

Chapter 1.09 COTATI CAMPAIGN REFORM LAW

1.09.010 Name and citation.

This chapter shall be known and cited as "The Cotati Campaign Reform Law." (Ord. 756 §1(part), 2004).

1.09.020 Purpose.

A. The purpose of this chapter is to ensure that the financial strength of certain individuals or organizations does not permit them to exercise a disproportionate or controlling influence on the election of city council candidates and to ensure that the electoral process is not corrupted, or appear to be corrupted, by the financial strength of individuals or organizations able to make large financial contributions. To achieve this purpose, this chapter establishes contribution limits applicable to individuals and organizations in the election of city council candidates to minimize the potentially corrupting influence and appearance of corruption caused by excessive contributions.

B. A further purpose of this chapter is to ensure that the Cotati electorate receives full, fair and timely disclosure of campaign contributions by individuals and organizations to the candidates for city council, their committees, and independent committees subject to the limitations contained in Government Code Section 81009.5, to reveal the true source of campaign contributions to a candidate and to any committee which supports or opposes Cotati city council candidates or advocates the election or defeat of a city ballot measure.

C. This chapter also requires that mass mailings by candidates, candidate controlled committees and independent expenditure committees contain certain designated information regarding financial contributions to the candidate or committee responsible for the mass mailing. (Ord. 756 §1(part), 2004).

1.09.030 Relation to the Political Reform Act.

This chapter is intended to supplement the Political Reform Act of 1974, as amended, commencing with Government Code Section 81000, et seq. (the "Act") and as interpreted by the fair political practices commission in regulations adopted and promulgated from time to time by the commission. Unless a word or term is specifically defined in this chapter, or the contrary is stated or clearly appears from the context, word and terms used herein shall have the same meaning as defined or used in the Act and commission regulations, as amended from time to time. (Ord. 756 §1(part), 2004).

1.09.040 Definitions.

As used in this chapter:

"Campaign statement" is as defined by the Act but governed by the dollar amounts set forth in this chapter.

"City candidate" means any person who is a candidate for city office.

"City office" or "officer" means the office of council member for the city of Cotati.

"Committee" is as defined in Section 82013 of the Act, except that the monetary thresholds for subdivisions (a) and (b) are changed to five hundred dollars. At the present time, Section 82013 of the Act defines "committee" to mean any person or combination of persons who directly or indirectly does any of the following:

1. Receives contributions totaling one thousand dollars or more in a calendar year;
2. Makes independent expenditures totaling one thousand dollars or more in a calendar year; or
3. Makes contributions totaling ten thousand dollars or more in a calendar year to or at the behest of candidates or committees. A person or combination of persons that becomes a committee shall retain its status as a committee until such time as that status is terminated pursuant to Section 84214 [of the Act].

"Controlled committee" means a committee that is controlled directly or indirectly by a candidate for city office or city measure proponent or opponent or that acts jointly with a candidate for city office, controlled committee or city measure proponent or opponent in connection with the making of expenditures. A candidate for city office or city measure proponent or opponent 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.

"Election cycle" means:

1. For each elective city office, the election cycle is the four year period commencing on January 1 immediately following the last general election for that particular city office and ending on December 31 of the year in which the next general election for the same city office occurs. For example: The last general election for city council was conducted in November of 2002. The election cycle for that election would have been January 1, 1999 through December 31, 2002. The next general election involving those same city offices is scheduled for November of 2006. The election cycle for that election would have commenced on January 1, 2003 and will continue through December 31, 2006. The election cycle for the general election scheduled for November of 2004 would be January 1, 2001 through December 31, 2004. For the November, 2008 election, the election cycle will commence on January 1, 2005 and continue through December 31, 2008.

2. For purposes of any special election for any city office, the election cycle shall commence on the date the special election is called and the election cycle shall end on the sixtieth day following that special election.

3. For purposes of any recall election of any city office, the election cycle shall commence on either the date a committee is formed pursuant to the Act in support of a recall election or the date the city clerk approves a recall petition for circulation and gathering of signatures, whichever occurs earlier, and ending on the sixtieth day following the first to occur of any of the following:

- a. The time provided by law for the gathering of signatures on recall petitions expires without sufficient recall petition signatures having been filed with the city clerk to require a recall election;
- b. All committees formed in support of the recall have been terminated pursuant to the Act;
- c. The date the recall election is held.

"Person" is defined by the Act, and shall expressly include a trust. At the present time, Section 82047 of the Act defines "person" to mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert.

