

ORDINANCE NO.

AN ORDINANCE REPEALING SECTION 2-13.00 TO SECTION 2-13.07 OF THE CITY OF HAYWARD MUNICIPAL CODE AND ADDING CHAPTER 2, ARTICLE 13 TO THE HAYWARD MUNICIPAL CODE REGARDING CAMPAIGN CONTRIBUTION PRACTICES FOR CITY ELECTIVE OFFICES AND BALLOT MEASURES

THE CITY COUNCIL OF THE CITY OF HAYWARD DOES ORDAIN AS FOLLOWS:

Section 1. Upon the effective date of this ordinance, Hayward Municipal Code Sections 2-13.00 through 2-13.07 are hereby repealed and Article 13 of Chapter 2 of the Hayward Municipal Code is hereby enacted to read in full as follows:

ARTICLE 13

CAMPAIGN CONTRIBUTION PRACTICES FOR CITY
ELECTIVE OFFICES AND BALLOT MEASURES

Section	Subject Matter
2-13.00	PURPOSE
2-13.01	DEFINITIONS
2-13.02	VOLUNTARY EXPENDITURE LIMITS FOR CAMPAIGNS FOR CITY ELECTIVE OFFICES
2-13.03	LIMITATION OF CONTRIBUTIONS FOR CANDIDATES WHO DO NOT ACCEPT VOLUNTARY EXPENDITURE LIMITS
2-13.04	CONTRIBUTION LIMITATIONS FOR CANDIDATES ACCEPTING EXPENDITURE LIMITATIONS
2-13.05	AGGREGATION OF CONTRIBUTIONS
2-13.06	PERSONAL LOANS
2-13.07	NOTIFICATION TO VOTERS
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- 2-13.10 NO ANONYMOUS CONTRIBUTIONS
- 2-13.11 MANDATORY DISCLOSURES ON CAMPAIGN COMMUNICATIONS OF CERTAIN CONTRIBUTIONS AND LOANS
- 2-13.12 ENFORCEMENT AND PENALTIES
- 2-13.13 CIVIL LIABILITY FOR VIOLATIONS
- 2-13.14 VIOLATION OF TITLE; PROBABLE CAUSE; HEARING; NOTICE; ORDER

SEC. 2-13.00. PURPOSE.

- a. Through their elected representatives, the people hereby enact the ordinance codified in this chapter in the hopes that public officials, whether elected or appointed, perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them. The ordinance codified in this chapter also seeks to create transparency concerning persons or entities that provide significant financial support for City of Hayward (“City”) ballot measures. Receipts and expenditures in municipal election campaigns should be fully and truthfully disclosed in order that the voters may be fully informed and improper practices may be inhibited.
- b. Local government should serve the needs and respond to the wishes of all citizens equally, without regard to wealth.

SEC. 2-13.01. DEFINITIONS.

- a. “Campaign Communications,” for the purposes of this chapter, means one thousand (1,000) or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers; paid advertisements, including but not limited to advertisements in newspapers, magazines, radio and television promotions, and on the internet; one thousand (1,000) or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month. “Campaign communication” does not include small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard signs, skywriting, and similar items; communications that are the content of a newspaper, radio show, television show, or other recognized news medium; and communications from an organization to its members.
- b. “Candidate,” for the purposes of this chapter, means a candidate for a Hayward municipal elective office. “Candidate” means an individual who is listed on the ballot or who has qualified to have write-in votes on his or her behalf counted by election officials, for nomination for or election to any elective office, or who receives a contribution, or makes an expenditure, or gives his or her consent for any other person to receive a contribution or make an expenditure with a view to bringing about his or her nomination or election to any elective office, whether or not the specific elective office for which he or she will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he or she has announced his or her candidacy or filed a declaration of candidacy at such time. “Candidate” also includes any office-holder who is the subject of a recall election and any candidate for his or her office, but does not include the proponents or opponents of a recall. The proponents or opponents of a recall are for the purposes of this chapter the proponents or opponents of a measure.

