

ORDINANCE NO. 29-94 N.S. ✓

AN ORDINANCE OF THE CITY OF RICHMOND ADDING CHAPTER 2.42, FAIR ELECTIONS, TO THE MUNICIPAL CODE OF THE CITY OF RICHMOND

The Council of the City of Richmond do ordain as follows:

Section I. Chapter 2.42 of the Municipal Code of the City of Richmond is hereby amended to delete Section 2.42.050(c) in its entirety and to make certain other deletions and additions as follows:

"CHAPTER 2.42

Fair Elections

- 2.42.010 **Title.**
- 2.42.020 **Finding and Declarations.**
- 2.42.030 **Purpose of the Ordinance.**
- 2.42.040 **Definitions.**
- 2.42.050 **Campaign Contribution Limitations.**
- 2.42.060 **Limitations on Transfers from Candidate-Controlled Committees**
- 2.42.070 **Disclosure.**
- 2.42.080 **Enforcement.**
- 2.42.090 **Distribution of ordinance to Candidates.**
- 2.42.100 **Applicability of Other Laws.**

2.42.010 **Title.** This ordinance shall be known and may be cited as the "City of Richmond Fair Elections Ordinance."

2.42.020 **Finding and Declarations.**

a. Monetary contributions to political campaigns are a legitimate form of participation in the American political process; however, the financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence upon the election of candidates.

b. The increasing costs of political campaigns compel many candidates to raise larger percentages of money from interested groups with a specific financial stake in matters which may come before the City Council. This has caused a public perception that votes may be improperly influenced by monetary contributions.

c. The tendency for campaign contributions to be dominated by a small number of very large contributors undermines the integrity of the governmental process, the competitiveness of campaigns, and the public confidence in local officials and local agencies.

d. High campaign costs are forcing officeholders to spend more time on fund raising and less time on the public's business. The constant pressure to raise contributions is distracting officeholders from urgent governmental matters.

2.42.030 **Purpose of the Ordinance.** The City Council enacts this ordinance to accomplish the following purposes.

- a. To improve methods of financing campaigns in order to ensure the public's right-to-know, combat corruption and undue influence, enable candidates to compete more equitably for public office, and promote citizen participation in the political process.
- b. To prevent parties with a specific financial interest in the City's decision from exerting undue influence over those decisions by means of large campaign contributions.
- c. To allow candidates and officeholders to spend a lesser proportion of their time on fund raising and greater proportion of their time dealing with issues of importance to the City and its residents.
- d. To improve the disclosure of contribution sources in reasonable and effective ways.
- e. To restore public trust in governmental, electoral institutions.

2.42.040 Definitions.

- a. Unless otherwise specifically provided in this Ordinance or required by the context, the words and phrases in this ordinance shall have the same meanings as in the California Elections Code and the Political Reform Act of 1974 (Government Code Section 8100, et seq.) and regulations adopted thereunder.
- b. "Campaign Statement" means any itemized report of campaign contributions and/or expenditures which a candidate or any person is required to file under the California Elections Code, the Political Reform Act of 1974 (California Government Code Sections 81000, et seq.), the Richmond Municipal Code, and any regulations adopted under the foregoing legislation.
- c. "Candidate" means a candidate for election to the Richmond City Council or to the office Mayor of the City of Richmond; and if the candidate is elected, means the officeholder.
- d. "Candidate-Controlled Committee" means a committee which is controlled by a candidate, or which acts jointly with a candidate in connection with the making of expenditures. A candidate controls a committee if the candidate, his or her agent, or any other committee which he or she controls has a significant influence on the actions or the decisions of the committee.
- e. "Candidate's Designated Committee" means the controlled committee designated by the candidate to receive contributions or make expenditures for his or her campaign, as declared in a signed statement filed with the City Clerk pursuant to Section 2.42.070.b of this ordinance.
- f. "City" means the City of Richmond.
- g. "City Council" means the City Council of the City of Richmond.
- h. "Contribution":
 - 1. "Contribution" means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for :

political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

2. The term "contribution" includes the candidate's own money or property used on behalf of his or her candidacy; the granting of discounts or rebates not extended to the public generally, or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration; a loan or extension of credit to the candidate on terms not generally available to the public, not made in the ordinary course of business of the contributor, and made without payment of full and adequate consideration.