"Primarily formed committee" is defined in the Act. At the present time, "primarily formed committee" is defined in the Act to mean a committee pursuant to subdivision (a) of Section 82013 [of the Act] which is formed or exists primarily to support or oppose any of the following:

1. A single candidate;
2. A single measure;
3. A group of specific candidates being voted upon in the same city, county, or multicounty election;
4. Two or more measures being voted upon in the same city, county, multicounty, or state election. (Ord. 756 §1(part), 2004).

1.09.050 Campaign contribution limitations.

A. No person shall make to any city candidate for city office or to a candidate's controlled committee, a contribution or contributions cumulatively totaling more than three hundred fifty dollars per election cycle, and no candidate for city office and no controlled committee for a city candidate shall accept from any person a contribution or contributions cumulatively totaling more than three hundred fifty dollars per election cycle.

B. The provisions of this section shall not apply to a city office candidate's contribution of his or her personal funds to his or her own campaign or controlled committee. Contributions from community property owned jointly by a city office candidate and his or her spouse shall be deemed contributions by the city office candidate. Contributions by a spouse or domestic partner of a city office candidate from the separate property of the spouse or domestic partner shall be subject to the campaign contribution limitations set forth in subsection A of this section.

C. This section does not apply to committees that make independent expenditures. (Ord. 756 §1(part), 2004).

1.09.060 Aggregation of contributions and contributors.

A. Contributions shall be aggregated and, hence, treated as though made by the same person, when made under any or all of the following circumstances and by:

1. Entities which share a majority of members on their boards of directors;
2. Entities which share two or more officers;
3. Entities which are in a parent-subsiidiary relationship, or where one entity is a branch, division, affiliate, department or local unit of the other;
4. An individual or group of individuals and any legal entity or entities in which the individual or group of individuals own greater than fifty percent of the voting or other class of stock of the entity, or who receive or are entitled to receive greater than fifty percent of the profits of the entity;
5. An individual and any other legal entity or entities for which the individual is in fact solely responsible for decisions regarding the making of contributions;
6. An individual and any general or limited partnership in which the individual has a ten percent or more interest, or an individual and any corporation in which the individual owns a fifty percent or more interest; or
7. Any or all members of a limited liability company and that limited liability company.

B. All contributions made by a sponsored committee shall be combined with those contributions made during the same election cycle by the sponsors of the committee and shall be treated as having been made by one person.

C. No committee which supports or opposes a candidate shall have as its officers individuals who serve as the majority of officers on any other committee which supports or opposes the same candidate. No such committee shall act in concert with, or solicit or make contributions on behalf of any other committee. This section shall not apply to treasurers of committees if such treasurers do not participate in or control in any way a decision on whether candidates receive contributions.

D. With respect to family contributions, contributions by a husband and wife or by domestic partners shall be treated as separate contributions and shall not be aggregated. Contributions by children under eighteen years of age shall be treated as contributions by their parents, custodians or guardians and shall be attributed proportionately to each parent, custodian or guardian. (Ord. 756 §1(part), 2004).

1.09.070 Deadline for debt retirement.

A. No money can be collected for debt retirement after the end of the campaign election cycle.

B. A candidate for city office and all committees (including but not limited to primarily formed committees and controlled committees) must retire all campaign-related debts, including loans, by the end of the election cycle.

C. A campaign-related debt, including any loan, which remains unpaid after the end of the election cycle is deemed to have been a campaign contribution which was accepted at the time the debt was incurred.

D. It is a violation of this section to forgive all or part of a loan or debt which is owed by a candidate or committee and which exceeds the applicable contribution limitation in this chapter. Forgiveness of a loan or debt shall not be deemed to include the failure to collect the loan or debt where there have been substantial attempts, in good faith, to collect the monies owed and such efforts have proven unsuccessful. In such case, a candidate and a committee is not exonerated from violations of the ordinance codified in this chapter if an outstanding loan or debt exceeds the contribution limitation of this chapter. (Ord. 756 §1(part), 2004).

1.09.080 Written solicitations by city candidates and controlled committees.

In the event that a city candidate or his or her controlled committee makes a written solicitation for a

contribution for the candidate's campaign for city office, that written solicitation shall include the following written notice in no less than ten-point type on each such solicitation:

Notice The Cotati Municipal Code limits the amount a contributor may give to or for the benefit of a candidate for city council to an aggregate total of three hundred fifty dollars (\$350.00). This \$350.00 aggregate applies to contributions to the candidate and to Persons or Committees controlled by the candidate.

(Ord. 756 §1(part), 2004).