- c. “Committee” means any person or combination of persons that directly or indirectly receives contributions which total more than two hundred fifty dollars (\$250) in a calendar year or makes expenditures exceeding more than two hundred fifty dollars (\$250) in a calendar year for the purpose of influencing or attempting to influence the action of voters for or against the nomination or election of one or more candidates, or the passage or defeat of any measure, including any committee or subcommittee of a political party.
- d. “Contribution” means a gift, subscription, loans not subject to Section 2-13.06, deposit, pledge, forgiveness of indebtedness, payment of a debt by a third party, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, made directly or indirectly in aid of or in opposition to the nomination or election of one or more candidates or the qualification for the ballot or voter approval of one or more measures. The term “contribution” includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund-raising events: a candidate’s own money or property used on behalf of his or her candidacy; the granting to a candidate or committee of discounts or rebates not available to the general public; and payments for the services of any person serving on behalf of a candidate or committee, when such payments are not made from contributions the candidate or committee must otherwise report under the terms of this chapter. The term “contribution” further includes a transfer, gift, loans not subject to Section 2-13.06, advance, deposit, forgiveness of indebtedness, payment of a debt by a third party, pledge, contract, agreement, or promise of money or anything of value or other obligation, whether or not legally enforceable, received directly or indirectly by a committee from another committee. The term “contribution” shall not include a gift of service or labor, but shall include service or labor for which a payment is made, nor shall the term “contribution” include a gift of the use of personal or real property where the value of such use is not in excess of fifty dollars (\$50), nor shall it include food and beverages the value of which for any one event is no more than fifty dollars (\$50).
- e. “Controlled Committee” means a committee either directly or indirectly controlled by a candidate or committee, or which acts jointly with a candidate or controlled committee in the making of expenditures or the receipt or solicitation of contributions. A committee is deemed controlled if another committee or candidate exercises significant influence over its actions or decisions. A committee may be controlled with respect to one or more candidates and independent with respect to other candidates.
- f. “Elective office” means the offices of Members of the City Council and Mayor.
- g. “Entity” means any person other than an individual.

- g. “Independent Committee” means a committee that makes an independent expenditure for a communication which expressly advocates the election or defeat of a clearly identified candidate, or the passage or defeat of a measure, and which is made independently from a candidate’s campaign. To be considered independent, the communication may not be made with the cooperation, consultation or in concert with, or at the request or suggestion of, any candidate or his or her authorized committees or a political party, or any of their agents. While there is no limit on how much an independent committee may spend, an independent committee must file a Committee Disclosure Statement and declaration with the City Clerk and disclose the sources of the funds it uses in accordance with Section 2-13.11.
- h. “Majority Owned” shall mean ownership of over fifty percent (50%).
- i. “Measure” means any City Charter amendment, ordinance or other proposition submitted to a popular vote at an election, whether by initiative, referendum or recall procedure or otherwise, or circulated for the purposes of submission to a popular vote at any election, whether or not the proposition qualifies for the ballot.
- j. “Personal Loans” mean a loan or loans, including advances, made to a candidate, where the proceeds of the loan are used in connection with a candidate’s campaign for election. Personal loans also include loans made to a candidate’s controlled committee(s).
- k. “Persons” means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert.
- l. “Sponsoring Entity” is any person, organization, corporation, or association that contributes at least thirty three percent (33%) of the total funding of the political committee.

SEC. 2-13.02. VOLUNTARY EXPENDITURE LIMITS FOR CAMPAIGNS FOR CITY ELECTIVE OFFICES.

- a. A voluntary expenditure limit of sixty-six thousand nine dollars (\$66,009) per candidate or controlled committee is hereby established for each election to City elective office. The amount established by this section shall be annually adjusted by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the expenditure limit in a visible place in the City Clerk’s Office and on the City’s website.
- b. Prior to accepting any contribution for a campaign, each candidate for City elective office or controlled committee shall file with the Hayward City Clerk a statement of acceptance

or rejection of the voluntary expenditure limit established herein with regard to that campaign.

