

ORDINANCE NO. 2019-19

**AN ORDINANCE OF THE CITY OF THE CITY COUNCIL
OF THE CITY OF NEWPORT BEACH, CALIFORNIA,
AMENDING CHAPTER 1.25 OF TITLE 1 OF THE
NEWPORT BEACH MUNICIPAL CODE PERTAINING TO
MUNICIPAL CAMPAIGN CONTRIBUTION AND
EXPENDITURE LIMITS**

WHEREAS, on April 9, 2019, the City Council adopted Resolution No. 2019-33 forming an Ad Hoc Committee on Election Reform (“Committee”) to determine whether the provisions of the Newport Beach Municipal Code (“NBMC”) should be modified or updated;

WHEREAS, the Committee has recommended the City Council modify and update Chapter 1.25 of Title 1 of the NBMC to clarify what constitutes a violation of the campaign contribution limits; provide a process for handling excess contributions that were inadvertently made by a person or received by a candidate or candidate controlled committee; and provide a clear path for the enforcement of violations of the campaign contribution ordinance; and

WHEREAS, the City Council has reviewed the proposed modifications to Chapter 1.25 of Title 1 of the NBMC and has determined that these modifications are consistent with the purpose and findings set forth in Section 1.25.010, Chapter 1.25 of Title 1 of the NBMC.

NOW, THEREFORE, the City Council of the City of Newport Beach ordains as follows:

Section 1: Chapter 1.25 of Title 1 of the Newport Beach Municipal Code is hereby amended to read as follows:

Chapter 1.25

**MUNICIPAL ELECTION CAMPAIGN CONTRIBUTION AND EXPENDITURE
CONTROL***

Sections:

- 1.25.010 Purpose and Findings.**
- 1.25.015 Intent.**
- 1.25.020 Definitions.**

1.25.030 Campaign Contributions—Limitations.

1.25.040 Enforcement and Penalties.

1.25.010 Purpose and Findings.

The City Council of the City of Newport Beach finds and declares as follows:

A. The primary purpose of the ordinances codified in this chapter is to prevent corruption, or the appearance of corruption, which results from the real or imagined influence of large contributions on the conduct or actions of candidates elected to office.

B. The limits on contributions to candidates and candidates' controlled committees imposed by this chapter will encourage candidates and their supporters to raise funds from a greater number of persons than would otherwise involve themselves in the political process.

C. Contribution limits encourage persons to expend funds that would otherwise be contributed to candidates on direct political expression which will broaden the discussion and debate on issues of importance to the electorate.

D. These contribution limits will not reduce the total amount of money potentially available, or used, to promote expression in the context of a political campaign, but will increase the amount of independent expenditures and encourage the dissemination of political expression through a wider variety of media sources.

E. Local campaign contribution limits are municipal affairs and this chapter is authorized pursuant to the laws and Constitution of the State of California, as well as the Charter of the City of Newport Beach.

F. The contribution limitations imposed by this chapter are consistent with the spirit, intent and letter of the Political Reform Act of 1974 (Title 9 of the California Government Code).

1.25.015 Intent.

The intent of this chapter is to impose limits on the amount of money that may be contributed to a candidate or candidate's controlled committee to achieve the purposes specified in Section 1.25.010. This chapter is not intended, and shall not be construed, to establish any reporting, filing, or procedural requirement in addition to, or different from, the Political Reform Act or the regulations adopted by the Fair Political Practices Commission (FPPC).

1.25.020 Definitions.

The terms used in this chapter shall have the same definitions as specified in the Political Reform Act and FPPC regulations. In those cases where definitions in the Political Reform Act or FPPC regulations contain a specific reference to any State election, candidate, or electoral criteria, the definition shall be modified to reflect the municipal equivalent, or, in the absence of a municipal equivalent, to delete the specific reference.

1.25.030 Campaign Contributions—Limitations.

A. Contributions by Persons to Candidate or Candidate's Controlled Committee. No person shall knowingly and willfully contribute to a candidate and/or the candidate's controlled committee, with respect to any single election, an amount that would cause the total contributed by such person to the candidate and the candidate's controlled committee, when combined, to exceed one thousand two hundred dollars (\$1,200.00).

