

URGENCY ORDINANCE 1043

NEW CAMPAIGN CONTRIBUTION LIMITS FINANCE LIMITS

EFFECTIVE IMMEDIATELY: On July 12, 2022, the City Council adopted an Urgency Ordinance 1043 limiting Mayor and City Council Campaign contributions, effective July 13, 2022 to \$500.

Please read Ordinance 1043 for complete details and definitions.

Questions? Please contact the City Clerk's office for questions:

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URGENCY ORDINANCE NO. 1043

AN URGENCY ORDINANCE OF THE CITY OF BRENTWOOD AMENDING CHAPTER 2.10 (GENERAL MUNICIPAL ELECTION) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE BRENTWOOD MUNICIPAL CODE TO ADD A NEW SECTION 2.10.065 (MAYOR AND CITY COUNCIL CAMPAIGN CONTRIBUTION LIMITATIONS); AND AMENDING THE 2022/23 GENERAL FUND OPERATING BUDGET IN THE AMOUNT OF \$25,000 FOR ENFORCEMENT RELATED EXPENSES.

WHEREAS, effective January 1, 2021, Assembly Bill No. 571 ("AB 571") imposed a default campaign contribution limit upon cities and counties; and

WHEREAS, the current State default contribution limit would be \$4,900 for the City's elections in 2022, which is in excess of the size of most contributions that have traditionally been made in City campaigns; and

WHEREAS, the City Council hereby finds and declares that a lower, reasonable contribution limit of \$500 will allow candidates to raise sufficient funds to get their message out to the electorate; and

WHEREAS, California Government Code Section 85702.5 permits cities to act, by either ordinance or resolution, to establish their own campaign contribution limits that differ from those described in Government Code Sections 85301 and 83124; and

WHEREAS, the nomination period for the 2022 election cycle starts on July 18, 2022 and candidates are likely to start soliciting contributions soon thereafter; and

WHEREAS, candidates for election to City offices in November 2022 need to know with certainty the limits that apply to their campaign contributions; and

WHEREAS, the City Council hereby finds and declares that a delay in enacting contribution limits for the November 2022 City elections is likely to cause confusion among candidates and voters and to increase the potential for violations, thereby upsetting public peace, health, and welfare; and

WHEREAS, with the beginning of the 2022 election cycle, there is now an urgent need to take immediate action to enact the campaign finance provisions herein so that they may be effective during the entire November 8, 2022 General Municipal Election campaign cycle; and

WHEREAS, to protect public peace, health, and welfare, the City Council may adopt this Urgency Ordinance to set local campaign contribution limitations on candidates for City elective office as an urgency measure in accordance with Government Code section 36937, subdivision (b) by a four-fifths vote of the City Council; and

WHEREAS, in adopting this Ordinance, it is the City Council's intent to ensure a fair election process by setting local campaign contribution limits; and

WHEREAS, all legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, the City Council of the City of Brentwood does ordain as follows.

SECTION 1. The recitals above containing a declaration of the facts constituting the need to take immediate action by urgency measure are each incorporated by reference and adopted as findings by the City Council.

SECTION 2. The City Council finds that the proposed amendments to the Brentwood Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061 because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. Chapter 2.10 (General Municipal Election) of Title 2 (Administration and Personnel) of the Brentwood Municipal Code is hereby amended to add a new section 2.10.065 to read as follows:

"2.10.065. Mayor and City Council Campaign Contribution Limitations

A. Intent. It is the intent of the City Council of the City of Brentwood in enacting this section to place realistic and enforceable limits on the amount persons may contribute to candidates for City elective office, to prevent improper or undue influence over elected officials by campaign contributors, or the appearance of undue influence. This Section is intended to supplement the Political Reform Act of 1974, as amended, and in the event of a conflict between that Act and this Section, that Act shall prevail. This Section is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Sections 81013 and 85702.5 of the California Government Code.

