

**AN ORDINANCE OF THE COUNTY OF MONTEREY, STATE OF CALIFORNIA,
ADDING CHAPTER 1.11 RELATING TO CAMPAIGN CONTRIBUTION LIMITS AND
DISCLOSURE.**

County Counsel Summary

This ordinance will add Chapter 1.11 to the Monterey County Code to establish monetary limits on contributions to County elective office candidates and elective officeholders. The purpose of this ordinance is to reduce corruption and appearance of corruption in political campaigns as well as to increase transparency of election funding through public disclosures.

The Board of Supervisors of the County of Monterey ordains as follows:

SECTION 1. Chapter 1.11 is added to the Monterey County Code to read as follows:

Sections:

1.11.010 Name of Chapter.

This Chapter shall be known and cited as the “County of Monterey Campaign Finance Ordinance” or the “Campaign Finance Ordinance.”

1.11.020 Purpose of the Chapter.

(a) The United States Supreme Court has held that the purpose of a campaign reform ordinance must be to reduce corruption or the appearance of corruption in the electoral process, and that corruption in this context means “quid pro quo” corruption, that is, the contribution of money or resources for political favors. This Chapter primarily accomplishes this purpose in three ways:

(1) this Chapter establishes a limit on the amount that individuals and entities may contribute to elective officeholders and candidates for elective County office and their controlled committees;

(2) this Chapter prohibits the hiding of the identity of contributors through the making of contributions via intermediaries without disclosure. Such contributions are attributed to the real contributor and subject to the contribution limit; and

(3) this Chapter applies to candidates, elective officer, elective officeholder, persons, entities and committees.

(b) This Chapter is intended to make campaigns more transparent and, by providing information to voters, make it more difficult for candidates and influential individuals and entities to engage in quid pro quo corruption, to make the financing of campaigns for ballot measures and elective County office more transparent, and to make more information, especially financial information, regarding campaigns and their supporters available to voters. Additionally, these requirements reflect the values of the County for a transparent and inclusive government, that leads to an engaged electorate, and candidate pool, across all economic strata.

(c) State and local ballot measure contributions are governed by the California Political Reform Act (California Government Code section 81000 et seq.) and the regulations adopted by the Fair Political Practices Commission (California Code of Regulations, title 2, section 18700 et seq.). This Chapter requires the local filing of campaign statements associated with local ballot measures pursuant to Chapter 1.10 of the Monterey County Code.

1.11.030 Relationship to the Political Reform Act of 1974.

(a) The Political Reform Act, as amended and codified, already establishes certain minimum reporting and other requirements for candidates, officeholders and certain committees making independent and other expenditures. The Political Reform Act establishes contribution limits for State officeholders and candidates for State office but does not provide for any contribution limits for local officeholders or candidates for local office. The Political Reform Act expressly authorizes local governments to impose additional requirements on for local office as long as the requirements do not prevent any person from complying with the Political Reform Act.

(b) Unless a word or term is specifically defined in this Chapter or the contrary is stated or clearly appears from the context, words and terms shall have the same meaning as when they are used in the Political Reform Act, as amended and codified, and in the related regulations of the Fair Political Practices Commission.

(c) If any provision of this Chapter prevents any candidate or person from complying with the Political Reform Act, such provision is preempted by the Political Reform Act to the extent necessary to bring this Chapter into full compliance therewith.

1.11.040 Definitions.

For the purposes of this Chapter, certain words are defined as follows:

“Ballot measure” means a proposition, measure or initiative qualifying for election pursuant to the California Elections Code and action by the Board of Supervisors where the electorate is Countywide or where a majority of voters eligible to vote on the measure reside in unincorporated County.

“Candidate” means any individual who is a candidate for Supervisor, Sheriff-Coroner, District Attorney, Auditor-Controller, Treasurer-Tax Collector, Assessor-Clerk-Recorder, or any other elective County office as defined in the California Government Code. Such office would include any elected County offices that have been consolidated or later separated. The provisions of Government Code section 82007 shall also apply to such individual.

“County” means the County of Monterey.

“Election” means a primary, general, special, or recall election. Each of these is a separate election for purposes of this Chapter.

“Elective officer” or “officeholder” means an individual who is a Supervisor, Sheriff-Coroner, District Attorney, Auditor-Controller, Treasurer-Tax Collector, Assessor-Clerk-Recorder, County Superintendent of Schools, or holder of any other elective County office.

“Entity” means any person, other than an individual.

“Individual” means a human being.

“Person” means 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.

