

**ORDINANCE NO. 09-12 N.S.**

**ORDINANCE AMENDING THE RICHMOND MUNICIPAL CODE BY ADDING CHAPTER 2.39 THERETO TO REGULATE CONTRIBUTIONS FROM PARTIES AND PARTICIPANTS IN ENTITLEMENT PROCEEDINGS**

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The City Council of the City of Richmond ordains as follows:

**Section 1. Amendment.** The Richmond Municipal Code is hereby amended by adding Chapter 2.39 thereto to read as follows:

**Chapter 2.39. Regulation of Campaign Contributions From Parties and Participants in Entitlement Proceedings**

**Section 2.39.010 Definitions.**

The definitions set forth in this section shall govern the interpretation of this chapter, provided that any term not defined in this section shall be defined as set forth in the California Political Reform Act (California Government Code sections 81000 et seq.).

- (a) A person is the "agent" of a party to, or a participant in, a proceeding involving a license, permit or other entitlement for use only if he or she represents that person in connection with the proceeding involving the license, permit or other entitlement for use. If an individual acting as an agent is also acting as an employee or member of a law, architectural, engineering or consulting firm, or a similar entity or corporation, both the entity or corporation and the individual are "agents."
- (b) "City" means the City of Richmond.
- (c) "City Council" means the Richmond City Council and any committee of the Richmond City Council
- (d) "Contribution" includes contributions to a Councilmembers and committees in federal, state, or local elections.
- (e) "Councilmember" means the Mayor or any member of the City Council of the City of Richmond.
- (f) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.
- (g) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in California Government Code sections 87100 et seq. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person a Councilmember, testifies in person before the City Council, or otherwise acts to influence Councilmembers.
- (h) "Party" means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
- (i) A proceeding is considered to be "pending" before the City Council beginning on the date the proceeding first appears on a published meeting agenda of the City Council or any standing committee of the City Council.

**Section 2.39.020. Contributions to Councilmembers.**

No Councilmember shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the City Council and for three months following the date a final decision is rendered in the proceeding if the Councilmember knows or has reason to know that the participant has a financial interest, as that term is used in California Government Code sections 87100 et seq.

This prohibition shall apply regardless of whether the Councilmember accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other Councilmember, or on behalf of any candidate for elected office or on behalf of any committee.

**Section 2.39.030. Disqualification**

Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before the City Council, each Councilmember who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No Councilmember shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use that is pending before the City Council, if the Councilmember has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent, if the Councilmember knows or has reason to know that the participant has a financial interest in the decision, as that term is described with respect to public officials in California Government Code sections 87100 et seq.

If a Councilmember receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

**2.39.040. Contributions by Parties and Participants to a Proceeding.**

A party to a proceeding before the City Council involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any Councilmember. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before the City Council, and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any Councilmember during the proceeding and for three months following the date a final decision is rendered by the City Council in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before the City Council, the majority shareholder is subject to the disclosure and prohibition requirements of this chapter.

**2.39.050 Reporting Obligations.**

Nothing in this chapter shall be construed to imply that any contribution subject to being reported under state law or the Richmond Municipal Code shall not be so reported.

**2.39.060 Applicability of State Law Interpretations.**

Reported court opinions, and administrative regulations and opinions, interpreting or implementing Government Code section 84308 shall be persuasive authority in interpreting this Chapter.

**2.39.070 - Penalties and enforcement.**

(a) Penalties.

(1) Criminal. Any person who knowingly or willfully violates any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by imprisonment in the County jail for a period of not more than six months or by a fine of \$5,000 for each violation, or three times the amount or value of any unlawful contribution, whichever is greater, or by both such fine and imprisonment.

(2) Civil. Any person who intentionally or negligently violates any provision of this chapter shall be liable in a civil action for an amount up to \$5,000 for each violation or three times the amount or value of any unlawful contribution, whichever is greater. Any civil penalties recovered under this section shall be deposited in the Richmond City Treasury.

(3) Joint and Several Liability. If two or more persons are responsible for any violation of this chapter, they shall be jointly and severally liable.

(b) Enforcement.

(1) Civil Actions. The City Attorney, or any resident, may bring a civil action to enjoin violations of, or compel compliance with, the provisions of this chapter, or for civil penalties under subsection (a)(2) of this section, or both. No resident may commence an action under this subsection without first providing written notice to the City Attorney of the intent to commence an action. The notice shall include a statement of the grounds for believing a cause of action exists. The resident shall deliver the notice to the City Attorney at least 60 days in advance of filing an action. No resident may commence an action if the City Attorney or District Attorney has commenced a civil or criminal action against the defendant, or if another resident has filed a civil action against the defendant under this section. A court may award reasonable attorney's fees and costs to any party who obtains civil penalties or equitable relief under this subsection. If the Court finds that an action brought by a party under this subsection is frivolous, the Court may award the defendant reasonable attorney's fees and costs.

(2) Issuance of Subpoenas. The City Attorney may issue subpoenas in furtherance of his or her duties under this chapter.

**Section 2. Application.** No contribution accepted before July 17, 2012 shall be considered in determining whether a person has complied with the requirements of this chapter.

**Section 3. Severability.** If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such a decision shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

First read at a regular meeting of the Council of the City of Richmond, California, held, July 17, 2012, and finally passed and adopted at a special meeting thereof held July 31, 2012, by the following vote:

AYES: Councilmembers Beckles, Butt, Ritterman, Vice Mayor Rogers, and Mayor McLaughlin.  
NOES: Councilmembers Bates and Booze.  
ABSTENTIONS: None.  
ABSENT: None.

DIANE HOLMES  
CLERK OF THE CITY OF RICHMOND

(SEAL)

Approved:

GAYLE MCLAUGHLIN  
Mayor

Approved as to form:

BRUCE REED GOODMILLER  
City Attorney

State of California            }  
County of Contra Costa        }        : ss.  
City of Richmond               }

I certify that the foregoing is a true copy of Ordinance No. 09-12 N.S., finally passed and adopted by the City Council of the City of Richmond at a special meeting held on July 31, 2012.