

TO: MAYOR AND CITY COUNCIL
FROM: STEVE HAUCK
SUBJECT: REPEAL OF CAMPAIGN EXPENDITURE ORDINANCE
DATE: 12/29/2008
CC: BARBARA CHRISTENSEN

REPEAL OF ORDINANCE

I am sending this memo to support the request of City Recorder Barbara Christensen to initiate the repeal of the City's Voluntary Campaign Expenditure ordinance. As the original author of the ordinance, I have come to this position reluctantly, but in firm support. I support repeal for one key reason, the ordinance in question is no longer effective in meeting the goal of it's adoption in 1995, limiting the level of campaign expenditures for Ashland city offices.

During the 12 years the voluntary limit has been in effect, it has been slowly losing it's ability to regulate campaign expenditures. This is due to the singular fact that the ordinance relies on public pressure to encourage candidates to adopt the voluntary limits. During the first few elections, it worked, as the limit became a political issue in the campaigns and candidates felt the need to sign up for the limit. In fact, during those elections, no candidate who either failed to sign the limit or after agreeing to the limit, exceeded it, won election. Unfortunately, the past few elections have show that this is no longer the case. Once the media no longer made campaign expenditures a focus of the coverage and thus a political issue, there was no longer any pressure to follow the ordinance. That has lead to current situation, where we have an ordinance in place, adopted to limit campaign expenditures, that is not fulfilling it's primary purpose.

While I am a strong proponent of campaign finance reform, I'm also a strong believer that ineffective or unenforceable laws should be removed the books. There is no point in requiring the City Recorder to spend time and money enforcing an ordinance that no longer works. Recent experience across the country has show that the only effective means for limiting campaign expenditures requires the creation of a system of public financing of elections. Portland's "Voter-Owned Elections" ordinance is the latest and best example of this. If the Council wishes to replace the existing ordinance with a more effective system, the Portland example would be the one to follow.

However, given the current economy and financial state of the City, I am realistic about the probability of spending city resources on a publicly financed campaign system. So, barring the adoption of such a system, I support the full repeal of the current ordinance for the reasons previously stated.

Thank you,



Steve Hauck

Chapter 2.41

VOLUNTARY CONTRIBUTION & SPENDING LIMITS FOR CANDIDATES FOR CITY OFFICES

Sections:

2.41.010	Definitions.
2.41.020	Contribution and Expenditure Exclusions.
2.41.040	Expenditure Limit Definitions.
2.41.050	Expenditure Limits.
2.41.060	Declaration of Limits on Expenditures.
2.41.070	Expenditures Not Qualifying as an Independent Expenditure.
2.41.080	Procedures and Appeals.
2.41.100	Recorder Responsibilities.
2.41.110	Publication.

Section 2.41.010 Definitions.

The following words and phrases whenever used in this chapter shall be construed as defined in this section unless from the context a different meaning is intended.

A. "Candidate" means:

1. An individual whose name is printed on a ballot, for whom a declaration of candidacy or nominating petition has been filed, who requested a tally of write-in votes under ORS 249.007 or whose name is expected to be or has been presented with the individual's consent, for election to public office;
2. An individual who has solicited or received and accepted a contribution, made an expenditure, or given consent to an individual, organization or political committee to solicit or receive and accept a contribution or make an expenditure on the individual's behalf to secure election to any public office at any time, whether or not the office which the individual will seek election is known when the solicitation is made, the contribution received and retained or the expenditure is made, and whether or not the name of the individual is printed on the ballot; or
3. A public office holder against whom a recall petition has been completed and filed.

B. Except as provided in section 2.41.020,

1. "Contribute" or "contribution" includes:
 - a. The payment, loan, gift, forgiving of indebtedness, or furnishing without equivalent compensation or consideration, of money, services other than personal services for which no compensation is asked or given, supplies, equipment or any other thing of value:
 - i. For the purpose of influencing an election for public office or of reducing the debt of a candidate for election to public office or the debt of a political committee; or
 - ii. To or on behalf of a candidate, political committee; and (ORD 2794, S1 1997)
2. Regarding a contribution made for compensation or consideration of less than equivalent value, only the excess value of it shall be considered a contribution.

