

O 77-260
JUN 29 1977

ORDINANCE NO. 12096
(New Series)

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 7, DIVISION 29 OF THE SAN DIEGO MUNICIPAL CODE BY REPEALING SECTIONS 27.2911, 27.2912, 27.2913, 27.2932, 27.2933, 27.2934, 27.2935, 27.2936, 27.2937, 27.2938, 27.2953 AND 27.2962; AND AMENDING SECTIONS 27.2901, 27.2902, 27.2903, 27.2921, 27.2922, 27.2923, 27.2924, 27.2925, 27.2931, 27.2941, 27.2942, 27.2943, 27.2951, 27.2961, 27.2963 AND 27.2973, RELATING TO THE SAN DIEGO MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE.

BE IT ORDAINED, by the Council of The City of San Diego, as follows:

Section 1. That Chapter II, Article 7, Division 29 of the San Diego Municipal Code is hereby amended by repealing the following sections:

- SEC. 27.2911 CAMPAIGN TREASURER - APPOINTMENT
- SEC. 27.2912 CAMPAIGN TREASURER - DUTIES
- SEC. 27.2913 REPORT TO CAMPAIGN TREASURER
- SEC. 27.2932 CAMPAIGN STATEMENT - CONTENTS
- SEC. 27.2933 CAMPAIGN STATEMENT - VERIFICATION
- SEC. 27.2934 CAMPAIGN STATEMENT - FILING
- SEC. 27.2935 CAMPAIGN STATEMENT - FILING FEE
- SEC. 27.2936 CAMPAIGN STATEMENT - EXCEPTIONS - DECLARATION
- SEC. 27.2937 CAMPAIGN STATEMENT - PUBLIC INSPECTION AND COPYMAKING
- SEC. 27.2938 CAMPAIGN STATEMENT - RETENTION
- SEC. 27.2953 CAMPAIGN EXPENDITURES RECEIVED BY COMMUNICATIONS MEDIA - STATEMENT REQUIRED
- SEC. 27.2962 DUTIES OF THE ENFORCEMENT AUTHORITY

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Section 2. That Chapter II, Article 7, Division 29
of the San Diego Municipal Code is hereby amended by amending
Sections 27.2901, 27.2902, 27.2903, 27.2921, 27.2922, 27.2923,
27.2924, 27.2925, 27.2931, 27.2941, 27.2942, 27.2943, 27.2951,
27.2961, 27.2963 and 27.2973 to read as follows:

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DIVISION 29

SAN DIEGO MUNICIPAL ELECTION CAMPAIGN CONTROL ORDINANCE

A. GENERAL PROVISIONS

SEC. 27.2901 PURPOSE AND INTENT

Inherent to the high cost of election campaigning is the problem of improper influence, real or potential, exercised by campaign contributors over elected officials. It is the purpose and intent of the City Council of the City of San Diego in enacting this division to preserve an orderly political forum in which individuals may express themselves effectively; to place realistic and enforceable limits on the amounts of money that may be contributed to political campaigns in municipal elections; to prohibit contributions by organizations in order to develop a broader base of political efficacy within the community; to limit the use of loans and credit in the financing of municipal election campaigns; and to provide full and fair enforcement of all the provisions of this division. This division is enacted in accordance with the terms of Section 5 of Article XI of the Constitution of the State of California and Articles II and III of the Charter of The City of San Diego. The provisions of Section 27.2002 of this article shall not apply to this division.

SEC. 27.2902 CITATION

This division shall be cited as the San Diego Municipal Election Campaign Control Ordinance.

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SEC. 27.2903 DEFINITIONS

Whenever in this division the following words or phrases are used, they shall mean:

(a) "Broadcast station" shall mean a person who engages in the dissemination of radio communication as defined in the Federal Communications Act of 1934. "Broadcast station" includes each cable television system franchised or otherwise licensed by the City.

(b) "Candidate" shall mean any individual who is listed on the ballot or who has begun to circulate nominating petitions or authorized others to circulate petitions in his behalf, for nomination for or election to any elective City office, or who receives a contribution or makes an expenditure or gives his consent for any other person to receive a contribution with a view to bringing about his nomination or election to any City office, whether or not the specific elective office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at such time. "Candidate" also includes any holder of any City office who is the subject of a recall election.