1.09.090 Disclosures in mass mailings by city candidates, controlled committees, and independent expenditure committees.

A. Any mass mailing by a person, committee (including but not limited to, a controlled committee, a primarily formed committee and an independent expenditure committee), or city candidate, in connection with a communication that expressly advocates the election or defeat of a clearly identified city candidate or city ballot measure, shall disclose the following information in a clear and legible manner in at least ten point type on the bottom portion of the front page of any mass mailing:

1. As of the date of the distribution of the mass mailing, the names and occupations of individuals who, and the names and business interests of nonindividuals, which are the six largest contributors to the candidate or committee listed in order of the amount of contributions. If two or more of the largest contributors have contributed the same amount, they shall be listed according to chronological sequence of their contributions; provided, that should two or more of the otherwise largest contributors make their contributions on the same day and at the exact same time, the candidate or committee shall list their names along with the names of the other largest contributors such that no more than six are listed, using a random selection methodology; and provided, further, that should a candidate or committee receive contributions on a given day at the exact, same time that, when taken together with the previously received contributions, constitute the largest seven or greater contributions, the candidate or committee shall list and/or exclude their names, as the case may be, such that no more than six are listed, using a random selection methodology. The disclosure shall read: "Major funding by: (name and occupation or business interest of each of the largest contributors)." In the case of contributions from committees, the disclosure shall read: "Major funding by (name of committee); Expenditures directed by: (name and occupation or business interest of persons or entities who direct or control the expenditures of the committee)."

2. If, as of the date the mass mailing is distributed, the committee has received at least forty percent of its total contributions from large out of town contributors, the top portion of the disclosure shall state, in at least ten point type, "Major funding from large out of town contributors." The names of the six largest out of town contributors listed in order of their contribution amounts, and the residence or business location of the contributors (i.e., city and state), shall be stated in not less than ten point type. In the event two or more of the six largest out of town contributions are the same amount, then the candidate or committee shall list their names using a random selection methodology, such that no more than six are listed. "Large out of town contributors" means those contributors: (a) who either are not residents of the city of Cotati or do not have a principal place of business in the city of Cotati; and (b) whose cumulative contributions in an election cycle are one hundred dollars or more.

3. The total production and postage cost of the mailing.

B. When making the disclosures required in subsections (A)(1) and (A)(2) of this section, the mass mailing must use the same type size for all words in both disclosures. The mass mailing must list each contributor on a new line. The bottom portion of the front page of the mass mailing shall be used solely for the purpose of making the disclosures required in subsection (A)(3) of this section.

C. For purposes of this section, "front page" means the envelope, page or panel where the address is or, in the case of unaddressed items, any outside panel.

D. For each piece of mass mailing sent to Cotati residents, the person or committee shall send a copy of the mass mailing to the city clerk at the same time the pieces are mailed to the other Cotati residents.

E. Any mass mailings sent by a city candidate or candidate-controlled committee shall state on the front page of the mailing in type not less than ten point, in a clear legible manner, whether or not the mailing or ad has been authorized by any candidate for city office, and, if not, by whom the mailing was authorized.

In the case of a mass mailing by an independent expenditure committee, the mass mailing shall state in a prominent place, in clear legible type, that the mailing is not authorized or approved by any candidate nor by any election official.

F. This section does not apply to communications from an organization to its members, except for mailings by a political party to its members, as to which this section does apply. (Ord. 762 §3, 2004; Ord. 756 §1(part), 2004).

1.09.091 Disclosures in political advertisements.

A. Except as to advertisements described in subsection B of this section, any advertisement (including advertisements communicated electronically) which advocates the defeat, election or passage, as the case may be, of a candidate for city office or city ballot measure and is sent, caused to be sent, delivered or caused to be delivered, or communicated or caused to be communicated by a person, committee, or city candidate, to more than two hundred Cotati residents shall be subject to the requirements set forth in Section 1.09.090 of this chapter, except that for purposes of this section, "front page" means the first page of the advertisement.

B. All television and radio advertisements in behalf of or in opposition to a candidate for city office or a city ballot measure shall, in either their oral statements or visual depictions, as the case may be, broadcast in clear and understandable language: (1) whether or not (in the case of a campaign for city office) the advertisement has been authorized by any candidate for city office, and, if not, by whom the promotion was authorized; and (2) (in the case of a city ballot measure) who or what committee and/or person(s) has authorized and/or paid for the advertisement and (3) in either case, how much the advertisement cost. (Ord. 756 §1(part), 2004).

