

ORDINANCE NO. 20160407-006

AN ORDINANCE AMENDING CITY CODE CHAPTER 2-2 RELATING TO CAMPAIGN FINANCE.

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

PART 1. City Code Section 2-2-2 (*Definitions*) is amended to read as follows:

§ 2-2-2 DEFINITIONS.

In this chapter:

- (1) CAMPAIGN or CAMPAIGN COMMITTEE means the principal, authorized political committee of a candidate for City office.
- (2) CAMPAIGN CONTRACT means a contract between a candidate for mayor or city council and the City as provided by this chapter.
- (3) CAMPAIGN FINANCE REPORT means a periodic report of contributions, loans, credits, interest, gains, reimbursements, and expenditures of a candidate, officeholder, or political committee required to be filed under Chapter 254, Texas Election Code, including any other matters and reports required to be disclosed under this chapter.
- (4)~~(3)~~ CAMPAIGN PERIOD means the time period allowed in City Charter Article III, Section 8 (*Limits on Campaign Contributions and Expenditures*).
- (5)~~(4)~~ CAMPAIGN TREASURER means the individual designated by a candidate, officeholder, or political committee under the Texas Election Code, including a candidate acting as his or her own campaign treasurer.
- (6)~~(5)~~ CANDIDATE means:
  - (a) a candidate for mayor or city council;
  - (b) a candidate's campaign committee; and
  - (c) related to Article 4 (*Direct Campaign* ~~*Independent*~~ *Expenditures*), a person who has, or has had during an election or runoff election, authority to act on behalf of the candidate or candidate's campaign.

~~(7)~~~~(6)~~ CONTRIBUTION means a direct or indirect transfer of money, goods, services, or any other thing of value, including a pledge or an agreement [made] or other obligation incurred, whether legally enforceable or not, to make a transfer. ~~[The term includes a loan or extension of credit, other than those expressly excluded by the Texas Election Code, and a guarantee of a loan or extension of credit.]~~ The term does not include an expenditure required to be reported under Section 35.006(b), Texas Government Code. In-kind labor, as defined in this chapter, is not a contribution.

~~(7) CONTRIBUTION AND EXPENDITURE REPORT~~ means a periodic report of contributions and expenditures by a candidate, officeholder, or political committee required to be filed under the Texas Election Code, including any other matters required to be disclosed under this chapter.]

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

(9) EXPENDITURE means a payment of money or other thing of value, including an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment. The term includes political expenditures made from the personal funds of a candidate or officeholder.

~~(10) INDEPENDENT EXPENDITURE~~ means:

~~(A) an expenditure for an electioneering communication or for express advocacy as those terms are defined in Article 4; and~~

~~(B) an expenditure on behalf of, or opposing the election of, a candidate, if:~~

~~(1) the expenditure is made independently of the candidate and the candidate's campaign committee; and~~

~~(2) the expenditure is made:~~

~~(a) without prior consent, cooperation, strategic communication, or consultation between the 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 or entity making the expenditure, or that person's agent or employee, and~~

~~(b) without prior sharing of material information regarding the communication's content, intended audience, timing, or method of dissemination between the 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 or entity making the expenditure, or that person's agent or employee.]~~

- (10)[44] INDIVIDUAL means a natural person, and cannot mean a corporation or other entity.
- (11)[42] IN-KIND LABOR means the value of personal services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.
- (12) LOAN means an agreement for the transfer of funds from a lender to a candidate, officeholder, or political committee with terms of repayment. The term includes the deposit of personal funds by a candidate or officeholder into an account in which political contributions are held.
- (13) LOBBY or LOBBYING has the same meaning set out in City Code Chapter 4-8 (Regulation of Lobbyists). [~~means the solicitation of a City official, by any means other than public expression at a meeting of City officials open to the public under the Open Meetings Act, directly or indirectly by a person in an effort to influence or persuade the City official to support or oppose, recommend or not recommend, vote for or against, or to take action or refrain from taking action on a municipal question, excluding mere requests for information or inquiries about a municipal question, matter, or procedure or communication to a City official that is incidental to other employment not for the purpose of lobbying.~~]
- (14) OFFICEHOLDER means an individual holding the office of mayor or City councilmember.
- (15) OFFICEHOLDER ACCOUNT means an account maintained by an officeholder as permitted by the Texas Election Code to make officeholder expenditures, whether or not maintained as a segregated fund.
- (16) OFFICEHOLDER EXPENDITURE means a payment made or obligation incurred by an officeholder when the payment or obligation is for officeholder purposes authorized by this chapter. The term includes political expenditures made from the personal funds of an officeholder.

