ORDINANCE NO. 2022-____

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

WHEREAS, Assembly Bill No. 571 ("AB 571") imposed a default campaign contribution limit upon cities and counties effective January 1, 2021; and

WHEREAS, California Government Code Section 85702.5 permits the City of Aliso Viejo to act by either ordinance or resolution to establish its own campaign contribution limits that differ from those described in Government Code Sections 85301 and 83124; and

WHEREAS, transparency in local elections regarding financial contributions and influence are important to promoting the election process and to ensure a fair Council election process for all candidates; and

WHEREAS, in adopting this Ordinance, it is the City Council's intention to promote transparency and ensure a fair election process by setting local campaign contribution limitations and requiring reasonable campaign finance disclosure for City Council elections; and

WHEREAS, any and all other legal prerequisites relating to the adoption of this Ordinance have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ALISO VIEJO DOES ORDAIN AS FOLLOWS:

SECTION 1. Incorporation of Recitals. The recitals above are each incorporated by reference and adopted as findings by the City Council as if fully set forth herein.

SECTION 2. CEQA. The City Council finds that the proposed amendments to the Aliso Viejo Municipal Code are exempt from the requirements of the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations, Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment.

SECTION 3. Code Amendment. Section 2.04.150 is hereby added to the Aliso Viejo Municipal Code to read in full as follows:
CHAPTER 2.04 – CITY COUNCIL

2.04.150 – City Council Campaign Finance Limitations and Regulations.

A. Intent.

It is the intent of the City Council of the City of Aliso Viejo in enacting this section to place realistic and Constitutionally enforceable limits on the amount which may be contributed to candidates’ political campaigns in City elections, for the purpose of preventing potential improper or undue influence over elected officials by campaign contributions, to develop a broader base of political efficacy within the community, to provide full and fair enforcement of all the provisions of this Section, and to encourage the public to participate as candidates in elections by simplifying the local regulations as much as possible in matters adequately regulated by State law. This Section is intended to supplement the Political Reform Act of 1974, as amended and in the event of a conflict between that Act and this Section, that Act shall prevail. This Section is enacted pursuant to Article XI, Section 7 of the Constitution of the State of California, and Section 81013 of the California Government Code.

B. Definitions.

1. “Candidate” means an individual who:

   a. is listed on the ballot;

   b. who has qualified to have write-in votes on that individual’s behalf counted by election officials; or

   c. who has begun to circulate nominating petitions or authorized others to circulate nominating petitions on the individual’s behalf for nomination for or election to any elective City office; or

   d. who receives a contribution or makes an expenditure or gives consent for any other person to receive a contribution or make an expenditure with a view to bringing about the individual’s nomination or election to any elective City office, whether or not the specific elective office for which the candidate will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not the candidate has announced the candidacy or filed a declaration of candidacy at such time.

“Candidate” includes any individual running to replace an incumbent City officer who is the subject of a recall election but does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971. An individual who becomes a candidate retains status as a
candidate until such time as that status is terminated pursuant to the Political Reform Act of 1974 (Government Code Section 84214, or successor statute.

2. “City election” means any general or special election, including a vacancy or recall election held within the City for elective City office or on a City measure. Each general or special election is a separate election for purposes of this Section.

3. “City measure” means any proposition for the issuance of funding or refunding of bonds of the City, voter approval of local taxes or other revenue matters, or any other question or proposition submitted to the voters of the City at any election held throughout the entire City. “City measure” includes any measure 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 an election by initiative, referendum, or recall procedure, whether or not it has qualified for the ballot.

4. “Person” means any individual or entity, including without limitation a firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or any other organization or group of persons acting in concert.

Except as otherwise stated herein, the terms of this Section shall have those definitions provided in the Political Reform Act of 1974 ((Government code Section 81000, et. seq. or in the regulations adopted by the California Fair Political Practices Commission to implement the Act.

C. Campaign Finance Disclosure/Electronic Filing.

1. Each candidate and committee must file campaign statements, statements of economic interest, reports, or other documents in the time and manner required by the Political Reform Act of 1974, as amended (Government Code Section 84100, et seq.). Except as set forth herein, compliance with the requirements of the Act are deemed to be in compliance with this Section.