(c) "City office" shall mean the offices of Mayor, Councilman, and City Attorney of the City of San Diego.

(d) "Committee" shall mean any person or combination of persons who directly or indirectly receives contributions or makes expenditures or contributions for the purpose of influencing or

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attempting to influence the action of the voters for or against
the nomination or election of one or more candidates, or the
passage or defeat of any City measure, including any committee
or subcommittee of a political party, whether national, state or
local, if:

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(1) Contributions received total five hundred dollars (\$500) or more in a calendar year;

(2) Expenditures and contributions made, other than contributions described in subsection (3), total five hundred dollars (\$500) or more in a calendar year; or

(3) Contributions of cash, checks and other cash equivalents paid directly to candidates and committees total five thousand dollars (\$5,000) or more in a calendar year.

(e) "Contribution" shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

The term "contribution" shall include the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; a candidate's own money or property used on behalf of his candidacy; the granting of credit in the normal course of business; the granting of discounts or rebates not

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extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; and the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

The term "contribution" shall further include any payment received by a committee from another committee.

The term "contribution" shall not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution.

The term "contribution" shall not include the cost of an event held in honor or behalf of a candidate or committee when the total cost of the event amounts to no more than two hundred dollars (\$200) and when the event is not held for the purpose of obtaining contributions to the candidate or committee.

Notwithstanding the foregoing definition, the term "contribution" shall not include volunteer personal services or payments made by any individual for his own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him. Further, the term "contribution" shall not include an independent expenditure.

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(f) "Controlled committee" shall mean a committee which is controlled directly or indirectly by a candidate or which acts jointly with a candidate or controlled committee in connection with the making of expenditures. A candidate controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.

(g) "Election" shall mean any primary, general or special election held in the City of San Diego, including an initiative, referendum or recall election. The primary and general or special elections are separate elections for purposes of this Division.

(h) "Enforcement Authority" shall mean the officer, agent or organization designated by resolution of the City Council to enforce the provisions of this division. Nothing in this division shall be construed as limiting the authority of any law enforcement agency or prosecuting attorney to enforce the provisions of this division under any circumstances where such law enforcement agency or prosecuting attorney otherwise has lawful authority to do so.

(i) "Expenditure" shall mean a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment, unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure is made on the date the payment is made or on the date consideration, if any, is received, whichever is earlier.

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(j) (1) "Independent expenditure" shall mean an expenditure by a person for a communication expressly advocating the support of or opposition to a clearly identified candidate or measure which is not made with the cooperation or with the prior consent of, a candidate or his agent or a controlled committee of a candidate or measure.

(2) For the purposes of this definition:

(a) "Expressly advocating" shall mean any communication containing a message advocating support or opposition. Content may include but not be limited to the name of a candidate, the title of a measure or any expression such as "vote for," "elect," "support," "cast your ballot for," "vote against," "defeat," or "reject" and an identifying phrase.

(b) "Clearly identified candidate or measure" shall mean that the name of a candidate or the title of a measure appears, a photograph or drawing of the candidate appears, or the identity of the candidate or substance of the measure is otherwise apparent by unambiguous references.

(c) "Made with the cooperation or with the prior consent of, or in consultation with, or at the behest or suggestion of, a candidate or his agent or a controlled committee of a candidate or measure" shall

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mean any arrangement, coordination, or direction by a candidate, agent or committee prior to the publication, display or broadcast of the communication.

(d) "Agent" shall mean any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate or measure, or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities, he or she may authorize expenditures.

(3) An expenditure not qualifying under this section as an independent expenditure shall be considered a contribution to the candidate or measure.

(k) "Measure" shall mean any City Charter amendment or other proposition which is submitted to a popular vote at an election by action of the City Council or which is submitted or is intended to be submitted to a popular vote at a City election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

(l) "Payment" shall mean a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(m) "Person" shall mean an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, labor union, and any other organization or group of persons acting in concert.