- (17) PERSON means an individual, corporation, partnership, labor union, or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons, including a political committee organized under the Texas Election Code, not limited to the definition in Section 1-1-2 (*General Definitions*) of the Code.
- (18) POLITICAL ADVERTISING has [~~shall have~~] the meaning set out in the Texas Election Code.
- (19) POLITICAL COMMITTEE means a specific purpose political committee or general purpose political committee as defined in the Texas Election Code.
- (20) QUALIFYING CANDIDATE means a candidate who has signed a campaign contract under this chapter and who has met the requirements under this chapter to qualify for funds from the Austin Fair Campaign Finance Fund.
- (21) REPORTING PERIOD means a period established under Chapter 254, [the] Texas Election Code, and this chapter, for filing of campaign finance [contribution and expenditure] reports.
- (22) RUNOFF ELECTION means an election following an election in which no candidate receives a majority of the votes cast.
- (23) STRATEGIC COMMUNICATION means a communication regarding advertising, campaign strategies, and voter groups between the candidate, candidate's campaign committee, or their agents or employees and any of the persons, agents, or employees of the entity making expenditures.

**PART 2.** Subsections (C) and (D) of City Code Section 2-2-11 (*Voluntary Campaign Contract*) are amended to read as follows:

- (C) Only a candidate who signs a campaign contract with the City will qualify for public funds from the Austin Fair Campaign Finance Fund under Article 7 of this chapter [Chapter] (*Austin Fair Campaign Finance Fund*).
- (D) A candidate who signs a campaign contract must report a contribution or expenditure during the first reporting period in which it is made and apply the contribution or expenditure to the candidate's voluntary limits. The candidate must file the campaign finance report's data as provided in Section 2-2-26 (*Filing of Campaign Finance Report Data*).

**PART 3.** Subsections (B) and (C) of City Code Section 2-2-12 (*Candidates' Expenditure Limitations*) are amended to read as follows:

- (B) A candidate in a race for mayor or city council shall not make expenditures from his or her own funds that exceed five percent of the applicable voluntary expenditure limits in this section for an election or runoff election. An expenditure by a candidate is an expenditure by his or her campaign. A candidate shall report expenditures from personal funds consistent with state law and this chapter [requirements].
- (C) If a candidate has signed a campaign contract under this chapter, expenditures on behalf of the candidate other than direct campaign [~~independent~~] expenditures, as defined in Article 4 (Direct Campaign Expenditures), shall apply to the candidate's voluntary expenditure limits.

**PART 4.** Subsection (B) of City Code Section 2-2-13 (*Candidates' Contribution Limits*) is amended to read as follows:

- (B) A candidate for mayor or city council may spend personal funds on his or her own campaign up to the applicable five percent expenditure limits set out in Section 2-2-12 (*Candidates' Expenditure Limitations*). An expenditure [~~Expenditures~~] from personal funds shall be reported in a manner consistent with state law and this chapter.

**PART 5.** Subsection (A) of City Code Section 2-2-17 (*Waiver of Voluntary Limits*) is amended to read as follows:

- (A) A candidate who signs a campaign contract need not comply with the voluntary contribution and expenditure limits and may continue to use on campaign advertising the statement of compliance with the Austin Fair Campaign Chapter if:
  - (1) another candidate who signed a campaign contract has exceeded the voluntary contribution and expenditure limits at the time of filing a contribution and expenditure report;
  - (2) one or more candidates files for the same City office who by the filing deadline has not entered into a campaign contract or filed a notice of intent, under the Texas Election Code, to raise and spend less than \$500; or
  - (3) direct campaign [~~independent~~] expenditures, as defined in Article 4 (Direct Campaign Expenditures), in a race for the same council office by one person exceed \$10,000 at any time before the election.

**PART 6.** City Code Section 2-2-21 (*Additional Information Required on All Contribution and Expenditure Reports Filed with the City*) is amended to read as follows:

**§ 2-2-21 ADDITIONAL INFORMATION REQUIRED ON ALL CAMPAIGN FINANCE [~~CONTRIBUTION AND EXPENDITURE~~] REPORTS FILED WITH THE CITY.**

- (A) In addition to the information required under the Texas Election Code, a campaign finance [~~contribution and expenditure~~] report[s] filed with the city clerk [City] by a candidate, office holder, and political committee involved in a City election shall include the following information:
- (1)[(A)] for all individual contributions of \$200 or more in a reporting period, disclosure of the occupation of the contributor and the name of the contributor's employer; and
- (2)[(B)] in disclosing expenditures, the nature and purpose of any payment over \$50 to a consultant or contractor, including a general description of the goods or services provided to the campaign. [~~; and~~]
- ~~[(C) in disclosing credit card transactions over \$50, the nature and purpose of the expenditure or expenditures paid by credit card, including a description of the goods or services paid for, itemized for each individual transaction over \$50.]~~
- (B) The requirements described in Subsection (A) also apply to the structured data file provided to the city clerk by a candidate, office holder, or political committee with each campaign finance report, as prescribed by Section 2-2-26 (Filing of Campaign Finance Report Data).