“Registrar of Voters” means the Registrar of Voters of Monterey County.

“Sponsored committee” means a committee, other than a controlled committee, which has one or more sponsors.

“Sponsor” means any entity other than a candidate or other individual if any of the following applies (neither a candidate nor individual may be a sponsor):

(a) The sponsored committee receives 80 percent or more of its contributions from the entity or its members, officers, employees, or shareholders.

(b) The entity collects contributions for the sponsored committee by use of payroll deductions or dues from its members, officers, or employees.

(c) The entity, alone or in combination with other organizations, provides all or nearly all of the administrative services for the sponsored committee.

(d) The entity, alone or in combination with other organizations, sets the policies for soliciting contributions or making expenditures of sponsored committee funds.

1.11.050 Contribution Limit.

(a) *Limit on Contributions to a Candidate, Candidate’s Controlled Committee or Elective Officeholder.* A person may not make to a candidate or the candidate’s controlled committee, and a candidate or the candidate’s controlled committee may not accept from a person, any contribution totaling more than 2% of the County Median Household Income as updated by the United States Census Bureau’s American Community Survey 5-year Estimates as reported annually by the Registrar of Voters. Each primary, general, special, and recall election is a separate election for purposes of this Chapter. A person may not make to an elective officeholder or the officeholder’s controlled committee, and an elective officeholder or officeholder’s controlled committee may not accept from a person, any contribution totaling more than 2% of the County Median Household Income as updated by the United States Census Bureau’s American Community Survey 5-year Estimates as reported annually by the Registrar of Voters.

(b) *Post-Election Fundraising Restrictions.* A contribution for an election may be accepted by a candidate after the date of the election only to the extent that the contribution does not exceed net debts outstanding from the election, and the contribution does not otherwise exceed the applicable contribution limit for that election. Notwithstanding any other provision of section 1.11.050, if a candidate or the candidate’s controlled committee had net debts resulting from an election held prior to January 1, 2018, contributions to that candidate or committee for that election are not subject to the limits of subdivision (a) of this section.

(c) *Contributions Received for Primary and General Elections.* A candidate may raise contributions for a general election prior to the primary election, and for a special general election prior to a special primary election, for the same elective office if the candidate sets aside these contributions and uses these contributions for the general election or special general election. Notwithstanding Government Code section 85201, candidates may establish separate campaign contribution accounts for the primary and general elections or special primary and special general elections.

(d) *Separate Controlled Committee for Each Campaign Account.* A candidate who is required to file a statement of organization for a controlled committee pursuant to Government Code section 84101 shall establish a separate controlled committee and campaign bank account for each specific term of elective office identified in statements filed by the candidate pursuant to Government Code section 85200. A controlled committee and campaign bank account established for a specific term of elective office may not be redesignated as a controlled committee and campaign account for a future election, even if the future election is for the same elective office. Insofar as State law or regulations allow amended statements or redesignations, then this Chapter also allows amended statements or redesignations.

(e) *Return of Contribution in Excess of Limits.*

(1) Contributions which either in the aggregate or on their face exceed the contribution limits of section 1.11.050(a) shall be deemed not to have been accepted within the meaning of that provision, if returned pursuant to section 1.11.050(e).

(2) A monetary contribution shall be returned to the contributor prior to deposit or negotiation, within 14 days of receipt.

(3) A non-monetary contribution shall be returned by returning to the contributor, within the deadline specified in subdivision (2), any of the following: the non-monetary contribution; its monetary equivalent; the monetary amount by which the value of the non-monetary contribution exceeds the contribution limits of section 1.11.050(a).

(4) Subdivision (e) shall not be construed to authorize the making or solicitation of any contribution in excess of the contribution limits of section 1.11.050(a).

1.11.060 Contribution Through Intermediary and Disclosure.

(a) *Contributor Acting through an Intermediary.* A person may not make any contribution to another person or to a committee on the condition or with the agreement that it will be contributed to any particular candidate unless the contribution is fully disclosed pursuant to Government Code section 84302.

(b) *Intermediary Acting on Behalf of Contributor.* A person may not make any contribution to a particular candidate on behalf of another person, or while acting as the intermediary or agent or conduit of another person, unless the contribution is fully disclosed pursuant to Government Code section 84302.

1.11.070 Aggregation of Contributions.

(a) For purposes of the contribution limit and reporting requirements of this Chapter, the contributions from certain combinations of individuals and entities must be added together to determine the total amount that will be treated as made by, and received from, a single contributor. Such aggregated amount shall not exceed the contribution limit established under section 1.11.050.

