

ORDINANCE NO. O2015.51

**AN ORDINANCE OF THE CITY COUNCIL OF
THE CITY OF TEMPE, ARIZONA, AMENDING
CHAPTER 13, ARTICLE II, THE TEMPE CITY
CODE, BY ADDING A NEW DIVISION 2,
RELATING TO CANDIDATE CONTRIBUTION
LIMITS.**

WHEREAS, under the Arizona Constitution, a city with a population of more than 3,500 people is entitled to establish a charter for its government and that a charter city is granted autonomy over matters of local interests;

WHEREAS, the voters of the City of Tempe established the Tempe City Charter in 1964 that governs City of Tempe elections, in addition to other matters of local interests; and,

WHEREAS, the implementation of campaign finance reform for the office of Mayor and Councilmember in the City of Tempe for the conduct of candidate elections will maintain the public trust, eliminate quid pro quo corruption, eliminate the potential for fraud for the conduct of city elections, and improve the integrity of local government.

THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

Section 1. That Chapter 13, Article II of the Tempe City Code is hereby amended by adding a new Division 2 to read as follows:

DIVISION 2. CANDIDATE CONTRIBUTION LIMITS

Sec.13-110. Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning, or as otherwise required by law:

Candidate means any person who has filed a statement of organization with the Tempe City Clerk's Office as a candidate for the office of the Mayor or Councilmember.

State law reference A.R.S. § 16-311.

Contribution means anything of value, including gifts, loans, in-kind contributions, advances or deposits of money, made for the purpose of influencing an election, including any contribution defined by state law, as amended from time to time.

State law reference A.R.S. § 16-901.

Election Cycle means the period beginning twenty-one (21) days after a general election and ending twenty (20) days after the next successive general election.

State law reference A.R.S. § 16-901.8.

Expenditure means any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value made by a person, a candidate's campaign committee or political committee for the purpose of influencing an election, including a contract, promise or agreement to make an expenditure resulting in an extension of credit and the value of any in-kind contribution received, including any expenditure defined by state law, as amended from time to time.

State law reference A.R.S. § 16-901.

Family contribution means any contribution that is provided to a candidate's campaign committee by a parent, grandparent, spouse, child or sibling of the candidate or a parent or spouse of any of those persons.

State law reference A.R.S. § 16-901.

Independent Expenditure means an expenditure by a person or political committee, other than a candidate's campaign committee, that expressly advocates the election or defeat of a clearly identified candidate, that is made without cooperation or consultation with any candidate or committee or agent of the candidate and that is not made in concert with or at the request or suggestion of a candidate, or any committee or agent of the candidate. Independent expenditure includes an expenditure that is subject to the requirements of state law which requires a copy of campaign literature or advertisement to be sent to a candidate named or otherwise referred to in the literature or advertisement.

State law reference A.R.S. § 16-901.15; -917.

In-Kind Contribution means a contribution of goods or services or anything of value that is not a monetary contribution.

State law reference A.R.S. § 16-901.

Multi-Candidate PAC means a political committee that received monies from five hundred (500) or more individuals in amounts of ten dollars (\$10) or more in the two-year period immediately before application to the secretary of state for qualification as a political committee and that receives a determination by the secretary of state that such committee meets the requirements of state law.

State law reference A.R.S. § 16-905.(G).

Partnership means an association or entity formed under Arizona law, a predecessor law or comparable law of another jurisdiction.

State law reference A.R.S. § 29-1001.11; -1012.

Personal Monies means assets and funds to which the candidate has legal right; salary and other earned income from candidate employment; dividends and proceeds from the sale of stocks or investments; income from trusts; proceeds of loans obtained that are not contributions; or, proceeds from legal games of chance.

State law reference A.R.S. § 16-901.

Political Committee or Political Action Committee (PAC) means a candidate or any association or combination of persons organized, conducted or combined for the primary purpose of influencing the result of any election or to determine whether an individual will become a candidate for election in any county, city, town, district or precinct in this state, that engages in political activity on behalf of or against a candidate for election, as defined by state law, as amended from time to time.

State law reference A.R.S. § 16-901.

Sec. 13-111. Limitations on Candidate Contributions.

(a) No candidate for mayor or councilmember shall accept or receive a campaign contribution of more than five hundred dollars (\$500) from any individual during any election cycle.

(b) No candidate for mayor or councilmember shall accept or receive a campaign contribution of more than one thousand dollars (\$1,000) from any PAC or single partnership during any election cycle. For purposes of this subsection, contributions from a partnership shall be allocated to the individual partners who are contributing, as designated by the partnership. Partnership contributions from designated partners shall be combined with other contributions by that individual partner to the same recipient and are subject to the limits on an individual prescribed by this section. Non-partnership monies that are contributed by an individual shall not be counted against the partnership contribution limit for that same recipient.

(c) No candidate for mayor or councilmember shall accept or receive a campaign contribution of more than one thousand dollars (\$1,000) from a political party during any election cycle.

(d) No candidate for mayor or councilmember shall accept or receive a campaign contribution of more than five thousand dollars (\$5,000) from a multicandidate PAC during an election cycle.

(e) No candidate for mayor or councilmember shall accept or receive aggregate campaign contributions of more than ten thousand dollars (\$10,000) total from political parties, during an election cycle.

(f) No candidate for mayor or councilmember shall accept or receive aggregate campaign contributions of more than ten thousand dollars (\$10,000) total from PACs and Multi-Candidate PACs during an election cycle.

(g) The limits imposed by this section shall apply to in-kind contributions.

(h) The limits imposed by this section shall not apply to contributions from a candidate's own personal monies to the candidate's own campaign.

(i) The limits imposed by this section shall not apply to independent expenditures.

(j) The limits imposed by this section shall adjust biennially to the nearest ten dollars (\$10) by the percentage change in the consumer price index. For the purposes of this section, "consumer price index" means the consumer price index for all urban consumers, United States city average, that is published by the United States department of labor, bureau of labor statistics.

State law reference § 16-905.

Sec. 13-112. Personal Use of Campaign Contributions Prohibited.

Candidates shall not use contributions for personal use or non-campaign purposes including making expenditures on behalf of another candidate's campaign for mayor or councilmember.

State law reference § 16-901 et seq.; Federal law reference Title 11, Chapter 1, Subchapter A, Section 100.94.

Sec. 13-113. Civil Penalties.

(a) If a person has reasonable cause to believe that a candidate or official, or former candidate, has violated any of the limits imposed by this section, a written, notarized complaint shall be filed with the City Clerk within ninety (90) days of the election. Within two (2) working days, the City Clerk shall notify the City Attorney of receipt of such complaint.

(b) If the City Clerk determines that if true, the facts listed in the complaint would constitute a violation of this article, the City Clerk shall provide the candidate or official, or former candidate, a notification requiring a response to the complaint. Such notification shall include a copy of the written, notarized complaint and shall specify the time period for compliance which shall in no event exceed ten (10) calendar days. Notice shall be accomplished by sending the notification by U.S. mail, certified delivery, to the last known address of the candidate or official, or former candidate. If compliance is not possible due to the nature of the violation or if no response is timely filed as required by subsection 13-113(c), a person who violates section 13-111 shall be subject to a civil penalty assessed by the City Clerk of three (3) times the amount of money that has been received in violation or up to three (3) times the value in money for an equivalent of money or other things of value received in violation of section 13-111, per violation.

(c) The candidate or official, or former candidate, shall have ten (10) calendar days from the date of issuance of the notification or assessment as set forth in subsection 13-113(b), in order to file a written, notarized response to the complaint. The response shall be filed with the City Clerk before 5:00 p.m. on the tenth (10th) calendar day.

(d) The City Clerk shall render a final decision which may include a civil penalty of three (3) times the amount of money that has been received in violation or up to three (3) times the value in money for an equivalent of money or other things of value received. The decision shall specify the time period for compliance or corrective action, if any, which shall in no event be less than twenty (20) calendar days.

(e) If the candidate or official, or former candidate, fails to take corrective action within the specified time period or no appeal is timely filed with the City Clerk, the candidate or official, or former candidate, shall remit payment to the City Clerk. The candidate shall pay penalties from the candidate's personal monies.

(f) Any candidate who knowingly accepts a contribution in excess of one hundred fifty percent (150%) of the campaign contribution limitations shall be subject to section 2.06 of the Tempe City Charter, Forfeiture of Office.

(g) In the event that a timely appeal is filed with the City Clerk, the City Attorney shall review the facts and make a written determination within twenty (20) calendar days of the filing of such appeal. The City Clerk may provide written documentation of the basis for its decision to be considered by the City Attorney.

(h) Appeals from the determination of the City Attorney shall be made to the Superior Court by way of special action within thirty (30) calendar days from the date of issuance of the determination set forth in subsection 13-113(g).

Sec. 13-114. Additional Powers of the Mayor and Council.

The City Council may enact ordinances or approve rules as may be necessary or desirable to carry out the provisions of this article.

Sec. 13-115. Applicable Law.

Candidates shall continue to be bound by other applicable laws, rules and regulations, including but not limited to election and campaign finance statutes and rules, with the exception of those provisions in express or clear conflict with this article.

Sec. 13-116. Severability.

If a provision of this article or its application to any person or circumstance is held invalid, the invalidity shall not be construed to affect any other provision or application of this article than can be given effect without the invalid provision or application. To this end, the provisions of this article are severable.

Secs. 13-117—13-124. Reserved.

Section 2. Pursuant to the Tempe City Charter, Section 2.12, this ordinance shall be effective for limitations on candidate contributions for city elected office beginning with the 2018 election cycle.

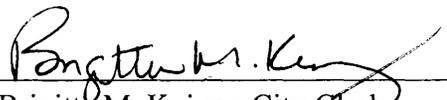
Section 3. Conditional Enactment. Pursuant to the Tempe City Charter, Section 2.12, this ordinance shall only be effective upon the effective date of the Charter Amendment regarding candidate contribution limits passed by the City of Tempe voters at the March 8, 2016 Special Election, pursuant to Resolution No. R2015.117, and approved by the Governor of the State of Arizona.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA this 12th day of November, 2015.



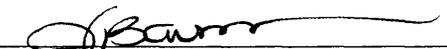
Mark W. Mitchell, Mayor

ATTEST:



Brigitta M. Kuiper, City Clerk

APPROVED AS TO FORM:



Judith R. Baumann, City Attorney