B. Definitions. Whenever in this Section the following words or phrases are used, they shall have the following meaning:

- "Candidate" shall be defined as set forth in the California Political Reform Act, (California Government Code section 81000, *et seq.*), but shall include only candidates for City elective office.
- "Candidate committee" shall mean a candidate-controlled committee that is primarily formed to support that candidate's election for City elective office.
- "City elective office" shall mean the offices of Mayor and Member of City Council. The City Council consists of four separate City elective offices.
- "Enforcement authority" shall mean that special counsel appointed by the City Manager, in consultation with the City Attorney, pursuant to Subsection (D).
- "Person" shall mean any individual or entity, including without limitation a firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

Except as otherwise stated herein, the terms of this Section shall have those definitions provided in the Political Reform Act of 1974 (Government Code Section 81000, et. seq.) or in the regulations adopted by the California Fair Political Practices Commission to implement the Act.

C. Limits on Campaign Contributions to Candidates

1. Effective July 13, 2022, a person shall not make to a candidate for City elective office, and a candidate for City elective office shall not accept from a person, a contribution totaling more than five hundred dollars (\$500) per election.

2. A candidate for City elective office shall have no more than one candidate committee for that office and one checking account into which all campaign contributions shall be deposited and out of which all expenditures shall be made. This paragraph shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of such savings accounts.

3. The limit in paragraph (1) of this subsection shall not be deemed to prohibit contributions or loans from a candidate to their own candidate committee in accordance with State law, or to limit the amount a candidate may contribute or loan to their own candidate committee. Contributions from the spouse of a candidate from such spouse's separate property shall be subject to the limit set forth in paragraph (1) of this subsection.

4. The limit in paragraph (1) of this subsection shall not apply to contributions made to a committee that is organized solely for the purpose of supporting or opposing the recall of an incumbent City elected officer, but shall apply to all candidates and their candidate committees seeking election to replace the incumbent City elected officer.

5. The limit in paragraph (1) of this subsection is subject to the laws of when contributions must be aggregated under the Political Reform Act of 1974, as amended. To determine when contributions are aggregated, "entity" means any person other than an individual, and "majority owned" means ownership of more than 50 percent. If an individual directs or controls an entity's contributions, the entity's contributions shall be aggregated with contributions made by both of the following: (a) that individual; and (b) any other entity whose contributions that individual directs or controls. If two or more entities make contributions that are directed or controlled by a majority of the same persons, the contributions of those entities shall be aggregated. Contributions made by entities that are majority owned by a person shall be aggregated with the contributions of the majority owner and all other entities majority owned by that person, unless those entities act independently in their contribution-making decisions.

6. If a candidate or the treasurer of a candidate committee for City elective office is offered a contribution, which would violate this limitation, the candidate or treasurer must refuse the contribution. If, however, a contribution which is in violation of this section is deposited into the campaign trust account, the candidate or treasurer must report in writing within 10 days of the receipt of the unlawful contribution to the City Clerk the facts surrounding such payment or contribution and, to the extent permitted by applicable law, return the contribution. After 10 days, if the contribution has not been returned to the contributor, the candidate or treasurer shall forfeit the amount of the unlawful contribution and pay the amount of the unlawful contribution to the City for deposit into the City's general fund.

7. The limit in paragraph (1) of this subsection shall not apply to political contributions made on or prior to July 13, 2022. After July 13, 2022, a person may make, and a

candidate for City elective office may accept from a person, a contribution of up to \$500, regardless of whether that person made to the candidate for City elective office a contribution totaling more than \$500 before July 13, 2022.