C. "Elector" means: an individual qualified to vote under section 2, Article II, Oregon Constitution.

- D. Except as provided in section 2.41.020, "expend" or "expenditure" includes the payment or furnishing of money or any thing of value or the incurring or repayment of indebtedness or obligation by or on behalf of a candidate, political committee or person in consideration for any services, supplies, equipment or other thing of value performed or furnished for any reason, including in support of or in opposition to a candidate, political committee, or for reducing the debt of a candidate for election to public office. "Expenditure" also includes contributions made by a candidate or political committee to or behalf of nay other candidate for public office or political committee. (ORD 2794, S2 1997)
- E. "Independent expenditure" means an expenditure by a person for a communication expressly advocating the election of a clearly identified candidate that is not made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate. As used in this subsection:
1. "Agent" means any person who has:
 - a. Actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate; or
 - b. Been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign related activities the person may authorize expenditures.
 2. "Clearly identified" means:
 - a. The name of the candidate involved appears;
 - b. A photograph or drawing of the candidate appears; or
 - c. The identity of the candidate is apparent by unambiguous reference.
 3. "Expressly advocating" means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as "vote for," "elect," "support," "cast your ballot for," or "vote against," "defeat" or "reject."
 4. "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate":
 - a. Means any arrangement, coordination or direction by the candidate or the candidate's agent prior to the publication, distribution, display or broadcast of the communication. An expenditure shall be presumed to be made so when it is:
 - i. Based on information about the candidate's plans, projects or needs provided to the expending person by the candidate or by the candidate's agent, with a view toward having an expenditure made; or
 - ii. Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of a political committee authorized by the candidate or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's principal campaign committee or agency; and
 - b. Does not include providing to the expending person upon request a copy of this chapter or any rules adopted by the recorder relating to independent expenditures.
- F. "Labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work.
- G. "Person" means an individual or a corporation, association firm, partnership, joint stock company club, organization or other combination of individuals having collective capacity.
- H. "Political committee" means a combination of two or more individuals , or a person other than an

individual, that has received a contribution or made an expenditure for the purpose of:

1. Supporting or opposing a candidate; or
2. Making independent expenditures in support of or in opposition to a candidate. (ORD 29794 S4, 1997)

- I. "Public office" means any city office or position that is filled by the electors.
- J. "With respect to a single election" means, in the case of a contribution to a candidate for public office:
 1. The next election to that public office, after the contribution is made; or
 2. In the case of a contribution made after an election and designated in writing by the contributor for the previous election, the election so designated. A contribution may be designated for a previous election under this subsection if the contribution does not exceed the expenditure deficit of the candidate or principal campaign committee of the candidate receiving the contribution.

Section 2.41.020 Contribution and Expenditure Exclusions.

As used in this chapter, "contribute," "contribution," "expend" or "expenditure" does not include:

- A. Any written news story, commentary or editorial distributed through the facilities of any broadcasting station, newspaper, magazine or other periodical publication, unless a political committee owns the facility;
- B. An individual's use of the individual's own personal residence, including a community room associated with the individual's residence, to conduct a reception for a candidate, and the cost of invitations, food and beverages provided at the reception;
- C. A vendor's sale of food and beverages for use in a candidate's campaign at charge less than the normal comparable charge, if the charge is at least equal to the cost of the food or beverages to the vendor;
- D. Any unreimbursed payment for travel expenses an individual makes on behalf of a candidate;
- E. Any loan of money made by a state bank, a federally chartered depository institution or a depository institution insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation or the National Credit Union Administration, other than any overdraft charge made with respect to a checking or savings account, if the loan bears the usual and customary interest rates for the category of loan involved, is made on the basis that assures repayment, is evidenced by a written instrument and is subject to a due date or amortization schedule. Each endorser or guarantor of the loan, however, shall be considered to have contributed that portion of the total amount of the loan for which the person agreed to be liable in a written agreement, except if the endorser or guarantor is the candidate's spouse;
- F. Any nonpartisan activity designed to encourage individuals to vote or to register to vote;
- G. Any communication a membership organization or corporation makes to its members, shareholders or employees if the membership organization or corporation is not organized primarily for the purpose of influencing an election to office; and
- H. The payment of compensation for legal and accounting services rendered to a candidate if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of insuring compliance with the provisions of this chapter.

Section 2.41.040 Expenditure Limit Definitions.