**PART 7.** City Code Section 2-2-23 (*General Purpose Committees*) is amended to read as follows:

**§ 2-2-23 POLITICAL [~~GENERAL PURPOSE~~] COMMITTEES.**

- (A) A specific purpose committee that makes contributions or expenditures in connection with a City election must file a campaign finance report with the city clerk as prescribed by the Texas Election Code and this chapter. In addition to the required report, a specific purpose committee must file each campaign finance report's data as provided in Section 2-2-26 (Filing of Campaign Finance Report Data).
- (B)[A] A general purpose committee that makes contributions or expenditures in connection with a City election must file with the city clerk a copy of each campaign finance [~~contribution and expenditure~~] report filed with the Texas Ethics Commission. This requirement shall apply to all reporting periods in which the general purpose committee makes 50 percent

or more of its expenditures in connection with a City election, or makes an expenditure of \$2,500 or more in connection with a City election. The filing date for filing with the city clerk is the date established under the Texas Election Code for filing with the Texas Ethics Commission. In addition to a copy of each campaign finance report filed with the Texas Ethics Commission, a general purpose committee must file the campaign finance report's data as provided in Section 2-2-26 (Filing of Campaign Finance Data).

- (C)[B] A general purpose political committee that makes more than 50 percent of its expenditures in a reporting period in connection with a City election, or makes an expenditure of \$2,500 or more in connection with a City election, or intends to do so, shall file with the city clerk as a notice of intent an original or a copy of its current "Appointment of a Campaign Treasurer" not later than the 60th day before making a contribution or expenditure in connection with a City election. At the written request of the general purpose political committee, the original filing with the city clerk of the "Appointment of a Campaign Treasurer" may serve as a notice of intent to participate in future City elections.

**PART 8.** City Code Section 2-2-25 (*Annual Reconciliation Filing by Candidates and Campaign Committees*) is repealed.

**PART 9.** Subsections (C), (D), (G), (H), and (I), of City Code Section 2-2-26 (*Electronic Filing*) are amended to read as follows:

**§ 2-2-26 [ELECTRONIC] FILING OF CAMPAIGN FINANCE REPORT DATA.**

- (C) The city clerk must upload a data file into the database exactly as the file is received, except that the city clerk may not upload a data file that does not comply with the city clerk's technical specifications. A filer who provides a non-compliant data file to the city 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 city clerk notifies the filer that the data file is non-compliant.
- (D) The city clerk shall upload the data related to a campaign finance report to the database available from the City's Web site on the first business day after the date that the city clerk accepts [receives] the data file. The city clerk shall post a campaign finance report to the City's Web site on the first business day after the date that the city clerk receives the report.

(G) The requirement under this section to provide to the city clerk a structured data file containing the contents of each campaign finance report does not apply to a candidate or officeholder running for re-election if:

- (1) the due date for the campaign finance report falls within the campaign period;
- (2) the candidate or officeholder running for re-election has not raised and does not intend to raise more than \$10,000 in contributions during the campaign period; and
- (3) the candidate or officeholder running for re-election files a signed statement with the city clerk stating that the candidate or officeholder running for re-election has not raised and does not intend to raise more than \$10,000 in contributions during a campaign period.

~~[(G) The requirement to provide a data file under this section does not apply to a candidate if the candidate files a signed statement with the city clerk stating that the candidate has not raised and does not intend to raise more than \$10,000 in contributions for the candidate's campaign. If contributions to a candidate who has signed a statement under this subsection exceed \$10,000, the candidate shall provide a data file for each subsequent report that the candidate is required to file, and, no later than the filing deadline for the first report that is due after the contributions to the candidate exceeded \$10,000, the candidate shall provide a data file for each report that was due before the contributions to the candidate exceeded \$10,000. An exemption under this subsection from providing a data file associated with a required report does not exempt the candidate from filing the report.]~~

(H) If contributions to a candidate or officeholder running for re-election who has signed an exemption statement under this subsection exceed \$10,000, the candidate or officeholder running for re-election shall provide to the city clerk:

- (1) a data file for each subsequent campaign finance report that the candidate or officeholder is required to file; and
- (2) a data file for each prior campaign finance report that was due during the campaign period before the contributions to the candidate or officeholder exceeded \$10,000, to be provided to the city clerk no later than the next campaign finance report filing deadline after the contributions to the candidate or officeholder exceed \$10,000.

