

ORDINANCE NO. 20160623-020

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 City Code Section 2-2-31 (*Definitions*) is repealed and replaced as follows: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

- (a) any candidate, any candidate's campaign staff, any candidate's campaign committee, or an agent or employee of any candidate or candidate's campaign committee; and
 - (b) the person or entity making the expenditure, or that person's agent or employee; and
- (3) without prior sharing of material information regarding the communication's content, intended audience, timing, or method of dissemination between:
- (a) any candidate, any candidate's campaign staff, any candidate's campaign committee, or an agent or employee of any candidate or any candidate's campaign committee; and
 - (b) the person or entity making the expenditure, or that person's agent or employee.

(B) ELECTIONEERING COMMUNICATION means a communication that:

- (1) costs, or is part of a series of communications that in the aggregate cost, [~~more than~~] \$500 or more;
- (2) refers to:
 - (a) a clearly identified candidate by:
 - (i) containing the candidate's name, nickname, or image; or
 - (ii) making an unambiguous reference to the candidate or to the candidate's status as a candidate, challenger, or incumbent; or
 - (b) a clearly identified ballot measure, by containing:
 - (i) the measure's number;
 - (ii) a description of the measure; or
 - (iii) an unambiguous reference to the measure;
- (3) is disseminated by publication, broadcast, Internet, a mass mailing, a telephone bank, or a billboard;
- (4) is made later than the 61st day before the date of an election in which the candidate or the ballot measure appears on the ballot; and
- (5) is capable of reaching at least:
 - (a) 5,000 people eligible to vote in the election; or
 - (b) two percent of the number of registered voters eligible to vote in the election.

- (C) **ELECTION REPORTING CYCLE** means the two-year period beginning on the date following the most recent City general election.
- (D) **EXPRESS ADVOCACY** means a communication, activity, goods, services, or any other thing of value that refers to a clearly identified candidate or ballot measure that:
- (1) expressly advocates the election or defeat of the candidate, or passage or defeat of the ballot measure, including using such language as "Vote for," "Re-elect," "Cast your ballot against," "Cast your ballot for," "Defeat," "Vote Down," or "No More Funds for X;" or
 - (2) is susceptible to no reasonable interpretation other than as an appeal to vote for or against a specific candidate or ballot measure.
- (E) **SEGREGATED BANK ACCOUNT** means a bank account maintained by a person who makes one or more direct campaign expenditures or covered transfers, consisting of funds that were paid directly to such account by persons other than the person that controls the account, used by that person to make direct campaign expenditures or covered transfers. A person who pays for direct campaign expenditures or covered transfers exclusively from a segregated bank account must only report information regarding contributions made to that account under Sections 2-2-32 (Reporting of Direct Campaign Expenditures), 2-2-33 (Disclosure Statement Required), and 2-2-34 (Reporting of Covered Transfers).

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

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

- (A) A person who makes one or more direct campaign expenditures in a City election that in the aggregate meet or exceed \$500[~~7~~] shall report:
- (1) the full name and address of the person who makes the expenditure;
 - (2) if the person who makes the expenditure is an individual, the individual's occupation and employer;
 - (3)[~~(1)~~] the full name and address of the person to whom each expenditure is made;
 - (4)[~~(2)~~] the date and amount of each expenditure;
 - (5)[~~(3)~~] the purpose and description of each expenditure;
 - (6)[~~(4)~~] in the case of an expenditure for express advocacy, 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; ~~and~~

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

(8) except as provided in subsection (A)(8)(c), if the person making the expenditure has accepted a contribution from another person during the current election reporting cycle:

(a) in the case of an expenditure exclusively paid for by funds contained in a segregated bank account, for each contributor to the account who made contributions in an aggregate amount of \$500 or more during the current election reporting cycle that have not previously been reported under this subsection:

- (i) the full name and address of the contributor;
- (ii) if the contributor is an individual, the individual's occupation and employer; and
- (iii) the date and amount of each contribution received; or

(b) in the case of an expenditure paid for by funds other than funds contained in a segregated bank account, for each contributor who made contributions in an aggregate amount of \$500 or more during the current election reporting cycle that have not previously been reported under this subsection:

- (i) the full name and address of the contributor;
- (ii) if the contributor is an individual, the individual's occupation and employer; and
- (iii) the date and amount of each contribution received.

(c) A person is not required to report a contribution under subsections (A)(8)(a) or (A)(8)(b) if:

- (i) the contributor specified in writing that the contribution was not to be used for political contributions or direct campaign expenditures at the time that the contribution was made to the person making the expenditure, and the person making the expenditure did not use the contribution for political contributions or direct campaign expenditures;

- (ii) the person making the expenditure received the contribution in a commercial transaction in the ordinary course of any trade or business conducted by the person;
or
- (iii) the person making the expenditure received the contribution from investments made by the person.