1.09.100 Contribution and expenditure disclosures and additional campaign statement filing requirements.

A. Each person, city candidate and each committee shall disclose in the campaign statements required by the Act and by this chapter, all of the following:

1. The information required under Section 84211(f) of the Act as to each person with respect to whom the cumulative amount of contributions (including loans) received from that person is fifty dollars or more and a contribution or loan has been received from that person during the period covered by the campaign statement;
2. The information required under Section 84211(g) of the Act as to each person with respect to whom the cumulative amount of loans received from or made to that person is fifty dollars or more, and a loan has been received from or made to that person during the period covered by the campaign statement or is outstanding during the period covered by the campaign statement;
3. The information required under Section 84211(k) of the Act as to each person to whom an expenditure of fifty dollars or more has been made during the period covered by the campaign statement;
4. All of the other information required by Section 84211 of the Act.

B. In addition to the campaign statements each person, candidate and committee are required to file under the Act, the following persons and committees shall be required to file a campaign statement on the Friday immediately preceding the election date covering the period between the closing date of the last campaign statement filed under the Act and the close of business on the Thursday immediately preceding the Friday before the election. This additional campaign statement must be filed in the office of the city clerk and must be received by the city clerk by one p.m. on that Friday. The persons and committees governed by this subsection are: city candidates, their controlled committees or committees formed or existing primarily to support or oppose their candidates, committees formed or existing primarily to support or oppose a city candidate or to support or oppose the qualification of, or passage of, a city ballot measure which is being voted on only in the city, and to city general purpose committees active only in the city.

C. Notwithstanding the amounts specified in Government Code Section 82036, each person, candidate and committee shall file a late contributions report with the city clerk which reports all contributions of

three hundred fifty dollars or more received from any source during the period commencing at the end of the period covered in the last campaign statement required pursuant to subsection B of this section, and ending on midnight of the date of the city election. This late contribution report shall be made at and received by the city clerk within twenty-four hours of the receipt of the contribution and the report to the city clerk shall include all of the information required of late contributions reports under the Act.

D. Notwithstanding the foregoing to the contrary, only those independent expenditure committees that are formed or existing primarily to support or oppose a candidate for city office or to support or oppose the qualification of, or passage of, a city ballot measure which is being voted on only in the city or are city general purpose committees active only in the city are required to comply with subsections A through C of this section.

E. 1. Any city candidate, person and committee that is required to file campaign statements under the Act and/or this chapter shall file, in addition to each duly executed original campaign statement, and any copies thereof, as is required by the Act and this chapter, campaign statements that are in a format, if any has been approved by the city, for use on the city's web site, and that are in electronic format, if any, approved by the city.

2. The city clerk shall cause to be placed on the city's web site a copy of each campaign statement filed electronically in accordance with the Act within twenty-four hours of the statement's filing with the city clerk, and the city clerk shall cause to be placed on the city's web site the additional pre-election campaign statement required under this section within four hours of its filing. (Ord. 762 §1, 2004; Ord. 756 §1(part), 2004).

1.09.110 Enforcement.

A. Notwithstanding any other provision of the Cotati Municipal Code, a violation of this chapter shall be enforceable solely as provided in this section. All such violations shall be enforced through civil process and violations shall not be subject to criminal penalties.

B. Any person who fails to comply with any provision of this chapter shall be strictly liable to the city of Cotati in a sum not to exceed the following amount for each violation:

1. Three times the amount a person fails to properly report or unlawfully contributes, expends, accepts, gives or receives, or five hundred dollars per violation, whichever is greater. Each failure to report a contribution or expenditure that is required to be reported hereunder shall constitute a separate violation. Each contribution that is accepted, given or received in violation of this chapter shall constitute a separate violation. Each expenditure that is expended in violation of this chapter shall constitute a separate violation.

2. Five hundred dollars per calendar day, or any portion of a calendar day, after the deadline specified in Section 1.09.100 for the filing of additional campaign statements required by Section 1.09.100, until the additional campaign statement is filed with the city clerk.

3. For all other violations, the sum shall be left to the sound discretion of the court, but shall not exceed two thousand dollars for each violation. This section shall apply to, but not be limited to, the failure to make the disclosures required by Sections 1.09.080, 1.09.090 and 1.09.091 of this chapter. For violations of Section 1.09.080, each written solicitation master form shall be considered one violation regardless of the number of individual written solicitations generated from the master form. For violations of Section 1.09.090, each mass mailing of an identical communication shall be considered one violation regardless of the number of individual communications included in the mass mailing. For violations of Section 1.09.091(A) of this chapter, each unique advertisement that violates this chapter shall be considered one violation regardless of the number of persons to whom the advertisement is circulated or communicated. For example, if a city candidate hands out three thousand identical flyers, each of which violates Section 1.09.091(A) of this chapter, such conduct shall be considered one violation. By way of further example, if a city candidate hands out one thousand identical flyers ("A flyers") and two thousand identical (but different from the A flyers) flyers, all of which violate this chapter, such conduct shall be considered two violations. For violations of Section 1.09.091(B) of this chapter, each unique television or radio advertisement shall be considered one violation regardless of the number of times such advertisement is published or broadcast.