B. Acceptance or Solicitation by Candidate or Candidate's Controlled Committee. No candidate or candidate's controlled committee shall knowingly and willfully solicit or accept any contribution from any person, which would cause the total amount contributed by such person, with respect to any single election, to the candidate and the candidate's controlled committee, when combined, to exceed the sum of one thousand two hundred dollars (\$1,200.00).

C. Adjustment for Cost of Living Changes. The campaign contribution limits and contribution acceptance and solicitation limits set forth in subsections (A) and (B) shall be adjusted in two-year intervals, beginning in 2021, by the City Clerk to reflect changes in the Consumer Price Index for All Urban Consumers (CPI-U) in the selected local area of Los Angeles-Long Beach-Anaheim, California. In June of each year there is to be an adjustment, the City Clerk shall determine the new limit by comparing the last published index number that is closest in time to the date the adjustment in limits is to be made, and the corresponding index number for 2019. $[(A)-B]/B*100=i$, where A=Most recent index, B=Corresponding index for 2019, i=Adjustment in percent]. Adjustments made pursuant to this subsection shall be rounded to the nearest one hundred dollars (\$100.00), shall be announced by the City Clerk in June of the year an adjustment is to be made, and shall be effective July 1.

D. Demand for Return of Excess Contributions. It shall not be a violation of subsection (A) if the person: (1) first became aware the person violated the limitations set forth in subsection (A) when the person received a return of the excess contribution(s) from the candidate or candidate's controlled committee; or (2) if the person demands, in writing, a return of the portion of any contribution(s) donated in excess of the limitations imposed by subsection (A) within fourteen (14) calendar days from the date the City provides written notice to the person of the alleged violation of subsection (A) or the date the person discovers that the person's contribution(s) exceed the contribution limit set forth in subsection (A), whichever is sooner. A copy of the written notification by the person demanding the return of the portion of any contribution(s) donated in excess of the limitations imposed by subsection (A) shall be provided via certified mail or courier delivery to the last known address of the candidate or the candidate's controlled committee. If the excess contributions were not returned by the candidate or candidate's controlled committee prior to sending the written demand, the person shall provide the City Clerk with a copy of the written demand, and proof of delivery thereof, within fourteen (14) calendar days of the date the demand is made.

E. Return of Excess Contributions. It shall not be a violation of subsection (B) if the candidate or candidate's controlled committee returns the portion of any contribution(s) donated in excess of the limitations imposed by subsection (B) within fourteen (14) calendar days from the date the City provides written notice to the candidate or candidate's controlled committee of the alleged violation of subsection (B) or the date the candidate or candidate's controlled committee discovers that the contribution(s) exceed the contribution limit set forth in subsection (B), whichever is sooner. If the City notified the candidate or candidate's controlled committee that the contributions exceeded the limitations imposed by subsection (B), written notification showing the donor's name, the amount returned, and the date of the return shall be provided to the City Clerk within fourteen (14) calendar days of the date of the return.

F. Contributions by Candidates. The provisions of subsections (A) and (B) of this section shall not apply to contributions from a candidate to his or her controlled committee nor to the expenditure, by the candidate, of his or her personal funds.

G. Contributions to Committees. Contributions made to any person or a committee, and not to a candidate or candidate's controlled committee, shall not be considered as contributions to the candidate or candidate's controlled committee notwithstanding the fact that such person or committee supports the candidate or uses the contribution with a view to bringing about the nomination or election of the candidate.

H. **Anonymous Contributions.** No candidate or candidate's controlled committee shall knowingly and willfully accept anonymous contributions, with respect to any single election, which would cause the total amount of anonymous contributions received by the candidate and the candidate's controlled committee, when combined, to exceed one hundred dollars (\$100.00). Subject to the provisions of State law, it shall not be a violation of this subsection if the candidate or candidate's controlled committee pays to the City, for deposit into the general fund to be used to defray the costs of municipal elections, the portion of any contributions accepted in excess of the limitations imposed by this subsection within fourteen (14) calendar days from the date the City provides written notice to the candidate or candidate's controlled committee of the alleged violation of this subsection or within fourteen (14) calendar days of the date the candidate or candidate's controlled committee discovers the contribution(s) exceed the contribution limit set forth in this subsection, whichever is sooner.

I. **Notice from the City.** For purposes of this section, written notification by the City shall be by certified mail to the person to be notified at the persons last known address. Service by certified mail shall be deemed completed at the time of deposit with the post office.

