

**CITY OF DANA POINT**  
**AGENDA REPORT**

<b>Reviewed By:</b>	
DH	<u>  X  </u>
CM	<u>  X  </u>
CA	<u>  X  </u>

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**DATE:** JULY 28, 2004

**TO:** THE HONORABLE MAYOR AND CITY COUNCIL

**FROM:** PATRICK A. MUNOZ, CITY ATTORNEY

**SUBJECT:** AMENDMENT TO CHAPTER 2.05 OF THE DANA POINT MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE

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**RECOMMENDED ACTION:**

That the City Council conduct a second reading and adopt an ordinance entitled:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 2.05 OF THE DANA POINT MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE

**BACKGROUND:**

On April 28, 2004 the Council was required to consider adjustments to the contribution and expenditure limits in the City's Campaign Finance Ordinance. At that time, a discussion ensued whereby it was pointed out that certain provisions of the Campaign Finance Ordinance were unenforceable, due to, in part, concerns they violated the First Amendment to the United States Constitution. In response, the Council gave staff direction to bring back a revised ordinance that eliminated the problematic language.

On June 23, 2004, the City Council approved the introduction and first reading of this municipal code amendment ordinance.

**DISCUSSION:**

The attached Ordinance amends Chapter 2.05 of the Dana Point Municipal Code in response to the direction given by Council on April 28, 2004. By way of summary, this Ordinance will delete independent expenditure limitations contained in the Municipal Code which are likely unenforceable due to conflicts with the provisions of the First Amendment. In addition, the Ordinance eliminates so called aspirational limitations which are unenforceable by their own terms.

**FISCAL IMPACT:**

None.

**ACTION DOCUMENT:**

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**ORDINANCE NO. 04-****AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA AMENDING TITLE CHAPTER 2.05 OF THE DANA POINT MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE.**

THE CITY COUNCIL OF THE CITY OF DANA POINT DOES ORDAIN AS FOLLOWS:

**SECTION 1. Amendment of Chapter 2.5**

Chapter 2.5 of the Dana Point Municipal Code is hereby amended in its entirety to read as set forth in the attached Exhibit 1.

**SECTION 2: SEVERABILITY.**

If any section, subsection, subdivision, paragraph, sentence, clause or phrase, or portion of this Ordinance is, for any reason, held to be unconstitutional or invalid or ineffective by any court of competent jurisdiction, such decision shall not affect the validity or effectiveness of the remaining portions of this Ordinance or any part thereof. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, subdivision, paragraph sentence, clause or phrase of this Ordinance irrespective of the fact that one or more sections, subsections, subdivisions, paragraphs, sentences, clauses or phrases be declared unconstitutional or invalid or effective. To this end the provisions of this Ordinance are declared to be severable.

**SECTION 3: POSTING OF ORDINANCE.**

The City Clerk shall certify as to the adoption of this Ordinance and shall cause a summary thereof to be published within fifteen (15) days of the adoption and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk, in accordance with Government Code Section 36933.

PASSED, APPROVED, AND ADOPTED this 28<sup>th</sup> day of July, 2004.

\_\_\_\_\_  
JOE SNYDER, MAYOR

ATTEST:

\_\_\_\_\_  
SHARON STREET, CITY CLERK

STATE OF CALIFORNIA)  
COUNTY OF ORANGE        ) ss  
CITY OF DANA POINT        )

I, Sharon Street, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing is a true and correct copy of Ordinance No. 04-\_\_\_\_\_ introduced at a regular meeting of the City Council held on the 23<sup>rd</sup> day of June, 2004, and passed and adopted at a regular meeting held on the 28<sup>th</sup> day of July, 2004, by the following roll call vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

(SEAL)

\_\_\_\_\_  
SHARON STREET, CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF DANA POINT )

I, SHARON STREET, City Clerk of the City of Dana Point, California, do hereby certify that the foregoing Ordinance No. 04-\_\_\_\_\_ was duly introduced and placed upon its first reading at a regular meeting of the City Council on the 23<sup>rd</sup> day of June, 2004, and that thereafter, said Ordinance was duly adopted and passed at a regular meeting of the City Council on the 28<sup>th</sup> day of July, 2004, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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SHARON STREET  
CITY CLERK

STATE OF CALIFORNIA )  
COUNTY OF ORANGE ) ss  
CITY OF DANA POINT )

AFFIDAVIT OF POSTING  
AND PUBLISHING

SHARON STREET, being first duly sworn, deposes, and says:

That she is the duly appointed and qualified City Clerk of the City of Dana Point;

That in compliance with State Laws of the State of California, ORDINANCE NO. 04-\_\_\_\_\_ being:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DANA POINT, CALIFORNIA, AMENDING CHAPTER 2.05 OF THE DANA POINT MUNICIPAL CODE RELATING TO CAMPAIGN FINANCE

was published in summary in the Dana Point News on the 1<sup>st</sup> day of July, 2004, and the \_\_\_\_\_ day of \_\_\_\_\_, 2004, and, in further compliance with City Resolution No. 91-10-08-1, on the 25<sup>th</sup> day of June, 2004, and the \_\_\_\_\_ day of \_\_\_\_\_, 2004, was caused to be posted in four (4) public places in the City of Dana Point, to wit:

- Dana Point City Hall
- Capistrano Beach Post Office
- Dana Point Post Office.
- Dana Point Library

\_\_\_\_\_  
SHARON STREET  
CITY CLERK  
Dana Point, California

<b>EXHIBIT 1</b>
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Title 2 ADMINISTRATION AND PERSONNELChapter 2.05 ELECTIONS

City of Dana Point

**2.05.010 Municipal Election Consolidation.**

Pursuant to Section 36503.5 of the California Government Code, general municipal elections, which would otherwise be held on the second Tuesday in April of even-numbered years or on the first Tuesday after the first Monday in March of odd-numbered years, shall be consolidated with the statewide general election on the first Tuesday after the first Monday of November in each even-numbered year. (Ord. 89-6, 1/11/89; Ord. 94-11, 8/23/94))

**2.05.050 Campaign Finance Reforms, Purpose.**

The purpose of this Chapter is to advance compelling City interests by limiting large contributions from single sources to candidates for City Council and by imposing reporting and accounting procedures for local campaigns. The City's interests are to provide a representative government which is accessible to all citizens to deter corruption and the appearance of corruption caused by the coercive influence of large financial contribution on candidates' positions, and to inform the electorate as to the sources and uses of political contributions and as to campaign expenditures. (Added by Ord. No. 91-10, 5/14/91)

**2.05.052 Definitions.**

For the purposes of this Chapter, unless the contrary is stated or clearly appears from the context, the definitions set forth in Chapter 2 of Title 9 of the Government Code of the State of California (commencing at Section 82000) (the Political Reform Act, as amended by Proposition 34) shall govern the construction, meaning, and application of words and phrases used in this Chapter. (Added by Ord. 91-10, 5/14/91)

**2.05.054 Application to City Council Elections Only.**

This Chapter shall apply solely to municipal elections for positions on the Dana Point City Council and not to other elected offices within the City. (Added by Ord. 91-10, 5/14/91)

**2.05.056 Contribution Limitations.**

(a) **Contributions.** No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any contribution which would cause the total amount contributed by that person to that candidate, including contributions or loans to all political committees or broad-based political committees controlled by the candidate, to exceed four hundred fifty dollars (\$450.00) for any election. The limit set forth in this Subsection shall be adjusted every two (2) years by resolution of the City Council pursuant to Section 2.05.058, Adjusting for Cost of Living Changes, herein.

(b) **Loans.** No person shall make, and no candidate for elective office, or campaign treasurer, shall solicit or accept any loan which would cause the candidate, including loans to all political committees or broad-based political committees controlled by the candidate, to exceed four hundred fifty dollars (\$450.00) for any election. The limit set forth in this Subsection may be adjusted every two (2) years by resolution of the City Council pursuant to Section 2.05.058, Adjusting for Cost of Living Changes, herein.

(c) **Anonymous Contributions.** No person shall make an anonymous contribution or contributions to a candidate, political committee or broad-based political committee or any other person totaling one hundred dollars (\$100.00) or more for any election period. An anonymous contribution of one hundred dollars (\$100.00) or more received by a candidate or such a committee shall not be kept by the intended recipient, but instead shall be paid promptly to the California Secretary of State for deposit in the General Fund of the state. This limit on single source anonymous contributions shall not be adjusted except for relevant changes in State law.

(d) **Extension of Credit.** No person shall extend credit, and no candidate for elective office, or campaign treasurer, or political committee or broad-based political committee controlled by the candidate shall solicit or accept any extension of credit which will extend beyond ninety (90) days from the date upon which the debt is incurred by the candidate, or political committee controlled by the candidate. (Added by Ord. 91-10, 5/14/91; amended by Ord. 96-03, 3/12/96)

#### **2.05.058 Adjusting for Cost of Living Changes.**

(a) **Adjustment.** The campaign contribution limits and the campaign expenditure limits set forth in Sections 2.05.056 and 2.05.068, respectively, shall be adjusted in February at two (2) year intervals beginning in 1998 by the City Clerk to reflect annual changes in the Consumer Price Index (CPI) over the previous two (2) year period. The City Clerk shall use the annual percent change in the Consumer Price Index for All Urban Consumers (CPI-U) in the selected local area of Los Angeles - Anaheim - Riverside, CA, to determine the appropriate rate of increase. The City Clerk shall compute the adjustment for each year separately, adding the adjustment for each year to the prior year's limit and then rounding the total adjusted amount for the two (2) year period. The new limit representing the rounded total adjustments for the previous two (2) year period shall be presented to the City Council for approval by resolution.

(b) **Rounding of Section 2.05.056 Amounts.** If the total adjusted limit under Section 2.05.056 for the two (2) year period ends in a digit between one (1) and four (4), then the limit shall be rounded down to the next lowest multiple of ten (10). If the final adjusted limit for the two (2) year period ends in a digit between five (5) and nine (9), then the limit shall be rounded up to the next highest multiple of ten (10).

