

February 16, 2005

Honorable Mayor and Members of
The Hermosa Beach City Council

Regular meeting of
February 22, 2005

**CONSIDERATION OF ORDINANCE AMENDING THE CITY'S
CAMPAIGN FINANCE ORDINANCE**

RECOMMENDATION

Staff recommends that Council:

1. Introduce the attached ordinance on first reading

BACKGROUND

On May 11, 2004, the City Attorney and staff presented the Council with an extensive report on enforcement of the City's campaign finance ordinance, Section 2.08.020 of the Municipal Code. In order to refresh your recollection, a copy of that report is attached for your convenient reference. That report recommended that staff return to the Council with proposals for revisions to the ordinance in order to eliminate difficulties in enforcement. The Council concurred with that recommendation.

Section 2.08.020 of the Municipal Code, adopted in 1987, reads as follows:

"No person shall make, nor shall any candidate for elective office or his or her committee, accept any contribution, gift, subscription, loan, advance, pledge or promise of money in aid of the nomination or election of a candidate which will cause the total given by such person with respect to a single election in support of, or opposite to, such candidate, including contributions to all committees supporting or opposing such candidate, to exceed the sum of two hundred forty-nine dollars (\$249.00). This section shall not apply to amounts given by a candidate to his own campaign."

This section prohibits any person from contributing a total of more than \$249 in support or opposition to any candidate, whether or not that \$249 is contributed directly to a candidate (or the candidate's controlled committee) or to any other committee supporting or opposing a candidate (including, by implication, independent expenditure committees), however that sum may be allocated among the various recipients.

You will recall that the problem with this section is that the wording is unclear in several respects – all discussed in detail in the attached staff report – making it difficult to enforce. As written, the section prohibits any person from contributing more than \$249 in support of or opposition to any candidate, regardless of how it is allocated among the candidate and any independent committees that may be soliciting contributions. Enforcement of this requirement requires a level of investigation by the City Clerk that is impractical, because the clerk must figure out how each contributors' contributions are allocated among various candidates and committees, and then determine whether the contributions to independent committees are being used to advocate for or against a

candidate. The section also is written so broadly as to cover any “candidate,” not just candidates for city council. And, as written, the section does not appear to prohibit an independent committee from “receiving” contributions in excess of the maximum.

ANALYSIS

The ordinance recommended by the City Attorney for your consideration accomplishes the following:

- It clarifies that a person may make a \$249 maximum contribution to any candidate for city council (or that candidate’s controlled committee) and to any independent committee that expressly advocates support of or opposition to a candidate for city council.
- It clarifies that contributions by spouses are to be treated as separate contributions, but that contributions by minors are attributed to their parents.

The law regarding regulating contributions to independent committees has not become any more clear than it was last May when this subject was first addressed. At present, there is no case authority applicable directly in California that would preclude such limitations. Hence, the attached ordinance includes a \$249 contribution limit to independent committees that without being either directly or indirectly controlled by a candidate or acting in concert with a candidate, receives \$1000 or more in political contributions and expressly advocates the election or defeat of a candidate. Whether a given organization that is active in City elections is governed by the ordinance thus depends upon the level of contributions it receives or makes and whether it engages in express advocacy for or against a candidate.

Finally, I note that under the law, any person may spend unlimited amounts of their own money, without even forming a committee, to engage in political speech (express advocacy or otherwise), subject only to the obligation to report those expenditures.

FISCAL IMPACT

None.

Respectfully submitted,

Concur:

MICHAEL JENKINS, CITY ATTORNEY

STEPHEN BURRELL
CITY MANAGER

AN ORDINANCE OF THE CITY OF HERMOSA
BEACH AMENDING THE CAMPAIGN
CONTRIBUTION PROVISIONS AND AMENDING
THE HERMOSA BEACH MUNICIPAL CODE

The City Council of the City of Hermosa Beach does ordain as follows:

Section 1. Section 2.08.020 of Title 2, Chapter 2.08 of the Hermosa Beach Municipal Code is amended to read as follows:

- 2.08.20 A. No person shall make a contribution to any candidate for city council or to any such candidate's committee, nor shall any candidate for city council or his or her committee accept, any contribution in aid of the election of a candidate to the city council which will cause the total given by such person with respect to a single election to exceed the sum of two hundred forty-nine dollars (\$249.00). This section shall not apply to amounts given by a candidate to his or her own campaign.
- B. No person shall make to any independent committee that expressly advocates support of or opposition to any candidate or candidates for election to the city council, nor shall any independent committee that expressly advocates support of or opposition to any candidate or candidates for election to the city council accept, any contribution in connection with a single election in excess of the sum of two hundred forty-nine dollars(\$249).
- C. Contributions by a husband and wife shall be treated as separate contributions and shall not be aggregated. Contributions by children under eighteen (18) years of age shall be treated as contributions attributed equally to each parent or guardian.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2005.

MAYOR

Attest:

City Clerk

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D. No person shall make to any independent committee that expressly advocates support of or opposition to any candidate or candidates for election to the city council, nor shall any independent committee that expressly advocates support of or opposition to any candidate or candidates for election to the city council accept, any contribution in connection with a single election in excess of the sum of two hundred forty-nine dollars(\$249).

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MAYOR

Attest:

City Clerk