(b) *Contributions of an Entity Treated as Contributions of an Individual.*

(1) The contributions of an entity whose contributions are directed and controlled by an individual shall also be treated as the contributions of the individual.

(2) The contributions of an entity whose contributions are directed and controlled by two or more individuals shall also be treated as the contributions, on a pro rata basis, of the individuals.

(3) The contributions of an entity that is majority-owned by an individual shall also be treated as the contributions of the individual, unless the entity acts independently in its decision to make the contributions.

(c) *Contributions of an Entity Treated as Contributions of Another Entity.*

(1) The contributions of an entity whose contributions are directed and controlled by an individual shall also be treated as the contributions of any other entity whose contributions are directed and controlled by the same individual.

(2) The contributions of an entity whose contributions are directed and controlled by a majority of persons shall also be treated as the contributions of all other entities whose contributions are directed and controlled by the same majority of persons.

(3) The contributions of an entity that is majority-owned by a person shall also be treated as the contributions of all other entities majority owned by the same person, unless the entity acts independently in its decision to make the contributions.

1.11.080 Reasonable Diligence and Disclosure of Aggregated Contributions.

(a) Candidates, their controlled committees and treasurers, and any person must exercise reasonable diligence to determine whether a particular contribution must be aggregated with another contribution by operation of any provision of this Chapter or law.

(b) Any person who makes a contribution that is subject to aggregation by operation of any provision of this Chapter or law shall, at the time of making the contribution, disclose in writing to the candidate or the candidate's controlled committee the existence of all other contributions that must be aggregated with such contribution. This requirement does not relieve the candidate and the candidate's controlled committee and treasurer of the obligations under section 1.11.080(a) or law.

1.11.090 Personal Contributions; Family Contributions.

(a) *Contribution of Candidate's personal Funds.* The provisions of section 1.11.050 do not apply to a candidate's contributions of his or her personal funds or community property to his or her campaign.

(b) *Contribution of Spouses or Domestic Partners.* For purposes of this Chapter, a single contribution made by both spouses or by both registered domestic partners shall not be aggregated but shall be divided equally between both spouses or between both domestic partners.

(c) *Contribution of Minor.* A contribution made by a child less than 18 years of age is presumed to be a contribution from the parent or guardian of the child. For contribution tracking purposes, if the parents or guardians of the child are married or have joint legal custody of child, the contribution shall be divided equally between them. If one parent or guardian has primary or sole legal custody of the child, then the contribution shall be attributed to that parent or guardian. The committee or candidate accepting a contribution from a child under the age of 18 shall obtain the information concerning parental or guardian attribution.

(d) *Statement of Intent to Self-Fund.* A candidate that intends to contribute his or her personal funds or community property shall file a Statement of Intent to Self-Fund with the Registrar of Voters at the same time that the candidate files his or her declaration of candidacy or when such contributions exceed \$10,000 for an election. No contribution of personal funds may be made unless a Statement of Intent to Self-Fund is filed at least 60 days prior to an election.

(e) *Opponent of Self-Funded Candidate.* The contribution limits set forth in section 1.11.050 for any opponent of a Self-Funded candidate in an election is increased to no more than 10% of the County Median Household Income as updated by the United States Census Bureau's American Community Survey 5-year Estimates as reported annually by the Registrar of Voters.

1.11.100 Intra-Candidate Transfer of Funds.

(a) A candidate may transfer campaign funds from one controlled committee to a controlled committee for County office of the same candidate. Contributions transferred shall be attributed to specific contributors and these attributed contributions when aggregated with all other contributions from the same contributor may not exceed the limits set forth in section 1.11.050.

(b) Notwithstanding section 1.11.100(a), a candidate for County office may carry over contributions raised in connection with one election to County office to pay campaign expenditures incurred by the same candidate in connection with a subsequent election for the same County office.

1.11.110 Electronic Filing of Campaign Statements.

(a) *Electronic Filing of Statements.* Campaign filing requirements shall be controlled by Chapter 1.10 of the Monterey County Code.

1.11.120 Non-Application to Other Elections and Recall Elections.

(a) *Non-County Election.* In the event a candidate also runs for election for a State, Federal, city, special district, or other non-County office, the provisions of this Chapter do not apply to the candidate's campaign for such other office nor to any committee established solely for the purpose of running for such other office.

