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ORDINANCE NO. 2023-14

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ESCONDIDO, CALIFORNIA, TO REPEAL AND REPLACE PROVISIONS OF ESCONDIDO MUNICIPAL CODE CHAPTER 2, ARTICLE 2, CONTROLS ON CAMPAIGN CONTRIBUTIONS

WHEREAS, the high cost of election campaigning creates problems of actual or perceived improper influence exercised by campaign contributors over elected officials; and

WHEREAS, the City Council for the City of Escondido ("City") has enacted the Campaign Control Contribution Ordinance ("Ordinance") to govern various aspects of campaign financing in the jurisdiction of the City; and

WHEREAS, the Ordinance at Escondido Municipal Code ("EMC") Section 2-100 recites the purpose and intent of creating reasonable limits on the amounts and types of campaign contributions and it is incorporated herein as though fully set forth; and

WHEREAS, mindful of first amendment constitutional principles, fundamental due process and fairness, there exists a compelling need and it is in the best interests of the citizens of this City to update and adopt reasonable and enforceable regulations related to election campaign fundraising conducted in the City; and

WHEREAS, such campaign regulations may be enacted pursuant to the authority granted to the City by Article XI, Section 7 of the California Constitution, and specifically authorized by the Political Reform Act.

NOW, THEREFORE, IT IS HEREBY RESOLVED and the City Council of the City of Escondido DOES HEREBY ORDAIN as follows:

SECTION 1. The foregoing recitals are true and correct.

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SECTION 2. That EMC Chapter 2, Administration, Article 7, Controls on Campaign Contributions, Section 2-102 shall be repealed and replaced as follows:

Section 2-102. Definitions.

As used in this article, the listed words or phrases shall be defined as follows:

(1) Candidate shall mean any individual who is listed on the ballot or who has begun to circulate nominating petitions or authorized others to circulate petitions in his or her behalf, for nomination for or election to any elective city office, or who receives a contribution or makes an expenditure or gives his or her consent for any other person to receive a contribution with a view to bringing about his or her nomination or election to any city office, whether or not the specific elective office for which nomination or election may be sought is known at the time the contribution is received or the expenditure is made and whether or not candidacy has been announced or a declaration of candidacy filed at such time. "Candidate" also includes any holder of any city office who is the subject of a recall election.

(2) City office shall mean the offices of mayor, councilmember and treasurer of the City of Escondido.

(3) Committee shall be defined as the definition found in Government Code Section 82013, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

(4) Contribution shall be defined as the definition found in Government Code Section 82015, contained within the Political Reform Act, and any related provisions in the California Code of Regulations.

(5) Controlled committee shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if he or she, his or her agent or any other committee he or she controls has a significant influence on the actions or decisions of the committee.

(6) Election shall mean any primary, general or special election held in the City of Escondido, including the candidate election portion of a consolidated recall election. The primary and general or special elections are separate elections for purposes of this article.

(7) Enforcement authority shall mean the officer, agent or organization designated by action of the city council to enforce the provisions of this article. Nothing in this article shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this article under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

(8) Expenditure shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

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(9) Independent Committee shall mean a committee that receives contributions or makes expenditures for the purpose of influencing or attempting to influence a City election, which is not made with the cooperation, consultation, or in concert with, or at the request or suggestion of, any candidate or his or her committee, or any of their agents.

(10) Independent expenditure:

(a) Independent expenditure shall mean an expenditure by a person for a communication expressly advocating the support of or opposition to a clearly identified candidate which is not made with the cooperation or prior consent of a candidate, his or her agent, or a controlled committee of a candidate.

(b) For the purpose of this definition:

1. "Expressly advocating" shall mean any communication containing a message advocating support or opposition. Content may include but not be limited to the name of a candidate, the title of a measure or any expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," or "reject" and an identifying phrase.

2. "Clearly identified candidate" shall mean that the name of a candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous references.

3. "Made with the cooperation or with the prior consent of, or in consultation with, or at the behest or suggestion of, a candidate or his or her agent or a controlled committee of a candidate" shall mean any arrangement, coordination, or direction by a candidate, agent or committee prior to the publication, display or broadcast of the communication.

4. "Agent" shall mean any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities, he or she may authorize expenditures.

(c) An expenditure not qualifying under this section as an independent expenditure shall be considered a contribution to the candidate.

(11) Measure shall mean any proposition which is submitted to a popular vote at an election by action of the city council or which is submitted or is intended to be submitted to a popular vote at a city election by initiative or referendum procedure whether or not it qualifies for the ballot.

(12) Payment shall mean payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(13) Person shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, Political Action Committee, Independent Committee and any other organization or group of persons acting in concert. "Person" does include a Political Party Committee.

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(14) Political Action Committee shall mean an organization that generates, receives and/or pools campaign contributions from members or others and either makes direct expenditures on behalf of, or donates those contributions to campaigns for or against, candidates or ballot measures. As used herein, a labor union or employee bargaining group shall constitute a political action committee.

(15) Political Party Committee shall mean the state central or county central committee of an organization that meets the requirements for recognition as a political party pursuant to California Elections Code sections 5100 or 5151.

SECTION 3. That EMC Chapter 2, Administration, Article 7, Controls on Campaign Contributions, Section 2-103 shall be repealed and replaced as follows:

Section 2-103. Campaign Contributions; limitations.

(a) No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all controlled committees supporting such candidate, to exceed one thousand dollars (\$1,000.00) for any single election for a City Council district office, or to exceed one thousand seven hundred and fifty dollars (\$1,750.00) for any single election for the office of mayor or city treasurer.

(b) A candidate shall not lend his or her own campaign more than one hundred thousand dollars (\$100,000.00) per election. A candidate may not charge interest on any loan he or she made to his or her campaign.

(c) The terms of this section are applicable to any contributions made to a candidate or committee, whether used by such candidate or committee to finance a current campaign, to pay deficits incurred in prior campaigns, or otherwise.

(d) Contribution Amount Adjustment. The dollar amounts set forth in this section shall be adjusted and increased on a biennial basis by fifty dollars (\$50.00) commencing on January 1, 2023.

(e) City Clerk Notice. The city clerk shall publish a public notice of the adjustment by March 1, or as soon as practicable thereafter.

(f) If any person is found guilty of violating the terms of this section, the amount of funds received constituting such violation shall be paid by the candidate or committee treasurer who received such funds to the city treasurer for deposit in the general fund of the city.

SECTION 4. That EMC Chapter 2, Administration, Article 7, Controls on Campaign Contributions, Section 2-107 shall be repealed and amended as follows:

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Section 2-107. Disbursement of surplus campaign funds.

(a) If the final campaign statement for a candidate or any committee discloses an unexpended surplus, the candidate or committee shall comply with Government Code Section 89519, as amended, in the closure of the account and disbursement of any such funds.

(b) No candidate for any city elected office, or his or her treasurer or committee, shall make a payment or contribution from an existing campaign account into a new campaign account for that candidate, except as allowed by state law.

SECTION 5. SEPARABILITY. If any section, subsection sentence, clause, phrase or portion of this ordinance is held invalid or unconstitutional for any reason by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions.

SECTION 6. That as of the effective date of this ordinance, all ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 7. That the City Clerk is hereby directed to certify to the passage of this ordinance and to cause the same or a summary to be published one time within 15 days of its passage in a newspaper of general circulation, printed and published in the County and circulated in the City of Escondido.