As used in sections 2.41.040 to 2.41.090:

- A. "Attributable expenditure" means an expenditure from contributions, including any loans

received, including accounts payable, made or authorized:

1. By the candidate or a person acting for the candidate;
 2. For the treasurer of the candidate or the candidate's principal campaign committee;
 3. For another person or political committee under the direction or control of the candidate or the treasurer of the candidate or the candidate's principal campaign committee.
- B. "Attributable expenditure" does not include an expenditure that is a repayment on a loan or an independent expenditure.
- C. "Recorder" means the City Recorder.
- D. "With respect to the special or primary election" means the period beginning on the date that the name of a treasurer is certified to the recorder under ORS 260.035 or 260.037 or the day following the last day of the accounting period for a previous statement of contributions received or expenditures made if the statement shows an expended balance of contributions or an expenditure deficit, and ending on the 20th day after the date of the special or primary election.
- E. "With respect to the general election" means the period extending from the date the name of a treasurer for the candidate or the principal campaign committee of the candidate is certified to the recorder and ending on December 31.

Section 2.41.050 Expenditure Limits.

- A. A candidate for public office may file a declaration of limitation on expenditures as described in section 2.41.060 with the recorder stating that the candidate, including the principal campaign committee of the candidate, will not make attributable expenditures in excess of \$2,500 for any public office.
- B. For purposes of this section, attributable expenditures made prior to the applicable special, primary or general election reporting period in consideration for goods to be delivered or services to be rendered solely during the special, primary or general election reporting period shall be charged against the expenditure limits described in subsections A and B of this section in the reporting period during which the goods or services are delivered.
- C. A candidate or political committee described in subsections A and B of this section who have filed a declaration under this section stating that the candidate or committee will not make attributable expenditures with respect to the special, primary and general election in excess of the limits described in subsections A and B of this section shall not be bound by the declaration if any opposing candidate or political committee for the same public office at the same election has not filed a declaration indicating that the candidate or political committee will limit expenditures or has filed the statement but has made expenditures exceeding the applicable limit. (ORD 2794, S7 1997)
- D. The recorder is authorized to adjust annually on April 1st of each year the expenditure limits imposed by this section to account for inflation, based on the Consumer Price Index - All Urban Consumer Portland Index (CPI-U) December to December.

Section 2.41.060 Declaration of Limits on Expenditures.

- A. The declaration of limits on expenditures filed under section 2.41.050 shall certify that with respect to the special, primary or general election, the candidate or the principal campaign committee of the candidate or political committee will not incur attributable expenditures in excess of the applicable expenditure limit described in section 2.41.050.
- B. The recorder shall prescribe forms for the filing of the information required by this section. The forms shall also include the name of the candidate by which the candidate is commonly known and by which the candidate transacts important private or official business. (ORD 2794, S8 1997)
- C. The declaration shall be filed with the recorder:

1. For a candidate, not later than the date the candidate files the name of the candidate's campaign treasurer; and
2. For a political committee, not later than the date that the name of a treasurer is certified to the recorder under ORS 260.035 or 260.037.

Section 2.41.070 Expenditures Not Qualifying as an Independent Expenditure.

- A. An expenditure not qualifying as an independent expenditure shall be considered an in-kind contribution to the candidate or the principal campaign committee of the candidate or political committee and an expenditure by the candidate or the principal campaign committee of the candidate or political committee.
- B. For purposes of section 2.41.050, the amount of an expenditure not qualifying as an independent expenditure shall count against the expenditure limits of the candidate or political committee for whose benefit the expenditure was made.
- C. For purposes of the contribution limitations established by section 2.41.030, the amount of an expenditure not qualifying as an independent expenditure shall count against the contribution limits of the person or political committee making the expenditure.
- D. No person, including a candidate or political committee, shall report an expenditure as an independent expenditure if the expenditure does not qualify as an independent expenditure under section 2.41.010.E.

Section 2.41.080 Procedures and Appeals.