2. Reportable contributions shall include, without limitation, money paid, loaned, contributed, or otherwise furnished to the candidate or any committee for the use of such candidate or such committee in aid of the candidate's election, or for the qualification, passage, or defeat of any city measure. Said disclosure shall include the name of the contributing person or entity and all other information required to be disclosed by the Political Reform Act of 1974, as amended.

3. All candidates and committees required to file campaign statements, reports, or other documents as referenced herein shall do so for all campaign expenditures made, to aid or oppose, either directly or indirectly, a candidate's election or the qualification and/or passage of any city measure. Reportable
expenditures shall include, without limitation, expenditures made by a candidate, candidate-controlled committee, political party or independent expenditure committee.

4. Any elected officer, candidate, committee or other person required to file campaign statements, reports or other documents required by the Political Reform Act of 1974, as amended, shall file those statements, reports or other documents in person, online or electronically with the city clerk.

5. In any instance in which an original campaign statement, report or other document must be filed with the California Secretary of State or Fair Political Practices Commission and a copy of that statement, report or other document is required to be filed with the city clerk, the filer may, but is not required to, file the copy electronically.

6. If the city clerk's electronic system is not capable of accepting a particular type of statement, report or other document, an elected officer, candidate, committee or other person shall file that document with the city clerk in an alternative format.

D. Limits on Campaign Contributions

1. No person, other than the candidate, is permitted to make to a candidate or candidate-controlled committee, and no candidate-controlled committee treasurer may solicit or accept, any campaign contribution which will cause the total amount contributed by such person with respect to a single city election to exceed one thousand dollars ($1,000).

2. A candidate for elective office shall have no more than one candidate-controlled committee and one checking account into which all campaign contributions shall be deposited and out of which all expenditures shall be made. This paragraph shall not prohibit the establishment of savings accounts, but no qualified campaign expenditures shall be made out of these accounts.

3. A person may not make a contribution for any other person under an assumed name or under the name of any other person.

4. The limit in paragraph (1) shall not be deemed to prohibit contributions or loans from a candidate to his/her own candidate-controlled committee in accordance with State law or to limit the amount of his/her own money or property a candidate may contribute, loan to, or expend on behalf of the candidate’s own campaign. Contributions by the spouse of a candidate from such spouse’s separate property shall be subject to the limit set forth in paragraph (1).

5. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the
qualification and/or passage of one or more city measures. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

6. The limit in paragraph (1) shall not apply to contributions made to a committee which is organized solely for the purpose of supporting or opposing the recall of an incumbent City officer, but shall apply to all candidates and their controlled committees seeking election to replace the incumbent City officer. The disclosure requirements for all committees set forth in Subsection (C) shall apply.

7. The limit in paragraph (1) shall not apply to political contributions made to and expenditures made by an independent expenditure committee in support of or in opposition to a city measure, or in support of or opposition to the election of a candidate for city office, if the contributions and expenditures were not made at the direction or control of the candidate or his or her controlled committee. However, the disclosure requirements for all committees set forth in Subsection (C) shall apply.

8. The limit in paragraph (1) shall not apply to political contributions made prior to the effective date of this Section.

9. If a candidate or the treasurer of a candidate-controlled committee is offered a contribution which would violate this limitation, the candidate or treasurer must refuse the contribution. If, however, a contribution which is in violation of this section is deposited into the campaign trust account, the candidate or treasurer must report in writing within five days of the receipt of the contribution to the City Clerk the facts surrounding such payment or contribution and, to the extent permitted by applicable law, return the contribution.

E. 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 any committee for use in connection with the campaign of a candidate or for or against a city measure may refuse to divulge or disclose to the enforcement authority that person’s record of any expenditures made by the candidate or committee in payment for such goods or services or both.