3. The term "contribution" further includes any transfer of anything of value received by a committee for another committee, unless full and adequate consideration is received.

4. The term "contribution" does not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution. However, the fact that such amounts have been received shall be indicated in the appropriate campaign statement.

5. The term "contribution" does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office if the costs for the meeting or fundraising event are \$500 or less.

6. Notwithstanding the foregoing definition of "contribution," the term does not include volunteer personal services or payments made by any individual for his or her own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him or her.

7. A contribution to the candidate's designated committee is deemed a contribution to the candidate.

i. "Election Cycle" means the period starting on the effective date of this ordinance and ending on December 31, 1993, for candidates seeking office in the November, 1993, City election, and shall mean the period starting on the effective date of this ordinance and ending on December 31, 1995, for candidates seeking office in the November, 1995, City election; and thereafter, the "Election Cycle" shall mean the period starting on the first day of January following the last November election for the office of Mayor or for a City Council seat and ending on the 31st day of December following the next election for the Office of Mayor or the same City Council seat.

j. "Independent Expenditure Committee" means any person who makes independent expenditures supporting or opposing a candidate for City Council or Mayor in the City of Richmond only and the expenditure is not made to or at the behest of the affected candidate.

k. "Mayor" means the Mayor of the City of Richmond.

1. "Non-Monetary Contribution" shall be valued as a contribution at the true or estimated fair market value of the goods, services, or facilities contributed to the campaign. A fair market value is the price that a person would be required to pay to acquire the same goods or services in the open market place.

m. "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, labor union, business trust, company, corporation, association, committee, candidate-controlled committee, broad based political committee, political committee, and any other organization or group of persons acting in concert.

2.42.050 Campaign Contribution Limitations.

a. Limitations on Contributions.

1. No person shall make to any candidate or independent expenditure committee and no candidate or independent expenditure committee shall solicit or accept any contribution which would cause the total amount contributed by that person to that candidate or independent expenditure committee to exceed \$2,500 in each election cycle.

2. No person shall make an anonymous contribution or contributions to a candidate, and no candidate shall accept or solicit an anonymous contribution, totaling one hundred dollars (\$100) or more in an election cycle.

3. A candidate shall maintain a written record of the name and address of each person from whom contributions of one hundred dollars (\$100) or more are received in an election cycle.

4. The limitation on contributions provisions of Section 2.42.050.a.1 shall not apply to a candidate's contribution or loan of his or her own personal funds to his or her own designated committee.

b. **Return of Excess Contributions.** A contribution need not be reported, nor shall it be deemed accepted, if it is not cashed, negotiated, or deposited and is returned to the contributor before the closing date of the campaign statement on which the contribution would otherwise be reported.

2.42.060 Limitations on Transfers from Candidate-Controlled Committees.

a. Contributions received by a candidate-controlled committee after the effective date of this ordinance shall be subject to the contribution limitations set forth in this ordinance when such contributions are transferred to the candidate's designated committee.

b. The following method shall be utilized to calculate the amount that is in compliance with the contribution limitations.

1. The candidate shall review the contributions which have been received by the candidate-controlled committee after the effective date of this ordinance, beginning with the last contribution

received and working back in time until the total amount of cash and cash equivalents held by the candidate-controlled committee is reached.

2. Should the review indicate that the aggregate amount of contributions from a contributor in the candidate-controlled committee account and in the designated committee account exceeds any applicable limitation, the total amount that may be transferred shall be reduced by the amount in excess of the applicable contribution limitation.