B. CAMPAIGN TREASURER

SEC. 27.2911 REPEAL

SEC. 27.2912 REPEAL

SEC. 27.2913 REPEAL

SEC. 27.2921 CAMPAIGN CONTRIBUTION CHECKING ACCOUNT

Every candidate and every committee shall establish one campaign contribution checking account at an office of a bank located in the City of San Diego. Upon opening of an account, the name of the bank and number thereof shall be filed with the City Clerk and the enforcement authority within twenty-four (24) hours. All contributions of money or checks, or anything of value converted by such candidate or committee to money or a check, made to a candidate, to a person on behalf of a candidate, to a committee supporting or opposing a candidate or a City measure, or to a person on behalf of a committee supporting or opposing a candidate or a City measure shall be placed in the candidate's or committee's checking account within three (3) business days. A candidate and a committee formed solely for the purpose of acting in aid of the nomination or election of the candidate may establish and maintain one joint checking account for the candidate and the committee.

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SEC. 27.2922 DISBURSEMENTS

Funds shall be disbursed from a campaign contribution checking account established pursuant to Section 27.2921 hereof only by check signed by the candidate or by the candidate's or committee's campaign treasurer or designated agents of the campaign treasurer. Each candidate or committee shall maintain a written record of the payee of each check drawn on a campaign contribution checking account and an itemized record of the goods or services for which each check is issued.

SEC. 27.2923 PETTY CASH FUND

Section 27.2922 notwithstanding, the candidate or campaign treasurer or other designated agents authorized to issue checks on a campaign contribution checking account may disburse to the candidate or committee establishing the checking account an amount not greater than \$20 per week to be used for petty cash purposes by the candidate or committee. An amount not greater than \$40 per week may be disbursed to a candidate and committee jointly establishing a campaign contribution checking account, to be used for petty cash purposes.

SEC. 27.2924 LIQUIDATION OF ACCOUNTS

In the event that payment has been made for all goods and services furnished in connection with the campaign of a candidate or committee, a campaign contribution checking account may be liquidated by paying the remaining balance in the checking

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account to the candidate or committee for his or its use in any lawful manner.

SEC. 27.2925 ACCOUNTABILITY

Every candidate or committee establishing a campaign contribution checking account pursuant to this division shall make available on demand to any public officer having legal authority to enforce this division, the details of any such checking account requested and the records supporting it. Every candidate or committee establishing a campaign contribution checking account shall maintain a record of every contribution received and disbursement made from the checking account, which record shall include, but not be limited to, copies of checks, canceled checks, bank records, bills and invoices. Such records shall be kept by the candidate or treasurer of the committee establishing the account for the periods specified in Section 18401 of Title 2, Division 6 of the California Administrative Code. Each candidate and committee shall, on demand, make available to any public officer having authority to enforce this division, a written declaration of consent that such officer may have access to the campaign contribution checking account.

D. CAMPAIGN STATEMENTS

SEC. 27.2931 CAMPAIGN STATEMENTS

Each candidate and committee shall file campaign statements in the time and manner required by the Political Reform Act of 1974 as amended (Government Code Sections 84100 through 84305)

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and compliance with the requirements of that act shall be deemed to be compliance with this section.

E. CAMPAIGN CONTRIBUTIONS

SEC. 27.2941 CAMPAIGN CONTRIBUTIONS--LIMITATIONS

(a) No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all committees supporting or opposing such candidate, to exceed two hundred and fifty dollars (\$250).

(b) No person shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to a measure to exceed five hundred dollars (\$500).

(c) Extensions of credit for a period of more than thirty (30) days are prohibited. Extensions of credit of more than two hundred fifty dollars (\$250) are prohibited. Provided, however, a candidate may personally borrow an unlimited amount and such funds shall be considered as a contribution by the candidate himself; provided, further, that such transaction is fully disclosed and documented in accordance with applicable law.

(d) The terms of this section are applicable to any contributions made to a candidate or committee hereunder, whether used

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by such candidate or committee to finance a current campaign, to pay deficits incurred in prior campaigns, or otherwise.

(e) If any person is found guilty of violating the terms of this section, the amount of funds received constituting such violation shall be paid by the candidate or committee treasurer who received such funds to the City Treasurer for deposit in the General Fund of the City.