D. Enforcement authority — Duties, complaints, legal actions, investigatory powers.

1. The City Attorney shall not investigate or prosecute any alleged violation of this Section, but will defend the constitutionality and legality of this Section in any civil proceeding in which the City or the City Council is a party.
2. Any resident of the City may sue for injunctive relief to enjoin violations or to compel compliance with the provisions of this Section. The court may, in its discretion, require any plaintiff other than the enforcement authority to file a complaint with the enforcement authority prior to seeking injunctive relief. The court may award to a plaintiff or defendant who prevails that party's costs of litigation, including reasonable attorney's fees.
3. Review of complaints of violation of this Section and criminal prosecution thereof may be commenced by the enforcement authority, and as set forth in this paragraph. The enforcement authority is authorized to commence and prosecute civil litigation to compel compliance with this Section or to enjoin conduct in violation of this Section. Prior to each election, the City Manager, in consultation with the City Attorney, will appoint an enforcement authority for that election. If the appointment of an additional enforcement authority becomes necessary or appropriate, the City Manager, in consultation with the City Attorney, will appoint such additional enforcement authority as may be required. Prior to the commencement of each Municipal General Election cycle, the City Council shall appropriate sufficient funds from the City's treasury to retain the services of the enforcement authority to investigate alleged violations of this Section and, if necessary, to take action to enforce this Section.
4. Any resident of the City who believes that a violation of this Section has occurred may file a written complaint requesting investigation of such violation by the enforcement authority. The complainant shall file the complaint with the City Clerk, under penalty of perjury and include proof that the complainant is a resident of the City. The complaint shall state a full recitation of all facts that are alleged to constitute a violation of this Section. If a complaint does not comply with these requirements, the City Clerk shall return the complaint to the complainant, with an explanation as to why it is insufficient for filing. Within five (5) working days after accepting the complaint for filing, the City Clerk shall forward it to the enforcement authority.
5. The enforcement authority shall, within thirty (30) calendar days of receiving a complaint that complies with paragraph 4 of this subsection, make a determination of whether there is probable cause to believe that a violation occurred. If no probable cause is determined to exist, the complaint shall be dismissed summarily, and interested parties shall be notified of the dismissal in writing.
6. If the enforcement authority determines there is probable cause to believe that a violation of this Section has occurred, the enforcement authority may refer the matter to the District Attorney for criminal prosecution, or may conduct an

investigation and commence such administrative or civil legal action as they deems necessary for the enforcement of this Section.

7. The enforcement authority shall not investigate or take any further action regarding any alleged violation which has been referred to the District Attorney, or which is already the subject of a complaint filed with the Fair Political Practices Commission, until the investigation of that complaint by the District Attorney or the Fair Political Practices Commission is complete.
8. The enforcement authority has such investigative powers as are necessary for the performance of duties described in this Section, and may demand and be furnished records of campaign contributions and expenditures of any person or committee that has relevant information about a contribution made in excess of the contribution limits in a Municipal General Election. In the event that production of such records is refused, the enforcement authority may commence litigation to compel such production.
9. The enforcement authority is immune from liability for its enforcement of this Section.
10. Any action alleging a violation of this Section must be commenced within two years of the time the alleged violation occurred.

E. Penalties

1. **Criminal Penalties.** Any person who knowingly or willfully violates any provisions of this Section is guilty of a misdemeanor.
2. **Civil Action.** Any person who violates this Section shall be liable in a civil action for an amount up to \$5,000.00 per violation.
3. **Administrative Action.** Any person who violates this Section may be subject to an administrative citation and administrative fines as set forth in Chapter 1.24 of this Code.

F. Rules of Construction

This Section will be construed liberally in order to effectuate its purposes.

SECTION 4. This Urgency Ordinance is adopted in the exercise of the City's authority under the California Constitution, article XI, section 7 and Government Code section 36937. This Urgency Ordinance is necessary to impose local contribution limits in time for the November 8, 2022 Municipal Election, and for those to be in effect before the candidate nomination period begins, which occurs July 18 through August 12, 2022. Imposing limits after that date would likely cause confusion among candidates and voters and increase the potential for violations, thereby upsetting public peace, health, and welfare.


SECTION 5. This Urgency Ordinance will be published in accordance with Government Code Section 36933 by either posting or publishing the Urgency Ordinance in accordance with that law. Further, the City Clerk is requested to cause the newly adopted Section 2.10.065 to be entered in the City of Brentwood Municipal Code.

SECTION 6. This Urgency Ordinance is adopted by a four-fifths vote of the Brentwood City Council. It shall take effect immediately upon its adoption.

SECTION 7. The 2022/23 General Fund Operating Budget is hereby amended in the amount of \$25,000 for enforcement related expenses.

THE FOREGOING URGENCY ORDINANCE was adopted, with the reading waived at the regular meeting of the Brentwood City Council on the 12 day of July, 2022, by the following vote:

AYES: Council Members Mendoza, Meyer, Rarey, and Mayor Bryant
NOES: None
ABSENT: Rodriguez
RECUSE: None



Joel Bryant
Mayor

ATTEST:


Margaret Wimberly, MMC
City Clerk