(I) An exemption under this subsection from providing a data file associated with a required campaign finance report does not exempt the candidate from filing the campaign finance report.

**PART 10.** City Code Section 2-2-27 (*Disclosure of Loans from a Candidate or Officeholder and Expenditures from the Funds of a Candidate or Officeholder*) is repealed.

**PART 11.** City Code Section 2-2-29 (*Special Pre-Election Reports*) is amended to read as follows:

**§ 2-2-29 [SPECIAL] PRE-ELECTION REPORTS.**

(A) This section applies to:

(1) a candidate who accepts contributions that total more than \$10,000 during the period beginning the 9th day before the date of an election and ending at 5 p.m. on the day before the date of an election;

(2) a candidate who loans personal funds to the candidate's campaign totaling \$10,000 during the period beginning the 9th day before the date of an election and ending at 5 p.m. on the day before the date of an election;

(3) a candidate who makes expenditures from personal funds in support of the candidate's campaign totaling \$10,000 during the period beginning the 9th day before the date of an election and ending at 5 p.m. on the day before the date of an election;

(4)[(2)] a political committee that accepts contributions that total more than \$2,500 during the period beginning the 9th day before the date of an election and ending at 5 p.m. on the day before the date of an election; and

(5)[(3)] a political committee that makes expenditures that total more than \$1,000 during the period beginning the 9th day before the date of an election and ending at 5 p.m. on the day before the date of an election.

(B) A candidate or political committee described in Subsection (A) shall file a pre-election report with the city clerk no later than 5 p.m. on the first business day after each date that one or more of the reporting thresholds prescribed by Subsection (A) are met. The filing of one pre-election report does not excuse the filing of a subsequent report each time the reporting thresholds prescribed by Subsection (A) are met.

(C) [(B)] A candidate described in Subsection (A) shall file a [special] pre-election report with the city clerk [City Clerk] that includes the following information:

(1) the name of the candidate;

(2) an itemization of contributions, including: [the name and address of each contributor making a contribution, or contributions, that total more than \$200 during the period beginning the 9th day before the date of the election and ending at 5 p.m. on the day before the date of the election;]

(a) the name and address of each contributor making a contribution of more than \$50;

(b)[(3)] the amount of each contribution;

(c)[(4)] the date each contribution was accepted; [and]

(d)[(5)] a description of any in-kind contribution[-]; and

(e) for each contribution of \$200 or more, the occupation of the contributor and the name of the contributor's employer.

(3) an itemization of loans from personal funds, including:

(a) the amount of each loan; and

(b) the date each loan.

(4) an itemization of expenditures from personal funds, including:

(a) the full name and address of the payee to whom each expenditure was made;

(b) the date and amount of each expenditure; and

(c) the purpose and description of each expenditure.

(D)[(C)] A political committee described in Subsection (A) shall file a [special] pre-election report with the city clerk [City Clerk] that includes the following information:

(1) the name of the political committee;

(2) an itemization of contributions, including: [the name and address of each contributor making a contribution, or contributions, that total more than \$200 during the period beginning the 9th day before the date of the election and ending at 5 p.m. on the day before the date of the election;]

(a) the name and address of each contributor making a contribution of more than \$50;

(b)[(3)] the amount of each contribution;

(c)[(4)] the date each contribution was accepted;

(d)[(5)] a description of any in-kind contribution; and



- (G) All information reported on a pre-election report must also be reported on the candidate's or political committee's subsequent campaign finance report.

**PART 12.** City Code Article 4 (*Independent Expenditures*) is retitled as follows:

**ARTICLE 4. DIRECT CAMPAIGN [INDEPENDENT] EXPENDITURES.**

**PART 13.** Subsections (B) and (C) of City Code Section 2-2-31 (*Definitions*) of Article 4 (*Independent Expenditures*) are amended to read as follows:

- (B) EXPRESS ADVOCACY means a communication, activity, goods, services, or any other thing of value that refers to a clearly identified candidate or ballot measure to expressly advocate the election or defeat of the candidate, or passage or defeat of the ballot measure, including using such language [a phrase such] as "Vote for," "Re-elect," "Cast your ballot against," "Cast you ballot for," "Defeat," "Vote Down," or "No More Funds for X."

(C) DIRECT CAMPAIGN EXPENDITURE means:

- (1) an expenditure for an electioneering communication or for express advocacy as those terms are defined in this Article; and
- (2) an expenditure on behalf of, or opposing the election of, a candidate, if:
  - (a) the expenditure is made independently of the candidate and the candidate's campaign committee; and
  - (b) the expenditure is made:
    - (i) without prior consent, cooperation, strategic communication, or consultation between the 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 or entity making the expenditure, or that person's agent or employee, and
    - (ii) without prior sharing of material information regarding the communication's content, intended audience, timing, or method of dissemination between the 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 or entity making the expenditure, or that person's agent or employee.

**PART 14.** City Code Section 2-2-32 (*Reporting of Independent Expenditures*) is amended to read as follows:

**§ 2-2-32 REPORTING OF DIRECT CAMPAIGN [~~INDEPENDENT~~]  
EXPENDITURES.**

- (A) A person who makes one or more direct campaign [~~independent~~] expenditures in a City election that in the aggregate exceed \$500, shall report:
- (1) the full name and address of the person to whom each expenditure is made;
  - (2) the date and amount of each expenditure;
  - (3) the purpose and description of each expenditure;
  - (4) 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
  - (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 referred or each ballot measure to which the communication referred.
- (B) A person making a report required by Subsection (A) shall include in the report a sworn statement that each direct campaign [~~independent~~] 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 [~~disclosure~~] 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 report required by this section shall be filed electronically, unless otherwise exempted from electronic filing. The city clerk shall post a report under this section on the City's Web site on the first business day after the date that the clerk receives the report.]

(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 contribution and expenditure report, if required by state law.

**PART 15.** City Code Section 2-2-33 (*Disclosure Statement Required*) is amended to read as follows:

In addition to any other disclosure statement required by law, a political advertisement, electioneering communication, or express advocacy paid for in whole or in part by a direct campaign ~~[an independent]~~ expenditure, must conspicuously disclose on the communication the names of the five largest donors in the preceding 12 months to the person making the direct campaign ~~[independent]~~ expenditure.

**PART 16.** City Code Article 5 (*Officeholder Accounts and Campaign Debt*) is retitled as follows:

**ARTICLE 5. OFFICEHOLDER ACCOUNTS ~~[AND CAMPAIGN DEBT]~~.**

**PART 17.** City Code Section 2-2-42 (*Annual Reconciliation of Campaign Debt*) is repealed.

**PART 18.** City Code Section 2-2-43 (*Existence of Campaign Debt*) is repealed.

**PART 19.** Subsection (B) of City Code Section 2-2-64 (*Funding for Qualifying Candidates*) is amended to read as follows:

(B) Funding from the Austin Fair Campaign Finance Fund shall be distributed to qualifying candidates in a runoff election under the following procedure and formula:

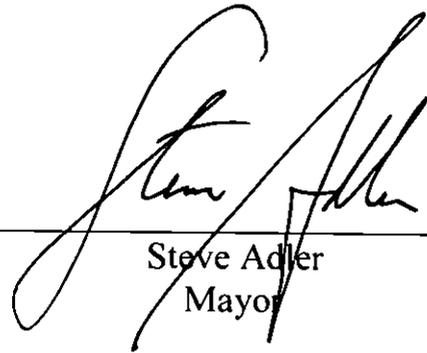
- (1) on request, the city clerk shall state the available balance in the Austin Fair Campaign Finance Fund;
- (2) funds for a city runoff election shall be made available as soon as practicable after the results of the city general election are certified; and
- (3) the city clerk shall review the "30-day before election", [~~and~~] "8-day before election" and "pre-election" [~~before election~~] campaign finance [~~contribution and expenditure~~] reports and any supporting materials filed by qualifying candidates seeking public funds to verify compliance with the expenditure limits of the candidate's campaign contract.

**PART 20.** This ordinance takes effect on April 18, 2016.

**PASSED AND APPROVED**

\_\_\_\_\_  
April 7, 2016

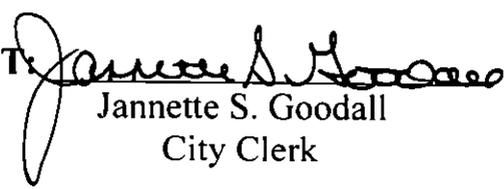
§  
§  
§

\_\_\_\_\_  
  
Steve Adler  
Mayor

**APPROVED:**

\_\_\_\_\_  
  
Anne L. Morgan  
City Attorney

**ATTEST:**

\_\_\_\_\_  
  
Jannette S. Goodall  
City Clerk