Recommended Actions:

If Council desires to establish Local Campaign Contribution Limits that vary from the State’s default limits, staff recommends that the Council do so by introducing the following Ordinance:

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS**

And consider adopting the following Ordinance, with additional urgency findings if Council deems them appropriate:

**AN URGENCY ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALISO VIEJO, CALIFORNIA, ADDING SECTION 2.04.150 TO CHAPTER 2.04 (CITY COUNCIL) OF TITLE 2 (ADMINISTRATION AND PERSONNEL) OF THE ALISO VIEJO MUNICIPAL CODE RELATING TO LOCAL ELECTION CAMPAIGN CONTRIBUTION LIMITS AND REGULATIONS.**

Fiscal Impact:

Yes. If Council adopts campaign contribution limits for City Council candidates that vary from the State’s default limit (that is currently set at $4,900 per source per election) then the City, as opposed to the Fair Political Practices Commission, would be required to enforce its contribution limits.

Background:

AB 571 (Local Campaign Contribution Limits) was approved by the Governor on October 8, 2019 and became operative on January 1, 2021. AB 571 gave cities the discretion to
either set contribution limits of their own choosing (including unlimited contribution limits) or default to the State’s contribution limit. The Aliso Viejo City Council subsequently did not set a local campaign contribution limit, thereby defaulting to the State limit. The current default limit is $4,900 per election per source, but increases every two years to account for inflation.

**Discussion:**

At its meeting of September 21, 2022, Council directed that a template ordinance, based on cities’ common approach to this issue, be agendized for this meeting to enable Council to consider establishing a contribution limit for City elections. Two draft ordinances – one conventional and one urgency – are attached to this report which, if adopted, would codify City contribution limits and provide definitions and other technical terms to implement these limits. They leave open the limitation dollar amount for Council discussion.

Below are factors that Council may wish to include in its consideration of whether or not to modify the City of Aliso Viejo’s contribution limit threshold:

1. The City would assume responsibility for enforcing contribution limits that vary from the State’s default contribution limits. The California Fair Political Practices Commission (FPPC) enforces contribution limits that align with the State’s contribution limit. Because the City has defaulted to the State’s contribution limit, enforcement is currently the responsibility of the FPPC. If the City were to now adopt contribution limits that are either higher or lower than the State default limit, then the City would be responsible for enforcing its self-imposed limits. As outlined in the attached draft ordinances, enforcement would involve the retainer of a third-party attorney/investigator and could result in litigation when merited. The possibility of staff bringing enforcement actions against incumbent or future Councilmembers is complicated and frequently causes cities to contract out these services.

2. Campaign contribution limits would not apply to Independent Expenditures, Ballot Measure Committees or Committees Seeking an Officer’s Recall. A local campaign contribution limit can only apply to direct contributions made to the candidate or to the candidate’s controlled committee. The United States Supreme Court, in its 2010 decision in *Citizens United v. Federal Election Commission*, held that the risk of actual or perceived “pay to play” corruption is a compelling enough governmental concern to reduce First Amendment freedoms and allow limits on direct contributions to a candidate or their controlled committee. The court further determined, however, that the risk of “pay to play” corruption is not the same for independent expenditure committees (IEC) and, hence, limiting their ability to collect and spend money for campaign purposes would violate their First Amendment rights. In sum, as long as an IEC (i) doesn’t give any money directly to a candidate or the candidate’s controlled committee, (ii) isn’t coordinating with, or acting at the behest of, a candidate or the candidate’s controlled committee, and (iii) files the required disclosure paperwork, the amounts that it collects and spends for campaign purposes cannot be limited. Likewise, such limitations may not apply to ballot measure committees or committees seeking an officer’s recall because the Court has found that
there is not enough risk of “pay to play” corruption to justify restricting First Amendment freedoms of these committees. The attached draft ordinances recognize these Constitutional exceptions.

The Council asked for this discussion about potential effective date for the contribution limitations. Under Government Code Section 36937, conventional city ordinances take effect after a first and second reading and passage of 30 days. That section, however, provides that ordinances take effect immediately if (1) they relate to “an election,” or (2) the city council determines by a 4/5ths vote that the ordinance is immediately necessary to preserve the public peace, health, or safety.

The first draft ordinance presented for Council consideration is a conventional ordinance. It leaves open the dollar amount of any contribution limit. It would be effective after a first and second reading, then 30 days. The vast majority of ordinances are written this way.

Having a contribution limit with retroactive effect would not be feasible legally. Having one with immediate and prospective effect raises the question of whether the ordinance is an ordinance “relating to an election” under Subsection 36937(a). An argument could be made that campaign contribution limits relate to elections and thus fall within this exception. However, the more common understanding of subsection (a) is that it applies to ordinances calling elections, specifically for initiatives and referendums, and does not apply to an ordinance with anything having to do with elections.

Therefore, if the Council wishes to consider giving this ordinance immediate effect, the only avenue for doing that would be to adopt it with a 4/5ths vote and urgency findings under subsection (b). The attached draft urgency ordinance would do that, but it contains only cursory place-holder text regarding the urgency findings. If the Council wished to consider an ordinance with immediate effect, it would need to articulate and include in this ordinance a more thorough explanation of why this ordinance can’t wait and should consider why contribution limits for the same local elections should differ based on when they’re made. These might be difficult findings to make under these circumstances, especially since the urgency ordinance would apply different limits to contributors in the very same Council race, depending on whether those contributions were received before or after the adoption date. The Constitution requires that this disparate treatment have a solid justification.

If Council adopts an urgency ordinance, it should also adopt the conventional ordinance as a backup to stand in event that the urgency ordinance is challenged or set aside for any reason.

**Public Notice:**

This item was publicly noticed in accordance with the City’s normal agenda procedures.
Attachments:

1. Draft Conventional Ordinance

2. Draft Urgency Ordinance