J. **City Clerk.** If the City Clerk has a good faith belief that a person, candidate, or candidate's controlled committee has violated Section 1.25.030, the City Clerk shall refer the matter to the District Attorney.

1.25.040 Enforcement and Penalties.

A. Any person who violates the provisions of Section 1.25.030 is guilty of a misdemeanor.

B. In addition to any criminal penalty, if, after a candidate is elected, the candidate is convicted of a misdemeanor for violating Section 1.25.030, the election to office of such candidate shall be void and the office shall become vacant as of the date of conviction or on the date upon which the candidate would otherwise take office, whichever occurs later. In such event, the vacancy shall be filled in accordance with the provisions of Section 403 of the City Charter. If a candidate is convicted of a misdemeanor for violating Section 1.25.030 at any time prior to the election of the candidate, the candidacy shall be terminated immediately and the candidate shall no longer be eligible for election. A plea of nolo contendere shall be deemed a conviction for purposes of this subsection.

C. For purposes of this chapter, the district attorney of the county is the civil and criminal prosecutor. If after a candidate is convicted of a misdemeanor there is a need to bring an enforcement action pursuant to subsection (B) and the district attorney of the county refuses to bring the action, the City Council shall have authority to appoint a special counsel to act as the civil prosecutor to enforce the civil penalties provided for in subsection (B).

Section 2: The recitals provided in this ordinance are true and correct and are incorporated herein by this reference.

Section 3: If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such decision shall not affect the validity or constitutionality of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid or unconstitutional.

Section 4: The City Council finds the introduction and adoption of this ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to Sections 15060(c)(2) (the activity will not result in a direct or reasonably foreseeable indirect physical change in the environment) and 15060(c)(3) (the activity is not a project as defined in Section 15378) of the CEQA Guidelines, California Code of Regulations, Title 14, Division 6, Chapter 3, because it has no potential for resulting in physical change to the environment, directly or indirectly.

Section 5: Except as expressly modified in this ordinance, all other sections, subsections, terms, clauses and phrases set forth in the Newport Beach Municipal Code shall remain unchanged and shall be in full force and effect.

Section 6: The Mayor shall sign and the City Clerk shall attest to the passage of this ordinance. The City Clerk shall cause the ordinance, or a summary thereof, to be published pursuant to City Charter Section 414. This ordinance shall be effective thirty (30) calendar days after its adoption.

This ordinance was introduced at a regular meeting of the City Council of the City of Newport Beach held on the 5th day of November, 2019, and adopted on the 19th day of November, 2019, by the following vote, to-wit:

AYES: Mayor Dixon, Mayor Pro Tem O'Neill, Council Member Avery, Council Member Brenner, Council Member Duffield, Council Member Herdman

NAYS: _____

ABSENT: Council Member Muldoon



DIANE B. DIXON, MAYOR

ATTEST:



LEILANI I. BROWN, CITY CLERK



APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE



AARON C. HARP, CITY ATTORNEY


STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, Leilani I. Brown, City Clerk of the City of Newport Beach, California, do hereby certify that the whole number of members of the City Council is seven; that the foregoing ordinance, being Ordinance No. 2019-19 was duly introduced on the 5th day of November, 2019, at a regular meeting, and adopted by the City Council at a regular meeting duly held on the 19th day of November, 2019, and that the same was so passed and adopted by the following vote, to wit:

AYES: Mayor Diane Dixon, Mayor Pro Tem Will O'Neill, Council Member Brad Avery, Council Member Joy Brenner, Council Member Duffy Duffield, Council Member Jeff Herdman
NAYS: None
ABSENT: Council Member Kevin Muldoon

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the official seal of said City this 20th day of November, 2019.





Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California

CERTIFICATE OF PUBLICATION

STATE OF CALIFORNIA }
COUNTY OF ORANGE } ss.
CITY OF NEWPORT BEACH }

I, LEILANI I. BROWN, City Clerk of the City of Newport Beach, California, do hereby certify that Ordinance No. 2019-19 has been duly and regularly published according to law and the order of the City Council of said City and that same was so published in *The Daily Pilot*, a newspaper of general circulation on the following dates:

Introduced Ordinance: November 9, 2019
Adopted Ordinance: November 23, 2019

In witness whereof, I have hereunto subscribed my name this _____ day of _____, 2019.

Leilani I. Brown, MMC
City Clerk
City of Newport Beach, California