- A. With respect to any election, the recorder shall examine each contribution and expenditure statement of each candidate and political committee who filed a declaration of limitation on expenditures under section 2.41.050 to determine whether any candidate or political committee exceeded the applicable expenditure limit. If the recorder determines after any filing that a candidate or political committee has exceeded the applicable expenditure limit, the recorder shall send a notice of the recorder's determination to the candidate or the treasurer of the political committee. If the recorder determines that the recorder or any candidate for election to an office for which the recorder is also a candidate for election has exceeded the applicable expenditure limit, the information shall be sent to the city attorney, who shall be substituted for the recorder in any enforcement proceeding under this section and section 2.41.090. The notice also shall state that the candidate may appeal the recorder's or the city attorney's determination as provided in this section.
- B. A hearing to contest the determination that a candidate or political committee has violated the declaration of limitation on expenditures as described in subsection A of this section and to consider circumstances in mitigation shall be held before a hearings officer appointed by the city administrator:
 1. Upon request of the candidate or political committee, if the request is made not later than the seventh day after the candidate received the notice sent under subsection A of this section; or
 2. Upon the recorder's or city attorney's own motion if the motion is filed not later than the seventh day after the candidate received the notice sent under subsection A of this section.
- C. All parties shall be afforded an opportunity for hearing after reasonable notice, served personally or by registered or certified mail.
 1. The notice shall include:
 - i. A statement of the party's right to hearing, or a statement of the time and place of the hearing;
 - ii. A statement of the authority and jurisdiction under which the hearing is to be held;
 - iii. A reference to the particular sections of this chapter involved; and
 - iv. A short and plain statement of the matters asserted or charged.

2. Parties may elect to be represented by counsel and to respond and present evidence and argument on all issues involved.
 3. Informal disposition may be made of any case by stipulation, agreed settlement, consent order or default.
 4. At the commencement of the hearing, the hearings officer shall explain the issues involved in the hearing and the matters that the parties must either prove or disprove.
 5. Testimony shall be taken upon oath or affirmation of the witness from whom received.
 6. The hearings officer shall place on the record a statement of the substance of any written or oral ex parte communications on a fact in issue made to the officer during the pendency of the proceeding and notify the parties of the communication and of their right to rebut such communications.
 7. The hearings officer shall insure that the record developed at the hearing shows a full and fair inquiry into the facts necessary for consideration of all issues properly before the presiding officer in the case.
 8. A verbatim oral, written or mechanical record shall be made of all motions, rulings and testimony. The record need not be transcribed unless requested for purposes of rehearing or court review. The city may charge the party requesting transcription the cost of a copy of transcription.
- D. The candidate or the treasurer of the political committee need not appear in person at a hearing held under this section, but instead may submit written testimony and other evidence, subject to the penalty for false swearing, to the recorder for entry in the hearing record. Such documents must be received by the recorder not later than five business days before the day of the hearing.

Section 2.41.100 Recorder Responsibilities.

The recorder shall:

- A. Adopt rules as necessary to carry out the provisions of sections 2.41.040 to 2.41.090.
- B. Prescribe forms for declarations required by section 2.41.050, and furnish the forms to persons required to file.
- C. Investigate when appropriate under the provisions of sections 2.41.040 to 2.41.090.

Section 2.41.110 Publication.

- A. The recorder shall:
 1. For each candidate and political committee described in section 2.41.050, publish a statement in a newspaper of general circulation and published in the City, and any other medium the recorder shall deem appropriate, indicating whether or not the candidate has agreed to limit expenditures under section 2.41.050.
 2. Include the statement described in subsection 1 on the nominating petitions of all prospective candidates for public office.
- B. If a candidate or political committee described in section 2.41.050 has agreed to limit expenditures, but is not bound by the agreement because an opponent or opposing political committee of the candidate or political committee for the same office at the same election has not agreed to limit expenditures or has exceeded the applicable expenditure limit, the published statement described in subsection 2.41.110.A.1 shall indicate that the candidate or political committee has agreed to limit expenditures and that the candidate or political committee is not bound by the agreement because an opponent of the candidate or opposing political committee for the same office at the same election has not agreed to limit expenditures or has exceeded the applicable spending limit. (ORD 2794, S10 1997)
- C. If the recorder or the city attorney finds under section 2.41.080 that a candidate described in section 2.41.050 filing a declaration of limitation on expenditures under section 2.41.050 has exceeded the

applicable expenditure limit, at the next election at which the candidate is a candidate for election to public office, the recorder shall publish a statement, in a newspaper of general circulation and published in the City, indicating that the candidate violated a previous declaration of limitation on expenditures under section 2.41.050. The statement required by this subsection shall identify the date of the election at which the candidate exceeded the applicable expenditure limit.