F. Duties of the City Clerk

In addition to other duties required of the City Clerk under the terms of this Section, the City Clerk must:

1. Supply appropriate forms and manuals prescribed by the California Fair Political Practices Commission to implement the Political Reform Act of 1974, as amended. These forms and manuals must be furnished to all candidates and committees, and to all other persons required to report;
2. Determine whether required documents have been filed and, if so, whether they conform on their face with the requirements of State law and this Section;

3. 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 and this Section;

4. Compile and maintain a current list of all statements or parts of statements filed with the city clerk’s office pertaining to each candidate and each city measure.

G. Enforcement.

Allegations of violations of this Section may be referred to the District Attorney for criminal prosecution. No enforcement, referral, prosecution or legal action shall be subject to review or control of the City Council, city staff, or the City Attorney.

H. Penalties

1. Any person who knowingly or willfully violates any provisions of this Section is guilty of a misdemeanor.

2. If any person is found to have violated Subsection (D), whether by civil, criminal or administrative enforcement action, the amount of funds received constituting such violation shall be paid by the candidate or committee that received such funds to the City Manager for deposit into the City's general fund. If any person is found to have violated any other sub-chapter of this Section, the fine imposed in connection with such violation shall be in the amount of $250.00 for the first 30 days after said violation, $500.00 for the next 30 days after said violation and $1,000.00 for any period in excess of 60 days following said violation, and shall be paid to the City Manager for deposit into the City's general fund.

3. If any candidate is convicted of a violation of any provision of this Section by a court of competent jurisdiction, the court shall be authorized, to the maximum extent allowed by State law, to declare the candidate’s election void or, if the candidate has already assumed office, to remove the candidate from office and declare such office vacant, to be filled in accordance with applicable State law. The Court shall also be authorized to declare the candidate/officer ineligible to hold any City office, up to the maximum amount of time allowed by State law for the offense.
I. Rules of Construction

This Section will be construed liberally in order to effectuate its purposes. No error, irregularity, informality, neglect or omission of any person in any procedure taken under this Section which does not directly affect the jurisdiction of the City to control campaign contributions and expenditures voids the effect of this Section.”

SECTION 4. Publication. The City Clerk shall certify to the adoption of this Ordinance and cause it, or a summary of it, to be published once within 15 days of adoption in a newspaper of general circulation printed and published within the City of Aliso Viejo, and shall post a certified copy of this Ordinance, including the vote for and against the same, in the Office of the City Clerk in accordance with California Government Code, section 36933.

SECTION 5. Records. The documents and materials associated with this Ordinance that constitute the record of proceedings on which the City Council's findings and determinations are based are located at 12 Journey, Aliso Viejo, CA.

SECTION 6. Severability. If any provision of this Ordinance or its application to any person or circumstance is held invalid, such invalidity has no effect on the other provisions or applications of the Ordinance that can be given effect without the invalid provision or application, and to this extent, the provisions of this ordinance are severable. The City Council declares that it would have adopted this Ordinance irrespective of the invalidity of any portion thereof.

SECTION 7. Effective Date. This Ordinance shall become effective 30 days after its adoption.

PASSED, APPROVED AND ADOPTED this ____ day of ____, 2022.

__________________________
Ross Chun
Mayor

APPROVED AS TO FORM:                                      ATTEST:

__________________________                            __________________________
Scott C. Smith, City Attorney          Mitzi Ortiz, MMC, City Clerk
I, MITZI ORTIZ, City Clerk of the City of Aliso Viejo, California, DO HEREBY CERTIFY that foregoing Ordinance No. ____ was duly passed and adopted by the City Council of the City of Aliso Viejo at their regular meeting held on the ___ day of _______, 2022, by the following roll call vote, to wit:

AYES:

NOES:

ABSENT:

MITZI ORTIZ, MMC
CITY CLERK
(SEAL)

I hereby certify that the foregoing is the original of Ordinance No. ____ duly passed and adopted by the Aliso Viejo City Council at its regular meeting held __________, 2022, and that the Summary of the Ordinance was published on __________, 2022, and __________, 2022, in the Laguna Niguel News.

MITZI ORTIZ, MMC
CITY CLERK
(SEAL)