SEC. 27.2942 ORGANIZATIONAL CONTRIBUTIONS

(a) No person, other than an individual, shall make a contribution to any candidate or committee; provided, however, that this section shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the qualification for the ballot or adoption of one or more City measures.

(b) No officer, employee, agent or attorney or other representative of a person covered by this division shall aid, abet, advise or participate in a violation of this section.

(c) No person shall knowingly accept a payment or contribution made in violation of this section.

(d) If a committee treasurer is offered a contribution which would be in excess of the limitation, the treasurer must refuse the contribution. If, however, a contribution is deposited into the campaign trust account which is in violation of this section, he shall report in writing within five (5) days of the

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receipt of the contribution to the Enforcement Authority the facts surrounding such payment or contribution. Any such payment or contribution so deposited shall be paid promptly, from available campaign funds, if any, to the City Treasurer to be used for deposit in the General Fund of the City.

(e) This section shall not prohibit a committee from conveying to a candidate any monies legally received by said committee as contributions.

SEC. 27.2943 ANONYMOUS CONTRIBUTIONS

Total anonymous contributions to a candidate or committee which exceed in the aggregate two hundred dollars (\$200) with respect to a single election shall not be used by the candidate or committee for whom it was intended. To the extent that total anonymous contributions exceed two hundred dollars (\$200) the excess shall be paid promptly, from available campaign funds, if any, to the City Treasurer for deposit in the General Fund of the City.

SEC. 27.2944 ASSUMED NAME CONTRIBUTIONS

No contribution shall be made, directly or indirectly, by any person or combination of persons acting jointly in a name other than the name by which they are identified for legal purposes, nor in the name of another person or combination of persons. No person shall make a contribution in his or its name of anything belonging to another person or received from another person on the condition that it be used as a contribution. When

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it is discovered by the campaign treasurer that a contribution has been received in violation of this section, the campaign treasurer shall pay promptly, from available campaign funds, if any, the amount received in violation of this section to the City Treasurer for deposit in the General Fund of the City.

F. CAMPAIGN EXPENDITURES

SEC. 27.2951 CAMPAIGN EXPENDITURES--UNCONTROLLED BY CANDIDATE OR COMMITTEE

Persons or organizations not subject to the control of a candidate or committee but who make independent expenditures for or against a candidate or committee shall indicate clearly on any material published, displayed or broadcast that it was not authorized by a candidate or committee, when such expenditures in whole or part would have been covered by the provisions of this ordinance if they were subject to the control of a candidate or committee.

SEC. 27.2952 ADVERTISING RATES; SERVICE FEES AND CHARGES

To the extent that any person sells space in any newspaper or magazine or sells time on a broadcast station to a candidate or committee or performs other services in connection with the campaign of the candidate or for or against the measure, the charges made for the use of such space or time shall not exceed the charges normally made for comparable use of such space or time by other users thereof.

SEC. 27.2953 REPEAL

SEC. 27.2954 SUPPLIERS OF GOODS AND SERVICES--DISCLOSURE OF RECORDS REQUIRED

No person who supplies goods or services or both goods and services to a candidate or committee for use in connection with the campaign of the candidate or for or against the measure shall refuse knowingly to divulge or disclose to the Enforcement Authority his record of any expenditures made by the candidate or committee in payment for such goods or services or both.

G. OFFICIAL DUTIES

SEC. 27.2961 DUTIES OF CITY CLERK

In addition to other duties required of him under the terms of this division, the City Clerk shall:

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

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

(d) Report apparent violations of this division and applicable state law to the Enforcement Authority.

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(e) Compile and maintain a current list of all statements or parts of statements filed with his office pertaining to each candidate and each measure.

(f) Cooperate with the Enforcement Authority in the performance of the duties of the Enforcement Authority as prescribed in this division and applicable state law.

SEC. 27.2963 ENFORCEMENT AUTHORITY--DUTIES, COMPLAINTS, LEGAL ACTION, INVESTIGATORY POWERS

(a) The Enforcement Authority shall enforce the provisions of this division.