4. If two or more persons are responsible for any violation, they shall be jointly and severally liable

therefor.

5. In addition to the sums provided for above, any person who is found liable for a violation of this chapter shall also be liable for the reasonable attorney fees and costs incurred by the plaintiff in any civil proceeding brought to enforce the provisions hereof.

C. In the event a candidate accepts a contribution and then becomes aware it is in violation of the contribution limit, that violation by the candidate may be excused if the candidate returns the contribution, or contributes it to the city general fund, within fourteen days of becoming aware of the violation.

D. The district attorney of the county of Sonoma shall file and prosecute a civil action in superior court to recover any amounts due and owing the city of Cotati by any person for a violation of this chapter. The district attorney may also seek through a civil action to enjoin any violation or otherwise compel compliance with the requirements of this chapter. Within ten days of receiving a complaint that this chapter has been violated, the district attorney shall provide written notice of that fact to the city manager, and include in that notice any other information that the district attorney deems relevant to the matter. Unless doing so would impede service of process or adversely affect settlement, prior to initiation of a civil action contemplated herein, the district attorney shall provide written notice of his/her intent to initiate such action to the city manager, and include in that notice any other information that the district attorney deems relevant to the matter. Upon the resolution or disposition of any complaint and upon the conclusion, disposition or resolution of any civil action brought by the district attorney hereunder, the district attorney shall provide written notice to the city manager informing her/him of the nature of the resolution and/or disposition. The city shall reimburse the office of the district attorney for all expenses incurred in connection with the civil action.

E. If the district attorney determines or believes that any person (the "target party") has violated any provision of this chapter, the district attorney may, at his or her sole discretion, advise the target party of remedial measures which may be taken by the target party to avoid possible civil action (the "remedial measures"). Such remedial measures may, but need not include the payment of a civil fine to the city. Nothing contained herein shall be deemed to require the district attorney to offer remedial measures to any target party. In the event the target party is offered and timely performs such remedial measures to the satisfaction of the district attorney, the district attorney shall advise the target party (and to any person who, in writing, informed or complained to the district attorney concerning such violation), in writing, that the alleged violation has been resolved. The district attorney shall prepare a letter of resolution which shall be executed by the district attorney and the target party. In the event a letter of resolution is executed, and in the event the target party complies with the terms and conditions contained in the letter of resolution, no civil action shall thereafter be filed or maintained relating to the alleged violation covered by the letter of resolution.

F. Any voter residing in the city who believes that a violation of this chapter has occurred may file a written complaint with the district attorney requesting investigation of the alleged violation by the district attorney. The district attorney, within fourteen days after receipt of the written complaint, shall determine whether a violation of this chapter has occurred and whether to file a civil action pursuant to this section. The district attorney, within this fourteen day period, shall inform the voter filing the written complaint, in writing, whether the district attorney intends to commence a civil action. Such a civil action must be commenced within seven days of the district attorney's written response to the voter filing the written complaint. If the writing from the district attorney states that he or she will not be filing a civil complaint, or if such civil complaint is not filed within seven days of the date of the district attorney's written response, the voter filing the written complaint may file a civil action pursuant to this section concerning the alleged violation complained of. Upon the filing of the civil action by the voter, the voter shall notify the city manager of such filing and provide a copy of the complaint to the city manager. If the district attorney notifies the voter filing the written complaint that he or she will not be filing a civil action, or if the district attorney fails to file a civil action within seven days of the date of the district attorney's written response, the district attorney may no longer utilize the remedial measures provided for in subsection E of this chapter.

G. If a judgment is entered against the defendant or defendants in an action brought by the district attorney, the entire amount of the judgment shall be paid into the city's general fund. If a judgment is entered against the defendant or defendants in an action brought by a voter of the city, the plaintiff shall receive fifty percent of the amount recovered. The remaining fifty percent shall be paid to the city's

general fund. As stated in subsection (B)(3) of this section, any person who is found liable for a violation of this chapter shall also be liable for the reasonable attorney fees and costs incurred by the plaintiff whether the plaintiff is the district attorney or a voter of the city. (Ord. 762 §2, 2004; Ord. 756 §1(part), 2004).