2.42.070

a. **Disclosure.**

1. The information required to be recorded by a candidate under Section 2.42.050 shall be disclosed in a written report to the City Clerk as of and at the required filing date of any campaign statement. If the information required to be disclosed has been compiled in another document which the candidate is required to prepare, that document may be filed with the City Clerk in lieu of the statement required herein.

2. In addition to the statements required to be filed under the California Political Reform Act of 1974 or the Richmond Municipal Code, each candidate shall file with the City Clerk a statement disclosing the name and address of any contributor of a loan or extension of credit made to the candidate on terms not generally available to the public, not made in the ordinary course of business of the contributor, and made without payment of full and adequate consideration. If the information required to be disclosed has been compiled in another document which the candidate is required to prepare, that document may be filed with the City Clerk in lieu of the statement required herein.

b. **Designated Committee Statement.**

1. Each candidate shall file a statement with the City Clerk naming one committee as the candidate's designated committee for the duration of the election cycle. The designated committee may not be changed during the election cycle. All other committees controlled by the candidate are prohibited from receiving contributions for expenditure in the candidate's campaign for the election for which the designated committee was selected, and from making expenditures on behalf of the candidate's campaign for the election for which the designated committee was selected, except as transfers of funds from other candidate-controlled committees to the designated committee are permitted within the limits set by this ordinance, and within any limits set by the California Political Reform Act of 1974.

2. The statement required by Section 2.42.070.b.1 of this ordinance shall be in the following form:

"I, [name of candidate], declare that [name of designated committee and ID number, if available] is the only candidate-controlled committee I shall allow to receive contributions for, or make expenditures on behalf of, my campaign for the election of [date of election]."

3. The statement required by Section 2.42.070.b.1 of this ordinance shall be signed and dated by the candidate, and shall be filed with the City Clerk before any expenditures are made in the election campaign or any contributions are solicited or accepted for the election campaign; except that the statement shall not be required to be filed until 14 days after the passage of this ordinance.

c. **Ownership of Non-Individual Contributors.** Each candidate shall ascertain and disclose, on the campaign statement or in a separate statement filed with the City Clerk attached to each campaign statement covering the period partly or wholly within the election cycle, the name and address of each person who holds at least 50 percent ownership or equity interest in a non-individual contributor of contributions totaling one hundred dollars (\$100) or more. A non-individual contributor shall provide to the candidate the name and address of each person required by this section to be disclosed at the time the contribution is made, and in no event later than the closing date of the campaign reporting period in which the contribution is made. The candidate shall inform each non-individual contributor of contributions of one hundred dollars (\$100) or more of its obligation to provide the information required by this section. No candidate designated committee, or designated committee's treasurer shall be liable for failure to make the disclosure required by this section if the name and address information has not been timely provided by the non-individual contributor, unless the candidate, designated committee, or designated committee's treasurer knew or had reason to know the facts requiring disclosure.

d. **Press disclosure.** The City Clerk shall, three (3) working days after any filing or payment deadline, disclose to the public by press release the name of any candidate who has failed to file any statements required under this ordinance in the current election or who has failed to pay to the City in a timely manner any fees owed from or resulting from fees imposed by the City for the campaign and/or in previous elections.

e. **Filing of Non-Richmond Committee Reports.** Any committee, as defined under Government Code Section 82013, domiciled outside of the City of Richmond which makes contributions or independent expenditures for or against any candidate for City Council or Mayor or for or against any local ballot measure which is being voted upon only in the City of Richmond shall file with the City Clerk a copy of all campaign statements required to be filed under the California Political Reform Act of 1974. The deadline for filing such campaign statements with the City Clerk shall be the same deadline for filing campaign statements with the California Secretary of State or any county clerk as set forth in the California Political Reform Act of 1974.

2.42.080 **Enforcement.**

a. **Campaign Statement Review.**

1. The City Clerk shall monitor all campaign statements and shall notify the candidate or committee of any of the following apparent violations of this ordinance:

(a) Whether the required statements have been timely filed.

