$200.00.

2.28.080 Media exemptions.

The provisions of this chapter shall not apply to any publication or broadcast or to any news story, commentary or editorial distributed through the facilities of a broadcasting station or bona fide newspaper, magazine or other periodical publication. A news story, commentary or editorial is not considered to be distributed through a bona fide newspaper, magazine, or other periodical publication if:

A. Such publication is primarily for distribution to individuals affiliated by membership or stock ownership with the person (other than an individual) distributing it or causing it to be distributed; or

B. Such publication is not primarily for purchase by the public at newsstands or paid by subscription; or

C. The news story, commentary or editorial is distributed by a person (other than an individual) who devotes a substantial part of his activities to attempting to influence the outcome of City elections, or to influence public opinion with respect to matters of City policy or concern.

2.28.090 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 committee for use in connection with the campaign of the candidate or for or against a measure shall refuse to divulge or disclose to the enforcement authority the record of any expenditures made by the candidate or committee in payment for such goods or services, or both.

2.28.100 Late filing of campaign statement.

A. If any person files a campaign statement after any deadline imposed by this chapter, he or she shall, in addition to any other penalties or remedies established in this chapter, be liable to the City Clerk in amounts as set forth by State guidelines until the statement is filed.

B. The City Clerk shall deposit any funds received under this section into the general fund of the City to defray the cost of municipal elections.

2.28.110 Enforcement.

A. The City Attorney shall not investigate or prosecute any alleged violation of this chapter, but shall defend the constitutionality and legality of this chapter in any civil proceeding in which the City or the City Council is a party.

B. Review of complaints of violation of this chapter and criminal prosecution thereof shall be commenced only by special counsel who shall be the District Attorney, the Attorney General, or such other qualified and independent special counsel or combination of the foregoing as may be appointed by the City Attorney. Such special counsel shall also commence and prosecute civil litigation to compel compliance with this chapter or to enjoin conduct in violation of this chapter. At least 90 days prior to a City election, a special counsel shall be appointed for that election. Should the appointment of additional special counsel become necessary or appropriate, the City Attorney shall appoint such additional special counsel as may be required. No enforcement or prosecution or action of special counsel shall be subject to the review or control of the City Council or the City Attorney.

C. Any person residing in the City who believes that a violation of this chapter has occurred may file a written complaint requesting investigation of such violation by the special counsel. If the special counsel determines that there is reason to believe a violation of this chapter has occurred, it shall conduct an investigation and may commence such administrative, civil or criminal legal action as it deems necessary for the enforcement of this chapter. Special counsel shall decline to investigate any alleged violation hereof which is also an alleged violation of State law and is the subject of a complaint filed with the Fair Political Practices Commission, until the investigation of that complaint is complete.

D. The special counsel shall have such investigative powers as are necessary for the performance of duties described in this chapter 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 special counsel may commence civil litigation to complete such production.

E. The special counsel shall be immune to liability for its enforcement of this chapter.

F. Any action alleging violation of this chapter must be commenced within two years of the time the alleged violation occurred.

2.28.120 Violation – Penalty.

A. Any knowing or willful violation of any provision of this chapter may be prosecuted, either as an infraction or as a misdemeanor, at the discretion of the prosecutor. The maximum fine which may be imposed for each misdemeanor conviction shall be \$1,000. The chairperson and treasurer of any committee shall be both criminally and civilly responsible for any violation of this chapter by the committee. In addition, the candidate shall be both criminally and civilly responsible for any violation of this chapter by the committee. In addition, the candidate shall be both criminally and civilly responsible for any violation by a committee controlled by the candidate.

B. If a candidate is convicted of a willful violation of PMC 2.28.030, the election to office of such candidate shall be void and such office shall immediately become vacant. In such event the vacancy shall be filled in accordance with the procedures as set forth in the Government Code.

2.28.130 Civil liability and penalties.

A. Any person who violates any provision of this chapter shall be liable in a civil action brought by the special counsel for an amount up to \$1,000. In addition thereto, such person shall be liable for the reasonable attorney's fees and costs incurred by the special counsel in any civil proceeding filed to enforce the provisions hereof.

B. Enforcement of this chapter through civil action may be filed as an alternative to criminal enforcement pursuant to PMC 2.28.120. Civil enforcement shall not require that the violation be knowing or willful. All discovery provisions of State law shall be available to the special counsel in the civil enforcement of this chapter. Special counsel shall have the power to subpoena documents and other materials as may be necessary to conduct the investigation. No civil action alleging a violation of this chapter shall be filed against a person pursuant to this section if the special counsel is maintaining a criminal action against that person pursuant to PMC 2.28.120.

C. Each violation of this chapter shall be a separate offense subject to the civil penalty provided in subsection A of this section.

D. The special counsel is authorized to settle any civil enforcement hereof prior or subsequent to the filing of a civil action by the imposition of a civil

penalty in an amount which does not exceed the potential civil liability, including attorney's fees, set forth in subsection A of this section. Upon payment in full of such civil penalty, the special counsel shall agree to forbear from filing civil or criminal action or, if action has already been filed, shall agree to dismiss such action. The imposition of all civil penalties shall be made a matter of public record.

E. All civil fines shall be deposited into the general fund.

2.28.140 Officeholder accounts prohibited.

Pursuant to the authority of Government Code Section 81013 and 85706, and notwithstanding the permissive provisions of Government Code Section 85313, the City Council finds that officeholder accounts are unnecessary in the City, and have the potential in such a small jurisdiction to provide incumbent officeholders with unfair political advantage and give a corrupt appearance to the political process. Officeholder accounts are prohibited.

2.28.150 Application of Government Code Section 83116.5.

To the greatest extent permitted by law, Government Code Section 83116.5 shall not be applied to any person who is an employee or under contract to the City and is giving advice interpreting the campaign, disclosure, or conflict of interest provisions of the Political Reform Act of 1974 or of this chapter as part of that person's government contract or employment.

Section 3: The City Council finds that pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3), this Ordinance is exempt from the requirements of the California Environmental Quality Act (CEQA) in that it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.

Section 4: This Ordinance shall take effect thirty (30) days after the date of this passage, and before the expiration of fifteen (15) days from the passage thereof shall be published at least once with names and members voting for and against the same in the Poway News Chieftain, a newspaper of general circulation, published and circulated in the City of Poway and thenceforth and thereafter the same shall be in full force and effect.

Section 5: This Ordinance shall be codified.

EFFECTIVE DATE: This Ordinance shall take effect and be in force thirty (30) days after its adoption.

CERTIFICATION/PUBLICATION: The City Clerk shall certify the adoption of this Ordinance and cause it or a summary of it, to be published with the names of the City Council members voting for and against the same in the Poway News Chieftain, a newspaper of general circulation in the City of Poway within fifteen (15) days after its adoption and shall post a certified copy of this Ordinance in the Office of the City Clerk in accordance with Government Code § 36933.

Introduced and first read at a regular meeting of the City Council of the City of Poway this 7th day of February 2012, and thereafter PASSED AND ADOPTED at a regular meeting of said City Council held on the 21st day of February 2012.



ATTEST:



STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

I, Linda A. Troyan, MMC, City Clerk of the City of Poway, do hereby certify, under penalty of perjury, that the foregoing Ordinance No. 737 was duly adopted by the City Council at a meeting of said City Council held on the 7th day of February 2012, and that it was so adopted by the following vote:

AYES: BOYACK, GROSCH, MULLIN, CUNNINGHAM, HIGGINSON

NOES: NONE

ABSENT: NONE

DISQUALIFIED: NONE