- c. No candidate for City elective office who accepts the voluntary expenditure limit established herein and no controlled committee of such a candidate shall make campaign expenditures cumulatively in excess of the voluntary expenditure limit established herein.
- d. Each candidate for City elective office or controlled committee who rejects the voluntary expenditure limit established herein shall be subject to the contribution limit set forth in section 2-13.03 of this Article as that section may be amended from time to time.

SEC. 2-13.03 LIMITATION OF CONTRIBUTIONS FOR CANDIDATES WHO DO NOT ACCEPT VOLUNTARY CONTRIBUTION LIMITS

- a. Except as provided hereafter in section 2-13.04 of this Article, no person shall make to any candidate for City elective office, a contribution or contributions totaling more than three hundred fifteen dollars (\$315) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- b. Except as provided hereafter in section 2-13.04 of this Article, no candidate running for City elective office, or the candidate's controlled committee, shall accept a contribution or contributions totaling more than three hundred fifteen dollars (\$315) per contributor for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- d. The amounts established by this section shall be adjusted annually by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the contribution limit in a visible place in the City Clerk's Office and on the City's website.
- e. Violation of any of the provisions of this section is subject to the penalties set forth in Section 2-13.12.

SEC. 2-13.04 CONTRIBUTION LIMITATIONS FOR CANDIDATES ACCEPTING EXPENDITURE LIMITATIONS.

- a. If a candidate accepts the expenditure limit set forth in section 2-13.02 of this Article, no person shall make to any candidate for City elective office, or the candidate's controlled committee, a contribution or contributions totaling more than one thousand two hundred ninety-five dollars (\$1,295) for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.
- b. If a candidate accepts the expenditure limit set forth in section 2-13.02 of this Article, no candidate running for City elective office, or the candidate's controlled committee, shall

accept a contribution or contributions totaling more than one thousand two hundred ninety-five (\$1,295) per person for each election in which the candidate is attempting to be on the ballot or is a write-in candidate.

- c. The amounts established by this section shall be adjusted annually by a percentage equal to the San Francisco Bay Area All Urban Consumer Price Index (CPI). The City Clerk shall calculate such increase and post the contribution limit in a visible place in the City Clerk's Office and on the City's website.

SEC. 2-13.05 AGGREGATION OF CONTRIBUTIONS.

- a. The contributions of an entity whose contributions are directed and controlled by any person shall be aggregated with contributions made by that person and any other entity whose contributions are directed and controlled by the same person.
- b. Contributions that are made by entities that are majority owned by any person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person.
- c. Contributions made by a husband and wife shall not be aggregated.

SEC. 2-13.06 PERSONAL LOANS.

- a. A candidate may take out personal bank loans for campaign purposes. Withdrawal of funds from a candidate's personal bank account or savings account does not constitute a bank loan. If a candidate has accepted the voluntary expenditure limits pursuant to Section 2-13.02, any bank loans taken out by the candidate will count towards his or her voluntary expenditure limit.
- b. If any person, including a relative or friend of the candidate, gives or loans the candidate money in connection with his or her campaign, these funds are considered a contribution from the donor to the candidate's campaign, and is subject to the campaign expenditure limits set forth in Sections 2-13.02 and 2-13.03. This is true even if the candidate uses the funds for personal living expenses while campaigning.
- c. Personal bank loans are not considered contributions from the bank. Such loans must be taken out solely in the name of the candidate from a commercial lending institution. If a person cosigns or guarantees a loan with a candidate, even if a relative or friend, that loan would be considered a contribution and subject to the expenditure limits set forth in Sections 2-13.03 and 2-13.04. The candidate must file notice of the loan with the City Clerk within seven (7) days of receiving the loan proceeds. Both the candidate and the commercial lending institution must be disclosed as the sources of the loan.