(c) **Rounding of Section 2.05.068 Amounts.** If the last two (2) digits of the total adjusted limit under Section 2.05.068 for the two (2) year period is a number between one (1) and forty-nine (49), then the limit shall be rounded down to the next lowest multiple of one hundred (100). If the last two (2) digits of the total adjusted limit for the two (2) year period is a number between fifty (50) and ninety-nine (99), then the limit shall be rounded up to the next highest multiple of one hundred (100). (Added by Ord. 91-10, 5/14/91; amended by Ord. 96-03, 3/12/96)

#### **2.06.060 Term.**

The term of each board or commission member, other than the Youth Board members, and Planning Commission members, shall be two (2) years with staggered terms. Planning Commissioners shall serve four (4) year staggered terms. The term of the Youth Board members shall be one (1) year; term to expire on the last day of August. Members of the Youth Board shall be appointed in May of each consecutive year. Upon appointment, members of the Youth Board shall attend regularly scheduled meetings of the Youth Board and work with sitting Youth Board members to train for their duties which they shall assume on September 1st of each consecutive year. With the exception of the Youth Board, terms shall expire on the last day of February of the designated year or until such time as the City Council appoints a successor. At the completion of any term, a board or commission member may be reappointed pursuant to the procedures set

forth in Section 2.06.050. (Amended by Ord. 93-11, 5/25/93; Ord. 94-18, 11/8/94; Ord. 00-02, 2/22/00; Ord. 01-04, 3/27/01)

#### **2.05.062 Commercial Loans.**

The provisions of this Chapter regarding loans shall not apply to loans made by a commercial lending institution in the lender's regular course of business on terms available to members of the general public and for which the loan recipient is personally liable. (Added by Ord. 91-10, 5/14/91)

#### **2.05.064 Campaign Disclosure.**

(a) Campaign Bank Account. The notice and filing requirements of Government Code Sections 81000 et seq. regarding the campaign bank account, shall also be made to the City Clerk at the same time and in the same manner as reporting is made to the Fair Political Practices Commission for the State of California.

(b) Committee Registration. Every political committee and broad based political committee involved in a municipal election which files campaign reports shall file also with the City Clerk in the same form, content, and procedure as set forth in Government Code Section 81000 et seq. (Added by Ord. 91-10, 5/14/91)

#### **2.05.066 Duties of City Clerk.**

The City Clerk shall administer the provisions of this Chapter. In addition to other duties required of the City Clerk under the terms of this Chapter, the City Clerk shall:

(a) Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission (FPPC). These forms and manuals shall be furnished to all candidates and committees, and to other persons required to file reports.

(b) Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of this Chapter and state law.

(c) Notify promptly all persons and known committees who have failed to file a document in the form and at the time required by state law, and promptly notify a person, candidate, campaign treasurer, political committee or broad-based political committee of any violations of this Chapter. The Clerk shall inform the person, candidate, campaign treasurer, political committee or broad-based political committee that they shall have two (2) weeks to correct the violation, after which the violation shall be made known to the City Council, other candidates, and be made available as a public record.

(d) Compile and maintain a current list of all statements or parts of statements filed with the City Clerk's office pertaining to each candidate and each measure.

(e) Monitor reports and statements filed by candidates and committees supporting or opposing candidates for City Council as required by state law and this Chapter.

(f) Adjust the campaign contributions and expenditure limit each January to reflect the Consumer Price Index change for the prevailing twelve (12) month period. (Added by Ord. 91-10, 5/14/91)

**2.05.070 Violation--Penalty.**

Any person violating any of the provisions of this Chapter relating to campaign contributions and disclosure is guilty of a misdemeanor and subject to punishment in accordance with Section 1.01.200 of this Code.

**2.05.080 Purpose of Term Limits.**

The purpose of term limits on members of the City Council is to encourage qualified candidates to seek public office and limit the powers of incumbency by placing limits on the number of consecutive terms which members of the City Council may serve. (Added by Ord. 92-05, 6/23/92; amended by Ord. 96-08, 5/14/96)

**2.05.082 Limitation on Consecutive Terms for Council Members.**

No person shall be elected as a member of the City Council for more than two (2) full consecutive terms and no person who has been a member for more than two (2) years of a term to which he or she was appointed shall be elected to the City Council more than one (1) further consecutive term. (Added by Ord. 92-05, 6/23/92; amended by Ord. 96-08, 5/14/96)

**2.05.084 Operative Date of Term Limits.**

Pursuant to California Government Code Section 36502, the provisions of Sections 2.05.080 and 2.05.082 shall not become operative unless they are submitted to the voters of the City at a regularly scheduled election and a majority of the votes cast on the question favor the adoption of the proposal. If a majority of the votes cast are in favor of the adoption of Dana Point Municipal Code Sections 2.05.080 and 2.05.082, then the provisions of these sections shall apply prospectively from the date of the election. (Added by Ord. 92-05, 6/23/92; amended by Ord. 96-08, 5/14/96)