- (B) A person making a report required by subsection (A) shall include in the report a sworn statement that each direct campaign expenditure was made without prior consent, cooperation, strategic communication, consultation, or sharing of material information regarding the communication's content, intended audience, timing, or method of dissemination between an affected candidate, the candidate's campaign staff, the candidate's campaign committee, or an agent or employee of the candidate or the committee, and the person making the expenditure, or that person's agent or employee.
- (C) The report required by subsection (A) shall be made:
 - (1) if the expenditure is made before the 60th day before the date of the election, no later than the fifth business day after the date of the expenditure;
 - (2) if the expenditure is made on or after the 60th day before the date of the election and before the ninth day before the date of the election, no later than the second business day after the date of the expenditure; or
 - (3) if the expenditure is made on or after the ninth day before the date of the election, no later than 5 p.m. on the first business day after the date of the expenditure.
- (D) A person making a report required by subsection (A) shall, in addition to the required report, also provide to the city clerk a structured data file containing the contents of the report. The data file must be provided to the city clerk no later than the date that the associated report must be filed.
- (E) The data file must comply with specifications and be on media determined by the city clerk. A filer who provides a non-compliant data file to the clerk shall resubmit the data in the required format. A data file that must be resubmitted is timely filed if resubmitted no later than the next business day after the date that the clerk notifies the filer that the data file is non-compliant.
- (F) Information reported under this section by [~~a candidate,~~] a political committee[~~,~~] or a person subject to Section 254.261 (*Direct campaign expenditure exceeding \$100*) of the Texas Election Code[~~,~~] must also be reported on the [~~candidate's,~~] political committee's[~~,~~] or person's next

campaign finance [contribution and expenditure] report, if required by state law.

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

§ 2-2-33 DISCLOSURE STATEMENT REQUIRED.

- (A) Except as provided by subsections (C) and (D), in [In] addition to any other disclosure statement required by law, a person making the expenditure for a political advertisement, electioneering communication, or express advocacy, paid for in whole or in part by a direct campaign expenditure, using funds other than funds in a segregated bank account must conspicuously disclose on the communication the names of the five largest contributors who have each made contributions in an aggregate amount of \$500 or more [donors in the preceding 12 months] to the person making the direct campaign expenditure during the current election reporting cycle.
- (B) Except as provided by subsections (C) and (D), in addition to any other disclosure statement required by law, a person making the expenditure for a political advertisement, electioneering communication, or express advocacy, paid for in whole or in part by a direct campaign expenditure, using exclusively funds in a segregated bank account must conspicuously disclose on the communication the names of the five largest contributors to the account who have each made contributions in an aggregate amount of \$500 or more to the person making the direct campaign expenditure during the current election reporting cycle.
- (C) A contributor's name is not subject to disclosure under this section if:
- (1) the contributor specified that the contribution was not to be used for political contributions or direct campaign expenditures at the time that the contributor made the contribution to the person making the expenditure, and the person making the expenditure did not use the contribution for political contributions or direct campaign expenditures;
 - (2) the person making the expenditure received the contribution in a commercial transaction in the ordinary course of any trade or business conducted by the person; or
 - (3) the person making the expenditure received the contribution from investments made by the person.
- (D) The disclosure requirements of this section do not apply to:

- (1) bumper stickers, pins, buttons, pens, apparel, and similar small items upon which the names cannot be conveniently printed; or
- (2) circulars or flyers that cost in the aggregate less than \$500 to publish and distribute.

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

- (1) on printed material, the disclosure shall be printed in sufficient type and size to be clearly readable, in two highly contrasting colors such as dark text on a light background, but in no case smaller than eight point font; and
- (2) on other forms of communication, including internet advertisement, television, and radio, the disclosure shall provide the reader, viewer, or listener with actual notice of the disclosure.

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

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

§ 2-2-34 REPORTING OF COVERED TRANSFERS.

- (A) In this section, “covered transfer” means any contribution by a person to another person if the first person:
- (1) designates, requests, or suggests that the contribution be used for:
 - (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, and if the person receiving the contribution did not use the 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;
 - (3) a contribution made by a person in the form of an investment made by that person; or
 - (4) a contribution made by a person who has not received a contribution from another person during the current election reporting cycle.
- (C) A person who makes one or more covered transfers in a City election that in the aggregate meet or 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;
 - (7) in the case of a transfer made for an electioneering communication, if known at the time that the transfer is reported, the name of each candidate, including the office held and office sought as applicable, to whom the communication refers or each ballot measure to which the communication refers; and
 - (8) except as provided in subsection (C)(8)(c), when the person making the transfer has accepted a contribution from another person during the current election reporting cycle:
 - (a) in the case of a transfer exclusively paid for by funds contained in a segregated bank account, for each contributor to the account who made contributions in an aggregate amount of

\$500 or more during the current election reporting cycle that have not previously been reported under this subsection:

- (i) the full name and address of the contributor;
 - (ii) if the contributor is an individual, the individual's occupation and employer; and
 - (iii) the date and amount of each contribution received; or
- (b) in the case of a transfer paid for by funds other than funds contained in a segregated bank account, for each contributor who made contributions in an aggregate amount of \$500 or more during the current election reporting cycle that have not previously been reported under this subsection:
- (i) the full name and address of the contributor;
 - (ii) if the contributor is an individual, the individual's occupation and employer; and
 - (iii) the date and amount of each contribution received.
- (c) A person is not required to report a contribution under subsections (C)(8)(a) or (C)(8)(b) if:
- (i) the contributor specified in writing that the contribution was not to be used for political contributions, direct campaign expenditures, or covered transfers at the time that the contribution was made to the person making the transfer, and the person making the transfer did not use the contribution for political contributions, direct campaign expenditures, or covered transfers;
 - (ii) the person making the transfer received the contribution in a commercial transaction in the ordinary course of any trade or business conducted by the person; or
 - (iii) the person making the transfer received the contribution from investments made by the person.

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

- (1) if the transfer is made before the 60th day before the date of the election, no later than the fifth business day after the date of the transfer;
- (2) if the transfer is made on or after the 60th day before the date of the election and before the ninth day before the date of the election, no later than the second business day after the date of the transfer; or

- (3) if the transfer is made on or after the ninth day before the date of the election, no later than 5 p.m. on the first business day after the date of the transfer.
- (E) A person making a report required by subsection (C) shall, in addition to the required report, also provide to the city clerk a structured data file containing the contents of the report. The data file must be provided to the city clerk no later than the date that the associated report must be filed.
 - (F) The data file must comply with specifications and be on media determined by the city clerk. A filer who provides a non-compliant data file to the clerk shall resubmit the data in the required format. A data file that must be resubmitted is timely filed if resubmitted no later than the next business day after the date that the clerk notifies the filer that the data file is non-compliant.
 - (G) Information reported under this section by a political committee or a person subject to Section 254.261 (*Direct campaign expenditure exceeding \$100*) of the Texas Election Code must also be reported on the political committee's or person's next campaign finance report, if required by state law.
 - (H) It is an affirmative defense to prosecution pursuant to section 2-2-34(C) that the person who makes the transfer:
 - (1) prohibits, in writing, the use of that transfer for political contributions, direct campaign expenditures, or covered transfers if the person receiving the contribution did not use the contribution for political contributions, direct campaign expenditures, or covered transfers;
 - (2) makes the transfer in a commercial transaction in the ordinary course of any trade or business conducted by that person;
 - (3) is making an investment; or
 - (4) has not received a contribution from another person during the current election reporting cycle.

§ 2-2-35 RETENTION OF RECORDS.

A person subject to this article shall:

- (A) maintain copies of checks, bank statements, and deposit slips for a period of five years after:
 - (1) the date of any report, made under Sections 2-2-32 (*Reporting of Direct Campaign Expenditures*) or 2-2-34 (*Reporting of Covered Transfers*), to which the records are applicable; or

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

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

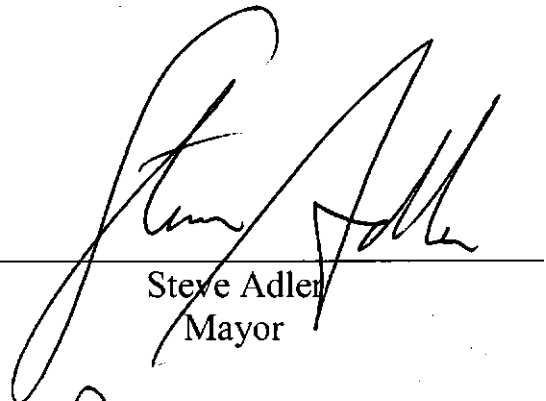
PART 7. A person who makes one or more expenditures that are reportable under Section 2-2-32 (*Reporting of Direct Campaign Expenditures*) must only report contributions received after August 31, 2016. A person who makes one or more transfers that are reportable under Section 2-2-34 (*Reporting of Covered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

PART 8. Parts 1, 2, 3, 5, and Section 2-2-35 in Part 6 of this ordinance take effect on July 3, 2016. Part 4 of this ordinance takes effect on September 1, 2016. Section 2-2-34 in Part 6 of this ordinance takes effect on February 1, 2017.

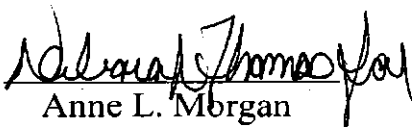
PASSED AND APPROVED

____ June 23 _____, 2016

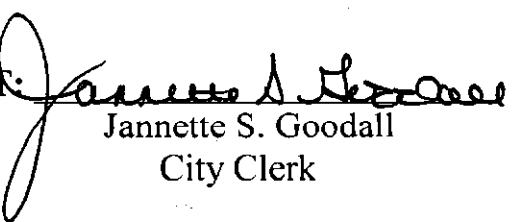
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Steve Adler
Mayor

APPROVED: 

Anne L. Morgan
City Attorney

ATTEST: 

Jannette S. Goodall
City Clerk