- d. A candidate who does not accept the voluntary expenditure limits of Section 2-13.02 may make a series of personal loans to his or her campaign as long as the outstanding balance does not exceed one hundred thousand dollars (\$100,000) at the time of making the loans. If a candidate's personal loan balance has reached the one hundred thousand dollar (\$100,000) limit, the loan balance must be reduced before the candidate may make any additional loans to his or her campaign.
- e. Candidates who accept the voluntary expenditure limits of Section 2-13.02 may make a series of personal bank loans to his or her campaign as long as the outstanding balance does not exceed sixty-six thousand nine dollars (\$66,009), or whatever amount constitutes the current voluntary expenditure limit as calculated by the City Clerk, at the time of making the loans. If a candidate's personal bank loan balance has reached the voluntary expenditure limit, the loan balance must be reduced before the candidate may make any additional bank loans to his or her campaign.

SEC. 2-13.07 NOTIFICATION TO VOTERS.

The City Clerk shall publish a listing of candidates for office and indicate whether such candidates have agreed to the voluntary spending limit. This list will be published on the City's website.

SEC. 2-13.08 ELECTION CONTEST AND ELECTION TERM.

- a. The provisions of this Article are applicable to each City of Hayward Municipal election contest for City Elective Office as defined in Section 2-13.01. For the purposes of this Article an election contest shall commence the day following a municipal election for City Elective Office and terminate on the day of the next election for the same City Elective Office.
- b. Notwithstanding subdivision a. of this section, an election contest term may be extended for a period not to exceed one hundred eighty (180) days to allow a candidate to collect funds for the purpose of retiring unpaid debt from the previous election contest. A candidate desiring to extend an election term must file a written notice with the City Clerk within ten (10) days of the election for which the candidate desires to have the term extended. All funds collected to retire the debt referred to in this subdivision shall be subject to the contribution limitations established for the election contest whose term is being extended.
- c. Surplus funds collected and not expended by a candidate for a City Elective Office may be utilized in any subsequent election for a City Elective Office. Such funds shall not be counted as contributions for the purposes of this Article until the election for which the surplus funds are used.

SEC. 2-13.09 RECALL ELECTIONS.

A City officeholder who is the subject of a recall may set up a separate committee to oppose the qualification of the recall measure and, if the recall petition qualifies, the recall election. Neither contribution limits nor voluntary expenditure ceilings apply to the candidate or controlled committee to oppose the recall by the officeholder who is the target of the recall attempt. Candidates running to replace an officeholder who is the target of a recall is subject to Section 2-13.03, unless, within three (3) days of the City Council's call for election, the candidate accepts the voluntary expenditure limits set forth in Section 2-13.02.

SEC. 2-13.10 NO ANONYMOUS CONTRIBUTIONS.

No person shall make an anonymous contribution or contributions to a candidate, committee, or any other person supporting a candidate or ballot measure. An anonymous contribution shall not be kept by the intended recipient, but instead shall be promptly paid to the City Clerk for deposit in the General Fund of the City.

SEC. 2-13.11 MANDATORY DISCLOSURES ON CAMPAIGN COMMUNICATIONS OF CERTAIN CONTRIBUTIONS AND LOANS.

