

ORDINANCE NO. 4824

AN ORDINANCE OF THE CITY OF MESQUITE, TEXAS, AMENDING ARTICLE IV OF CHAPTER 2 OF THE MESQUITE CITY CODE, AS AMENDED, BY ADDING A NEW DIVISION 5 TO ESTABLISH REGULATIONS FOR POLITICAL CONTRIBUTIONS, AND AMENDING APPENDIX D OF THE MESQUITE CITY CODE, COMPREHENSIVE FEE SCHEDULE, AS AMENDED, TO ESTABLISH A FEE IN ARTICLE I, ADMINISTRATION, BY ADDING A FEE FOR POLITICAL CONTRIBUTIONS COMPLAINT; PROVIDING REPEALER, CONFLICTS RESOLUTION, SEVERABILITY AND SAVINGS CLAUSES; AND PROVIDING FOR A PENALTY NOT TO EXCEED \$500.00 FOR EACH OFFENSE; AND DECLARING AN EFFECTIVE DATE THEREOF.

WHEREAS, it is the intent of the City Council of the City of Mesquite, Texas (“**City Council**”), to protect the public health, safety, and welfare; and

WHEREAS, the City of Mesquite, Texas (“**City**”), is a home-rule municipality acting under its Charter adopted, and amended, by the electorate pursuant to the Texas Constitution, Article 11, Section 5 and the Texas Local Government Code, Chapter 9; and

WHEREAS, a home-rule municipality has full power of local self-government, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 51, Section 51.072(a); and

WHEREAS, a home-rule municipality has general enforcement authority and may enforce each rule, ordinance or police regulation of the municipality and may punish a violation of a rule, ordinance, or police regulation pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Section 54.001, as amended and pursuant to Mesquite City Code, Chapter 1, Section 1-6; and

WHEREAS, a home-rule municipality may enforce ordinances necessary to protect health, life and property and to preserve the good government, order, and security of the municipality and its inhabitants, pursuant to Texas Local Government Code, Title 2, Subtitle D, Chapter 54, Section 54.004, as amended; and

WHEREAS, the City shall have the power to enact and enforce ordinances necessary to protect health, life and property and to prevent and summarily abate and remove all nuisances, and to preserve and enforce good government and order and security of the City and its inhabitants, pursuant to Mesquite City Charter, Article III, Section 2; and

WHEREAS, there is a perception within the public that large political contributions from land developers, others having business before the City Council and those with associated interests may create opportunity for corruption and give the appearance of corruption; and

WHEREAS, preventing corruption and the appearance of corruption is an important and compelling interest to the citizens of the City, those having business before the City Council, and the City Council; and

WHEREAS, the public has expressed to the City Council its support for regulations of political contributions for the reasons stated herein; and

WHEREAS, the City Council directed the City staff to prepare proposed political contribution regulations for the purposes stated herein and the City Council has reviewed and considered the proposed regulations and provided input and direction to City staff concerning the regulations; and

WHEREAS, the political contribution regulations now presented to the City Council and adopted by this ordinance are closely drawn to (a) allow candidates to amass the resources necessary for effective campaign advocacy, (b) not render political association ineffective and political contributions pointless, and (c) not magnify the advantages of incumbency so as to put challengers to a significant disadvantage; and

WHEREAS, these political contribution regulations are reasonable and proportional to the interests served as identified herein; and

WHEREAS, upon the review and consideration of all matters attendant and related hereto, the City Council is of the opinion that this ordinance is in the best interests of the City and its citizens and should be approved and adopted.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MESQUITE, TEXAS:

SECTION 1. The findings contained in the preamble of this ordinance are determined to be true and correct and are hereby adopted as a part of this ordinance.

SECTION 2. Article IV of Chapter 2 of the Code of the City of Mesquite, Texas, as amended, is hereby amended by adding a new Division 5 to establish regulations for political contributions. Such amendments are attached hereto as Exhibit A, incorporated herein by reference and hereby made a part thereof, and in all other respects said Code, Chapter and Article to remain in full force and effect.

SECTION 3. Appendix D, the Comprehensive Fee Schedule of the Mesquite City Code, as amended, is hereby amended to establish a fee in Article I, Administration, by adding a fee for Political Contributions Complaint, to read as follows, and in all other respects said Code, Appendix and Article to remain in full force and effect:

ARTICLE I. – ADMINISTRATION

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Sec. 1-103. – Political Contributions Complaint processing fee.

Political Contributions Complaint processing fee\$25.00

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SECTION 4. All ordinances or portions thereof in conflict with the provisions of this ordinance, to the extent of such conflict, are hereby repealed. To the extent that such ordinances or portions thereof are not in conflict herewith, the same shall remain in full force and effect.

SECTION 5. In the event of an irreconcilable conflict between the provisions of another previously adopted ordinance of the City of Mesquite and the provisions of this Ordinance, the provisions of this Ordinance shall be controlling.

SECTION 6. Should any word, sentence, clause, paragraph or provision of this ordinance be held to be invalid or unconstitutional, the validity of the remaining provisions of this ordinance shall not be affected and shall remain in full force and effect.

SECTION 7. Any person (as defined in Chapter 1, Section 1-2 of the Code of the City of Mesquite, Texas, as amended) knowingly violating any of the provisions or terms of this ordinance shall be deemed to be guilty of a Class C Misdemeanor and upon conviction thereof, shall be subject to a fine not to exceed \$500.00 for each offense.

SECTION 8. This ordinance shall take effect and be in force from and after five days after publication.

DULY PASSED AND APPROVED by the City Council of the City of Mesquite, Texas, on the 16th day of November 2020.



Bruce Archer
Mayor

ATTEST:



Sonja Land
City Secretary

APPROVED AS TO LEGAL FORM:



David L. Paschall
City Attorney

EXHIBIT A TO ORDINANCE NO. _____.
Chapter 2, Article IV., Division 5. – Political Contributions

Mesquite City Code

Chapter 2 – ADMINISTRATION

ARTICLE IV. – OFFICIALS AND EMPLOYEES GENERALLY

DIVISION 5. – POLITICAL CONTRIBUTIONS

Sec. 2-158. – Definitions.

Sec. 2-159. – Political contribution limitation.

Sec. 2-160. – Disclosures by political committees and candidates.

Sec. 2-161. – Political contributions by applicants in zoning cases and public subsidy matters and by bidders and proposers on City contracts.

Sec. 2-162. – Recusal.

Sec. 2-163. – Enforcement.

Secs. 2-164 – 2-165. – Reserved.

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Chapter 2, Article IV., Division 5. – Political Contributions

Mesquite City Code

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Chapter 2 – ADMINISTRATION

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ARTICLE IV. – OFFICIALS AND EMPLOYEES GENERALLY

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DIVISION 5. – POLITICAL CONTRIBUTIONS

Sec. 2-158. - Definitions.

The terms used in this division have the meanings ascribed to them in Chapter 251, Texas Election Code, as amended, except as defined in this section.

Affiliated means the relationship created when one business entity is the parent or subsidiary of another business entity or when multiple business entities are subsidiaries of the same parent business entity.

Candidate means a person who has filed an application with the City Secretary for a place on the official ballot in an impending election for one or more members of the Mesquite City Council, including Mayor.

Contribution means (1), (2) or (3) below:

- (1) A direct or indirect transfer of money, goods, services or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a guarantee of a loan or extension of credit, including a loan described by this subdivision.
- (2) An expenditure made to advocate or influence the election of a candidate and that is made in cooperation, consultation or in concert with the candidate's campaign. The following is considered a contribution within the meaning of this definition:
 - a. the expenditure is made at the request or suggestion of the candidate's campaign;
 - b. the individual or political committee suggests the expenditure and the candidate's campaign assents to the suggestion;

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- c. the individual or political committee making the expenditure communicates with the candidate's campaign before making the expenditure;
 - d. the candidate's campaign has solicited funds for or directed funds to the individual or political committee making the expenditure, but only if the expenditure or direction occurred in the 12 months before the election that the expenditure seeks to influence; or
 - e. the individual or political committee making the expenditure uses information from the candidate's campaign to design, prepare or pay for the expenditure unless that same information is available to the general public.
- (3) A transfer of money to a political committee for the purpose of the political committee making a political contribution to a candidate.
- (4) The term does not include a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made.

Domestic partner means an individual who, on a continuous basis, lives in the same household and shares the common resources of life in a close, personal, intimate, committed relationship with another individual. A domestic partner may be of the same or opposite gender as the other individual and is not married to or related by blood to the other individual.

Person shall mean and extend to associations, corporations, firms, partnerships, business trusts, individual trusts, estates and bodies politic and corporate as well as to individuals.

Sec. 2-159 Political contribution limitation.

- (a) A person, including an individual's child under 10 years of age, shall not, in total, make a political contribution of more than:
 - (1) \$500.00 per City election in support of, or opposition to, a single candidate for election to Places 1, 2, 3, 4, 5 or 6 on the City Council; and
 - (2) \$3,000.00 per City election in support of, or opposition to, a single candidate for election of Mayor.
- (b) Except as otherwise prohibited, each individual is entitled to contribute the full amount of the limitation established in Subsection (a), regardless of marital status.
- (c) A political committee shall not:

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- (1) make a political contribution of more than \$500.00 per contributing member per City election to a single candidate for election to Places 1, 2, 3, 4, 5 or 6 on the Mesquite City Council; and
- (2) make a political contribution of more than \$3,000.00 per contributing member per City election to a single candidate for election to Mayor.
- (d) No person shall knowingly make or authorize a political contribution in the name of or on behalf of another person or knowingly permit his or her name to be used to effect such a political contribution, and no City Council Member, including Mayor, or candidate shall knowingly accept a political contribution made by one person in the name of another person.
- (e) For the purpose of this section, an initial election and any runoff election for the initial election are considered as separate City elections.
- (f) The amount of the political contribution limits set forth in this section are cumulative, such that the total of all political contributions of a person or political committee per City election shall not exceed the limits of this section.
- (g) The amount of the political contribution limits set forth in this section shall be modified each year with the adoption of the budget to increase or decrease in accordance with the most recently published federal government Bureau of Labor Statistics Indicator, Consumer Price Index (CPI-U) U.S. City Average. The most recently published Consumer Price Index for August 2020 shall be used as a base of 100 and the adjustment thereafter will be to the nearest \$10.00.

Sec. 2-160. Disclosures by political committees, candidates and officeholders.

- (a) A general purpose political committee that makes a political contribution to a City Council Member, including Mayor, or candidate, or to support or oppose a City measure, shall file with the City Secretary:
 - (1) a copy of the latest campaign treasurer designation, a verified statement of the number of contributing members of the committee, and a copy of the monthly reports filed with the Texas Ethics Commission:
 - a. for the three months immediately preceding the date of the contribution; and
 - b. for the two months immediately following the date of the contribution; or
 - (2) if the political committee does not file monthly reports with the Texas Ethics Commission, then reports on the dates and covering the reporting

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periods required by state law for candidates or measures shall be filed, whichever apply.

- (b) A general purpose political committee shall make its initial filing with the City Secretary no later than five business days following the date of its first political contribution to a City Council Member, including Mayor, or a candidate, or to support or oppose a City measure, the initial filing to include the required campaign treasurer designation, the verified statement of the number of contributing members of the committee, and copies of reports filed with the Texas Ethics Commission for the preceding three months, if the committee files monthly with the Texas Ethics Commission. Subsequent monthly reports filed by general purpose political committees must be filed with the City Secretary by the deadline and covering the reporting periods designated in Chapter 254, Texas Election Code, for monthly reports filed with the Texas Ethics Commission.
- (c) Specific purpose political committees must file campaign reports with the City Secretary in accordance with Chapter 254, Texas Election Code.
- (d) A candidate receiving a political contribution from a political committee shall notify in writing the political committee of the requirements of this section.
- (e) For each contribution from an individual reported on a Candidate/Officeholder Campaign Finance Report filed by a candidate or officeholder, the candidate or officeholder must disclose on such report the occupation and employer of the individual.

Sec. 2-161. Political contributions by applicants in zoning cases and public subsidy matters and by bidders and proposers on City contracts.

- (a) In this section:
 - (1) *Applicant* means any person who:
 - a. owns all or part of the property that is the subject of a zoning case or public subsidy matter;
 - b. is a parent, child, spouse or other family member within the first degree of consanguinity or affinity, of a person that owns all or part of the property that is the subject of a change of zoning case or public subsidy matter;
 - c. is a representative of the property owner in connection with the zoning case or public subsidy matter, and, if the representative is an entity, includes any individual who holds with the entity any position described in Paragraphs (1).e.1 through (1).e.7 of this subsection;

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- d. is affiliated with the property owner; or
 - e. if the property owner is an entity, is an individual who holds any of the following positions with the entity or with any affiliated business entity:
 - 1. the chief executive officer, chief financial officer or chief operating officer, or any person with equivalent duties, powers and functions;
 - 2. a member of the board of directors of a corporation;
 - 3. a general partner of a general partnership or limited partnership;
 - 4. a manager of a limited liability company that is managed by managers;
 - 5. a member of a limited liability company that is managed by members entitled to manage the company;
 - 6. a member of the board of directors of a cooperative association; or
 - 7. a trust manager of a real estate investment trust.
- (2) *Council term* means the two-year period members of the Mesquite City Council, including the Mayor, serve as elected officials, including any period of continuation of service under Texas Constitution, Article 16, Section 17.
- (3) *Public subsidy matter* means any of the following:
- a. A tax abatement.
 - b. A housing tax credit.
 - c. An historic development tax abatement.
 - d. Federal grant money administered by the City.
 - e. Tax increment financing.
 - f. An economic development grant or loan.

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- (b) An applicant in a change of zoning case shall not (either personally or through a representative, employee or agent) knowingly make a political contribution to a City Council Member, including Mayor, or candidate during the period between the date the first notices of a public hearing to consider the change of zoning case by the City Zoning and Planning Commission are mailed and the later of:
 - (1) the council term in which the change of zoning case is withdrawn; or
 - (2) the council term in which a final decision on the change of zoning case is made by the City Council either granting or denying the application.

- (c) Subsection (b) does not apply to the designation, or change of designation, of a Mesquite Landmark or Historic Preservation Overlay District (H-POD) or an Established Neighborhood Overlay District.

- (d) An applicant in a public subsidy matter shall not (either personally or through a representative, employee or agent) knowingly make a political contribution to a City Council Member, including Mayor, or candidate from the time the application is made or the matter is posted on a City Council agenda, whichever occurs first, until the later of:
 - (1) the council term in which the matter is withdrawn; or
 - (2) the council term in which a final decision on the matter is made by the City Council either granting or denying the matter.

- (e) A person responding to a request for bids or request for proposals on a City contract shall not (either personally or through a representative, employee or agent) knowingly make a political contribution to a City Council Member, including Mayor, or candidate from the time the advertisement or public notification of the request for bids or request for proposals is made until the end of the council term in which the contract is awarded. For purposes of this subsection, "person" includes:
 - (1) any individual responding to the request for bids or proposals;
 - (2) any entity responding to the request for bids or proposals and its affiliated business entities;
 - (3) if the person responding to the request for bids or proposals is an entity, any individual who holds with the entity (or with any affiliated business entity) any position described in Subsections (a)(1)e.1 through (a)(1)e.7 of this division;

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- (4) the parent, child, spouse or other family member within the first degree of consanguinity or affinity, of any individual described in Paragraphs (1) or (3) of this subsection; and
- (5) a representative of the bidder or proposer in connection with the City contract, and, if the representative is an entity, includes any individual who holds with the entity any position described in Subsections (a)(1)e.1 through (a)(1)e.7 of this section.
- (f) This section applies to a contribution made to any political committee that will ultimately contribute to an identified City Council Member, including Mayor, or candidate, and the contributor to the political committee is an applicant in a zoning case or public subsidy matter or is the person responding to a request for bids or proposals on a City contract. Any contribution made to a political committee during the time restrictions imposed by this section is considered to have been made to that City Council Member, including Mayor, or candidate, at the time the contribution is made to the political committee and the time restrictions imposed by this section do not apply to when the political committee makes a political contribution to the identified City Council Member, including Mayor, or candidate.
- (g) This section applies to a political contribution made by any political committee established, administered, financially supported or assisted pursuant to state or federal law by a corporation or labor organization that is an applicant in a zoning case or public subsidy matter or that is the person responding to a request for bids or proposals on a City contract. The time restrictions imposed by this section do not apply to when an individual contribution is received by the political committee, but only to when the political committee actually makes the political contribution to the City Council Member, including Mayor, or candidate.

Sec. 2-162. Recusal.

- (a) Any Councilmember, Mayor or candidate who receives a political contribution, regardless of amount, prohibited by this division shall recuse themselves from the City Council's consideration of and shall not vote on any of the following for a period of two years beginning on the date the offending political contribution is made:
 - (1) any matter before the City Council involving an individual (including that individual's employer, entities affiliated with that individual's employer, parent, child, spouse, domestic partner or other family member within the first degree of consanguinity or affinity) that made a contribution in violation of this division;
 - (2) any matter before the City Council involving an entity (including affiliated entities and those persons described in in Sections 2-161(a)(1)e.1 through 2-161(a)(1)e.7 that made a contribution in violation of this division; and

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- (3) any matter before the City Council involving an officer, director, employee, representative or affiliated entity of a political committee that made a contribution in violation of this division, and any City measure supported or opposed by any such political committee.

- (b) If application of this section would require recusal of a majority of the City Council Members (which includes the Mayor) for a particular matter before the City Council, then the recusal and abstention requirements of this section shall not apply to that particular matter. Prior to the City Council’s consideration of and action on any such matter at a public meeting, however, the Mayor shall make a statement at the public meeting informing the public of the application of this section.

Sec. 2-163. Enforcement.

- (a) *Filing a complaint.* Any person who believes that there has been a violation of this division may file a sworn complaint with the City Secretary to allege such violation and must pay a processing fee as provided in Appendix D – Comprehensive Fee Schedule. A complaint filed under this section with the City Secretary must be in writing and under oath and must set forth in simple, concise and direct statements:
 - (1) The name of the complainant;
 - (2) The street or mailing address, email address and the telephone number of the complainant;
 - (3) The name of each person complained about (respondent);
 - (4) The position or title or candidacy of each person complained about;
 - (5) The nature of the alleged violation, including the specific provision of this division alleged to have been violated;
 - (6) A statement of the facts constituting the alleged violation and the dates on which or period of time in which the alleged violation occurred;
 - (7) All documents or other material available to the complainant that are relevant to the allegation; a list of all documents or other material relevant to the allegation and available to the complainant but that are not in the possession of the complainant, including the location of the documents, if known; and a list of all documents or other material relevant to the allegation but unavailable to the complainant, including the location of the documents, if known; and
 - (8) the name, address, email address and telephone number of persons having knowledge of relevant facts concerning the alleged violation, a brief

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statement of each identified person’s connection with the alleged violation and a brief statement of the relevant facts of which each identified person has knowledge.

The complaint must be accompanied by an affidavit stating that the information contained in the complaint is either true and correct or that the complainant has good reason to believe and does believe that the facts alleged constitute a violation of this division. If the complaint is based on information and belief, the complaint shall state the source and basis of the information and belief. The complainant shall swear to the facts by oath before a notary public or other person authorized by law to administer oaths under penalty of perjury.

The complaint must state on its face an allegation that, if true, constitutes a violation of this division.

- (b) *Complaint review.* A copy of a complaint shall be promptly reviewed by the City Secretary and if the complaint substantially complies with the filing requirements, the complaint shall be forwarded to the respondent(s) and the City Attorney for investigation and appropriate enforcement action, if warranted. If the complaint does not substantially comply with the filing requirements, the City Secretary shall return the complaint to the complainant with a letter explaining the defects in the complaint, with a copy to the respondent(s).
- (c) At the discretion of the City Attorney the City Attorney may, or in the event of a conflict of interest the City Attorney shall, engage a special prosecutor to investigate the complaint and, if warranted, take appropriate enforcement action.
- (d) *Penalty.* A person who knowingly violates a provision of this division is guilty of a separate offense for each such violation. Each offense, upon conviction, is punishable by a fine not to exceed \$500.00.