(b) Whether the statements conform on their face with the requirements of this ordinance.

(c) Whether any reported contributions exceed the allowable maximums established under this ordinance.

2. The candidate or committee shall be allowed to correct any reports within five (5) days after receipt of notice of an apparent violation sent by the City Clerk.

b. Violations.

1. In the event that a candidate or committee fails to correct any reports within five (5) business days after receiving a notice of apparent violation under Section 2.42.080.a.2 of this ordinance, the City may bring a civil action against the candidate or committee for injunctive relief to enjoin violations or to compel compliance with the provisions of this ordinance.

2. Any person residing in the City of Richmond may bring a civil action against any candidate or committee who intentionally or negligently violates any of the reporting requirements of this ordinance. Such civil action may be for:

(a) Injunctive relief to enjoin violations or to compel compliance with the provisions of this ordinance; and

(b) Damages in an amount which is the greater of:

(i) Five hundred dollars (\$500);
or

(ii) Three times the amount or value of the unlawful contribution.

3. In any legal action brought under Section 2.42.080.b.2 for injunctive relief or civil liability, the court may award to a plaintiff or defendant who prevails his or her costs of litigation, including reasonable attorney's fees.

4. A civil action may be brought under Section 2.42.080.b.2 only if the City has not brought a civil action under Section 2.42.080.b.1 for the same violation within thirty (30) days of the deadline for filing the campaign statements which form the basis for the alleged violation.

c. Enforcement. Nothing in Section 2.42.080 of this ordinance shall be construed as limiting the authority of any law enforcement agency, prosecuting attorney or other person to enforce the provision of this ordinance, under any circumstances where such law enforcement agency, prosecuting attorney or other person has lawful authority to do so.

2.42.090 Distribution of ordinance to Candidates. The City Clerk shall distribute a complete copy and a summary of this ordinance to all potential candidates for City Council and Mayor at the time the potential candidate requests and receives a nomination petition.

2.42.100 Applicability of Other Laws. Nothing in this ordinance shall exempt any person or committee from applicable provisions of any other laws of this State."

Section II. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph sentence, clause or phrase.

Section III. Emergency Ordinance. The City Council hereby finds that Richmond Municipal Code Section 2.42.050(c) is vague and ambiguous and may be of questionable Constitutionality. In order to avoid any confusion regarding the legitimacy of any contributions which have been received and must be reported by July 31, 1994, and in order to provide immediate and necessary guidance to the City Clerk with regard to the enforcement of said provisions, the City Council hereby declares that this is an emergency ordinance and that it shall take effect and be in force from and after its first reading.

Section IV. It is the intent of the Council of the City of Richmond that this amendment, to the extent that it repeals former Section 2.42.050(c), shall be effective retroactive to the original effective date of Chapter 2.42 of the Richmond Municipal Code and that this repeal by amendment shall be a bar to any prosecution or action seeking injunctive relief or the imposition of liability on a candidate or any other person in connection with an alleged violation of said former Section 2.42.050(c).

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First read, passed and adopted at a special meeting of the Council of the City of Richmond held July 25, 1994, by the following vote:

Ayes: Councilmembers Washington, Niccolls, Rogers, Marquez, Anderson, McMillan, Powers, Griffin and Mayor Corbin

Noes: None

Abstentions: None

Absent: None

EULA M. BARNES
 Clerk of the City of Richmond

(Seal)

Approved:

ROSEMARY M. CORBIN
 Mayor

Approved as to form:

MALCOLM HUNTER
 City Attorney

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State of California)
 County of Contra Costa : ss.
 City of Richmond)

I certify that the foregoing is a true copy of Ordinance No. 29-94 N.S. finally passed and adopted by the Council of the City of Richmond at a regular meeting held July 25, 1994, and published in accordance with law.

(d)(5)

 Clerk of the City of Richmond