- a. Campaign communications supporting or opposing any candidate or measure that is funded by an independent committee shall include the name of the committee and the phrase "Major Funding Provided By" immediately followed by the legal name of the contributor, the contributor's city of domicile, and the total cumulative sum of contributions by each of the top four (4) contributors over one thousand dollars (\$1,000) to the committee funding the expenditure. Committees shall aggregate contributions from the same person or entity when determining the total cumulative sum of contributions from a contributor.
- b. The disclosures required by this section shall list contributors in descending order by the cumulative total amount of their contributions and shall be presented in a clear and conspicuous manner to give the reader, observer, or listener adequate notice. For all communications, the complete name of the contributor must be listed. No acronyms may be used. When disclosing the top four contributors, the name of the sponsoring entity must be listed in addition to the contributor's legal name, city of domicile, and total sum of contributions. When listing the sponsoring entity, the sponsoring entity may not be listed as a subsidiary of a larger organization or corporation, but rather the disclosure of the sponsoring entity must list the parent organization or corporation or root source of the contribution. If an independent committee has received two or more contributions of the same amount over one thousand dollars (\$1,000), and the contributions are from the top four donors, then the most recent contribution takes priority on the list. For purposes of this section, "campaign communication" means any of the following items:
 - 1) One thousand (1,000) or more substantially similar pieces of campaign literature, including but not limited to mailers, flyers, pamphlets, and door hangers;
 - 2) Paid advertisements, including but not limited to advertisements in newspapers, magazines, radio and television promotions, and on the internet;

- 3) One thousand (1,000) or more substantially similar e-mails or pre-recorded telephone calls made within a calendar month.
- c. For purposes of this section, “campaign communication” does not include: small promotional items such as pens, pencils, clothing, mugs, potholders, or other items on which the statement required by this section cannot be reasonably printed or displayed in an easily legible typeface; posters, yard signs, skywriting, and similar items; communications that are the content of a newspaper, radio show, television show, or other recognized news medium; and communications from an organization to its members.
 - d. When a new contribution changes the list of contributors required to be disclosed on campaign communications under subsection 2-13.11(a) or subsection 2-13.11(b), campaign communications must be updated on the following schedule:
 - 1) For printed campaign communications under subsection 2-13.11(b)(1) or subsection 2-13.11(b)(2), or for website, radio, or television advertisements, disclosures must be updated within seven calendar days to include current disclosure information every time an order to reproduce the campaign communication is placed, or any time the campaign communication is reprinted;
 - 2) For e-mails or pre-recorded telephone calls under subsection 2-13.11(b)(3), disclosures must be updated to include current disclosure information within three (3) calendar days.
 - e. All internet advertisements that have a gif weight of over twenty (20) kilobytes and a flash weight over thirty (30) kilobytes must have viewable at all times the disclosure set forth in subsection 2-13.11(a) and subsection 2-13.11(b). For internet advertisements that have a gif weight of twenty (20) kilobytes and a flash weight of thirty (30) kilobytes or under, committees are not required to display the language “major funding provided by” as stated in subsection 2-13.11(a) in the actual advertisement display, but rather, must have both rollover content viewable at all times and an ad link to the committee’s website stating the information set forth in subsection 2-13.11(a) and subsection 2-13.11(b).
 - f. For television and radio advertisements that are one minute and under in duration, the television or radio advertisements must clearly and audibly state and show “major funding provided by” immediately followed by the name of the top contributor, the city of domicile, and the total cumulative sum of contributions by the top contributor over one thousand dollars (\$1,000) to the committee funding the expenditure, as well as information set forth in subsection 2-13.11(b). Television and radio advertisements over one (1) minute in duration must audibly state and show the conditions set forth in subsections 2-13.11(a) and 2-13.11(b).
 - g. Section 2-13.11 shall be complied with by all independent committees, for campaign communications for all candidates and all ballot measures. All candidates and committees are subject to the penalties and liabilities set forth in section 2-13.13 and section 2-13.14 for any violations of this section.