1.11.130 Maintenance and Access to Records.

(a) *Maintenance of Records.* Candidates and their controlled committees shall maintain, for the period of time required in Government Code section 84104, such detailed accounts, records, bills, receipts, and other documentation necessary to prepare campaign statements and to comply with the provisions of this Chapter.

(b) *Disclosure of Records.* Candidates and their controlled committees shall deliver to the Registrar of Voters and any public entity or official having authority to implement or enforce this Chapter, upon demand, the documentation and information described in subdivision (a) and any other information and documentation sufficient to allow the determination of whether any provision of this Chapter has been violated.

(c) *Authorization to Access Records.* Candidates and their controlled committees shall deliver to the Registrar of Voters and any public entity or official having authority to implement or enforce this Chapter, upon demand, a written authorization permitting such entity or official to have access to all documentation and information pertaining to the campaign contribution checking account.

1.11.140 Violations and Enforcement—Criminal.

(a) Any person who knowingly or willfully violates any provision of this Chapter, who purposely causes any other person to violate any provision of this Chapter, or who aids and abets any other person in the violation of any provision of this Chapter, is guilty of a misdemeanor.

(b) In addition to any other penalties provided by this Chapter or the County Code or law, a fine of up to the three times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received, or \$10,000.00, whichever is greater, may be imposed upon conviction for each violation.

(c) A plea of nolo contendere shall be deemed a conviction for purposes of this Section.

1.11.150 Violations and Enforcement—Civil.

(a) Any person who violates any provision of this Chapter, who purposely causes any other person to violate any provision of this Chapter, or who aids and abets any other person in the violation of any provision of this Chapter, shall be subject to, in addition to any other penalties provided by this Chapter or the County Code or law, a civil penalty of up to three times the amount the person failed to report properly or unlawfully contributed, expended, gave, or received, or \$1,000.00, whichever is greater. Civil remedies also include injunctive or other equitable or declaratory relief.

(b) If two or more persons are responsible for any violation of any provision of this Chapter, then they shall be jointly and severally liable.

(c) The civil prosecutor is primarily responsible for enforcement of the civil penalties and remedies of this Chapter. The civil prosecutor shall be the District Attorney. If the enforcement action is against a candidate for the Office of District Attorney, then the Civil Prosecutor shall be the County Counsel.

(d) Any person residing within the jurisdiction of the election may bring a civil action under this Section. Before filing such action, such person must first file with the civil prosecutor a written request for the civil prosecutor to commence the action, subject to procedures that comport with the procedures set forth in Government Code section 91007.

(e) No civil action may be filed with regard to a person for any violation of this Chapter after an administrative order pursuant to section 1.11.160 has been issued against such person for the same violation.

1.11.160 Violations and Enforcement—Administrative.

(a) Any person who, pursuant to an appropriate administrative action, is determined to have violated any provision of this Chapter, purposely caused any other person to violate any provision of this Chapter, or aided and abetted any other person in the violation of any provision

of this Chapter, shall be subject to an administrative order requiring that the person to do all or any of the following:

- (1) Cease and desist violation of this Chapter;
- (2) File any reports, statements, or other documents or information required by this Chapter;
- (3) Pay a monetary penalty of up to \$5,000.00 per violation;
- (b) If two or more persons are responsible for any violation of any provision of this Chapter, then they shall be jointly and severally liable.
- (c) No administrative action brought alleging a violation of any provision of this Chapter shall be commenced more than five years after the date on which the violation occurred.

1.11.170 Construction.

This Chapter shall be liberally construed to accomplish its purposes.

1.11.180 Operative Date.

The Campaign Finance Reform Ordinance shall become operative on January 1, 2018. The Campaign Finance Reform Ordinance shall apply only to contributions made to, or received by, a candidate on or after January 1, 2018. No contribution made to, or received by, a candidate prior to January 1, 2018, shall be considered whatsoever for purposes of the contribution limit, the aggregation of contributions provision, or any other requirement of the Campaign Finance Reform Ordinance.

1.11.181 Severability.

If any section, subsection, sentence, clause or phrase of this Chapter is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Chapter. The Board of Supervisors hereby declares that it would have passed this Chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

SECTION 2. This ordinance shall become effective on the thirty-first day following its adoption.

PASSED AND ADOPTED on this ____ day of _____, 2017, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Mary L. Adams, Chair
Monterey County Board of Supervisors

A T T E S T

GAIL T. BORKOWSKI
Clerk of the Board of Supervisors

By: _____
Deputy

APPROVED AS TO FORM:

WENDY S. STRIMLING
Senior Deputy County Counsel