(b) Any person who believes that a violation of any portion of this division has occurred may file a complaint with the Enforcement Authority. If the Enforcement Authority determines that there is reason to believe a violation of this division has occurred, it shall make an investigation. Whenever the Enforcement Authority has reason to believe a willful violation of this division has occurred or is about to occur, it may institute such legal action at such time as it deems necessary to prevent further violations.

(c) The Enforcement Authority shall have such investigative powers as are necessary for the performance of the duties prescribed in this division and may demand and be furnished records of campaign contributions and expenses at any time.

(d) The Enforcement Authority shall determine whether required statements and declarations have been filed as required and, if so, whether they conform with the requirements of this division.

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H. PENALTIES, VIOLATIONS AND CONSTRUCTION

SEC. 27.2971 PENALTIES

Any person who knowingly or willfully violates any of this division is guilty of a misdemeanor. In addition to any other penalty provided by law, any willful or knowing failure to report contributions, done with intent to mislead or deceive, shall be punishable by a fine of not less than five hundred dollars (\$500).

SEC. 27.2972 EFFECT OF VIOLATION ON OUTCOME OF ELECTION

If after his election a candidate is convicted of a violation of any provision of this division, the election to office of such candidate shall be void and such office shall become vacant immediately thereupon, or on the date upon which the candidate, if he is not an incumbent, would otherwise take office, whichever occurs later. In such event, the vacancy shall be filled in accordance with the procedures set forth in the City Charter for the filling of vacant City offices. If a candidate is convicted of a violation of this division at any time prior to his election, his candidacy shall be terminated immediately and he shall be no longer eligible for election. Any person convicted of a violation of this division shall be ineligible to hold City elective office for a period of five (5) years from and after the date of his conviction.

SEC. 27.2973 EFFECT OF VIOLATION ON CERTIFICATION OF ELECTION RESULTS

The City Clerk shall not issue any certificate of nomination or election to any candidate until his campaign statements required in Section 27.2931, or, if no campaign statement is

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is required, the written declaration permitted under Section 84212 of the Government Code have been filed in the form and at the place required by the Political Reform Act of 1974. The City Council shall not adopt a resolution declaring any candidate to be nominated or elected until such statements or declaration have been filed in the form and at the place required of the candidate in this division.

SEC. 27.2974 RULES OF CONSTRUCTION

This division shall be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any officer in any procedure taken under this division which does not directly affect the jurisdiction of the Council or the City to control campaign contributions and expenditures shall avoid the effect of this division.

SEC. 27.2975 SEVERABILITY

If any provision of this division, or the application thereof to any person or circumstance, is held invalid, the validity of the remainder of the division and the applicability of such provisions to other persons and circumstances shall not be affected thereby.


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Section 3. This ordinance relating as it does to elections shall take effect and be in force on the day of its introduction and adoption pursuant to Section 17 of the Charter.

APPROVED: JOHN W. WITT, City Attorney

By


Robert S. Teaze

Assistant City Attorney

RST:rb 048.3
Orig.Dept.: Mayor
Rev. pg. 8,7-1-77

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Passed and adopted by the Council of The City of San Diego on
by the following vote:

Councilmen	Yeas	Nays	Excused	Absent
Gil Johnson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Maureen F. O'Connor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lee Hubbard	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Leon L. Williams	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Floyd L. Morrow	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Tom Gade	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Joel M. Strobl	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jess D. Haro	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mayor Pete Wilson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

AUTHENTICATED BY:

PETE WILSON

Mayor of The City of San Diego, California.

(Seal)

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By Kathleen Martinez Deputy.

I HEREBY CERTIFY that the foregoing ordinance was passed on the day of its introduction, to wit, on
JUN 29 1977, said ordinance being of the kind and character
authorized for passage on its introduction by Section 16 of the Charter.

~~I FURTHER CERTIFY that the final reading of said ordinance was in full.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not
less than a majority of the members elected to the Council, and that there was available for the consideration
of each member of the Council and the public prior to the day of its passage a written or printed copy of said
ordinance.

EDWARD NIELSEN

City Clerk of The City of San Diego, California.

By Kathleen Martinez Deputy.

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Office of the City Clerk, San Diego, California

Ordinance
Number

12096

Adopted

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CITY CLERK'S OFFICE
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SAN DIEGO, CALIF. (Seal)