- h. All committees subject to this section, and with contributions totaling two hundred fifty dollars (\$250) or more, shall file with the City Clerk a Committee Disclosure Statement within ten (10) days after it has formed as a committee. The “Committee Disclosure Statement” shall include, but is not limited to, Form 410 and Form 460 of the California Fair Political Practices Commission (“FPPC”), and other relevant FPPC forms. All committees shall also file a declaration stating the following:
 - 1) The names and addresses of all sponsoring entities and parent corporations;
 - 2) The disposition of surplus funds which will be made in the event of dissolution;
- i. A committee must file an amended Committee Disclosure Statement within ten (10) days of any change to the information required in the Committee Disclosure Statement or declaration.
- j. No person or committee shall engage in any form of campaign communication until it has filed a Committee Disclosure Statement and declaration with the City Clerk in accordance with subdivision 2-13.11(h).
- k. If there is reason to believe that a candidate or committee has engaged in conduct detrimental to the purposes of this Article, or it is found that a candidate or committee attempted to circumvent the purposes of this Article, a candidate or committee may be subject to the enforcement procedures and penalties set forth in Section 2-13.12, Section 2-13.13, and Section 2-13.14.

SEC. 2-13.12 ENFORCEMENT AND PENALTIES.

- a. Any person who knowingly or willfully violates any provision of this Article is guilty of a misdemeanor.
- b. In addition to other penalties provided by law, a fine of up to one thousand dollars (\$1,000) for each violation of this Article may be imposed.
- c. Prosecution for violations of this title must be commenced within four (4) years of the date on which the violation occurred.

SEC. 2-13.13 CIVIL LIABILITY FOR VIOLATIONS.

- a. Any person who violates any provision of this Article shall be liable in a civil action brought by either the district attorney or independent counsel, appointed by the City Attorney, for an amount up to one thousand dollars (\$1,000) per violation of this Article.
- b. No civil action alleging a violation of this Article may be filed against a person pursuant to this section if a criminal prosecution arising out of the same allegation is pending.

SEC. 2-13.14 VIOLATION OF TITLE; PROBABLE CAUSE; HEARING; NOTICE; ORDER.

- a. If evidence of a violation of this Article is presented to the City Clerk, she/he shall:
 - 1) Send written notice to the candidate or committee of the alleged violation;
 - 2) Order a candidate or committee file any reports, statements, or other documents or information pertinent to evaluating whether a violation has occurred;
 - 3) Request that the alleged violation must be corrected within three (3) calendar days of the date on the written notice;
 - 4) If no correction has been made within the allotted time, the City Clerk shall consult with the City Attorney to determine if probable cause exists to either refer the matter to the District Attorney or appoint an independent counsel to serve as a hearing officer. Such hearing officer shall not be an employee of the City.
 - 5) If after a hearing it is determined that a violation has occurred, the candidate or committee shall cease and desist all contributions, expenditures, and campaign communications, and pay a monetary penalty of up to one thousand dollars (\$1,000) per violation, or up to the amount or value of the unlawful or undisclosed contribution or expenditure, whichever is greater, to the General Fund of the City.
- b. In the event that the matter is referred to a hearing officer, notice shall be given and a hearing will be conducted in accordance with the Administrative Procedures Act contained in the California Government Code.
- c. If it is determined, after a hearing, that no violation of this Article has occurred, an order stating such shall be prepared.

Section 2. Severance. Should any part of this ordinance be declared by a final decision by a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of the City, such decision shall not affect the validity of the remainder of this ordinance, which shall continue in full force and effect, provided that the remainder of the ordinance, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the City Council.

Section 3. In accordance with the provisions of Section 620 of the City Charter, this ordinance regarding elections shall become effective upon its adoption.

Section 4. This ordinance is not subject to the California Environmental Quality Act (CEQA) pursuant to Sections 15060(c)(2) of the CEQA Guidelines (Title 14, Chapter 3, of the California Code of Regulations) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) of the CEQA Guidelines (because it has no potential for resulting in physical change to the environment, directly or indirectly).

IN COUNCIL INTRODUCED at a regular meeting of the City Council of the City of Hayward, held the __ day of __, 2015, by Council Member _____.

ADOPTED at a regular meeting of the City Council of the City of Hayward held
the ____ day of ____, 2015, by the following votes of members of said City Council.

AYES:
NOES:
ATTEST:
ABSENT:

APPROVED: _____
Mayor of the City of Hayward

DATE: _____

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward