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MEMORANDUM

TO: Bowie City Council

FROM: Robert H. Levan, City Attorney 

CC: David J. Deutsch, City Manager
Hon. Gerald F. Devlin, Chair, Election Task Force
Brendan Bohan, Chair, Board of Elections

DATE: November 6, 2008

SUBJECT: Ordinance O-5-08 and Ordinance O-6-08

We are submitting herewith for introduction, Ordinances O-5-08 and O-6-08.

The Ordinances were considered by the Council in draft form and Ordinance O-6-08 modified slightly. The modifications are incorporated in the Ordinance. Those modifications include a recognition under Section 6-33 that the authority for determining violations of this portion of the Election Code rests with the Board of Elections. On Page 4 in the list of punishable offenses, Number 5 has been clarified to apply to City employees and to define the coercive activity. Number 6 is modified to be more precise as to the type of municipal infractions covered by that Section and the section itself is re-lettered to stand independently as a separate subsection.

Finally, on page 5 the appropriate typographical correction has been made.

The Council will note that the prohibition on walk-around funds recommended by the Election Task Force has been eliminated from the Ordinance draft. This comes about as a result of a Court of Appeals decision in *State v. Brookins*, a 2004 case, in which the Court held that payment of persons to engage in electioneering activity was part of the free speech process and thus constitutionally protected. As a result, it has been omitted from the draft Ordinance.

Please direct any questions or concerns to me. As I understand it, the Ordinance will be introduced on November 16 and set for public hearing discussion and possible adoption at the Council regular meeting on December 1.

ORDINANCE
OF THE COUNCIL OF THE CITY OF BOWIE, MARYLAND,
AMENDING CHAPTER 6, “ELECTIONS”, TO UPDATE THE CITATION TO
STATE ELECTIONS CODE IN SECTION 6-32; AMENDING SECTION 6-33
ENTITLED “PENALTIES” TO PROVIDE THAT ALL PENALTIES, EXCEPT
FOR CERTAIN STATED VIOLATIONS OF THE CHAPTER, SHALL BE
CONSIDERED A MUNICIPAL INFRACTION, AND FURTHER AMENDING
SECTION 6-33 TO MAKE IT UNLAWFUL TO OFFER, ACCEPT OR ACT ON A
BRIBE, MAKE A POLITICAL CONTRIBUTION UNDER A FALSE NAME,
COERCE AN EMPLOYEE OR FAIL TO PROPERLY FILE MORE THAN TWO
CAMPAIGN FINANCE REPORTS DURING AN ELECTION CYCLE, AND
FURTHER AMENDING SECTION 6-33 MAKING IT A MUNICIPAL
INFRACTION SUBJECT TO A \$500 FINE FOR VIOLATING SECTION 6-75
ENTITLED “ELECTION REPORTS TO BE FILED BY TREASURER”, AND
FURTHER AMENDING SECTION 6-33 CAUSING AN ELECTED OFFICIAL,
EMPLOYEE OR CANDIDATE TO BE DISQUALIFIED FROM OFFICE OR
EMPLOYMENT UPON BEING FOUND GUILTY OF A MISDEMEANOR
UNDER THE CHAPTER AND FURTHER AMENDING SECTION 6-33 TO
PERMIT THE CITY TO USE EXTRAORDINARY FORMS OF JUDICIAL
RELIEF TO ENFORCE AND CORRECT VIOLATIONS OF THE CHAPTER;
AMENDING SECTION 6-71 ENTITLED “BOOKS, RECORDS AND RECEIPTS
OF TREASURER” REQUIRING THAT THERE MUST BE A ZERO SUM
BALANCE AT THE TIME OF THE FINAL ELECTION REPORT; AMENDING
SECTION 6-72 ENTITLED “CONTRIBUTIONS OF CANDIDATE” TO DELETE
SUBSECTION C LIMITING A CANDIDATE FROM CONTRIBUTING MORE
THAT \$2,500 TO THE CANDIDATE’S OWN CAMPAIGN; AMENDING
SECTION 6-73 ENTITLED “LIMITS OF CONTRIBUTIONS BY NON-
CANDIDATES” TO REQUIRE REVIEW OF THE CONTRIBUTION LIMIT
AFTER EACH ELECTION AND TO CLARIFY THAT CORPORATIONS AND
CERTAIN OTHER BUSINESS ENTITIES SHALL NOT CONTRIBUTE TO ANY
CANDIDATE IN A CITY ELECTION; AMENDING SECTION 6-75 ENTITLED
“ELECTION REPORTS TO BE FILED BY TREASURER” REQUIRING
CERTAIN MONTHLY CAMPAIGN FINANCIAL REPORTS AND A FINAL
CAMPAIGN FINANCIAL REPORT TO BE FILED AND ACCEPTED DURING
AND IMMEDIATELY AFTER THE ELECTION AS A CONDITION TO
HOLDING OFFICE, AND FURTHER REQUIRING THE REPORTS TO BE
SUFFICIENTLY ITEMIZED AND THEREAFTER POSTED ON THE CITY’S
WEBSITE, AND FURTHER AMENDING SECTION 6-75 TO PROVIDE THAT
ANY UNPAID DEBTS SHALL BE DEEMED A CONTRIBUTION SUBJECT TO

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**CERTAIN LIMITATIONS AND FURTHER ALLOWING CERTAIN REPORTS
TO BE REJECTED AS FAILING TO MEET REPORTING GUIDELINES.**

WHEREAS, pursuant to Md. Ann. Code, Article 23A, § 2(a), the City of Bowie (hereinafter, “the City”) has the general authority to pass such ordinances not contrary to the Constitution of Maryland, public general law, or, except as provided in Md. Code Ann., Article 23A, § 2B, public local law, as it may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality’s rights, property, and privileges, to preserve peace and good order, to secure persons and property from danger and destruction, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, pursuant to this authority, the City has enacted Chapter 6, “Elections” of the City Code; and

WHEREAS, pursuant to a Resolution of the Council of the City of Bowie, Maryland Creating an Elections Task Force (R-8-08) passed on January 22, 2008, the City Council established an Elections Task Force to review all Bowie City Code references to the conduct of city elections, to identify ordinances that remain current and valuable or ordinances that would benefit from updating and to identify those sections of the Code that should be amended or deleted; and

WHEREAS, pursuant to Resolution 8-08, the Honorable Gerard Devlin, Chairman of the Elections Task Force presented a final report on October 1, 2008 along with several recommendations for amending Chapter 6 of the Bowie City Code ; and

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WHEREAS, the City Council therefore deems it to be in the best interests of the City to amend Chapter 6, "Elections" of the City Code including Sections 6-32, 6-33, 6-71, 6-72, 6-73, and 6-75 as indicated herein below.

Section 1. NOW THEREFORE, BE IT ORDAINED AND ENACTED, by the Council of the City of Bowie, Maryland that Chapter 6, "Elections", Section 6-32, "Interpretation of Chapter", of the City Code, be amended as follows:

Sec. 6-32. Interpretation of chapter.

Unless an interpretation to the contrary is clearly intended from the context in which it appears, each provision of this chapter shall be interpreted in conformity with [article 33] THE ELECTION LAW ARTICLE of the Annotated Code of Maryland, 1957 edition, as amended.

Section 2. BE IT FURTHER ORDAINED AND ENACTED, by the Council of the City of Bowie, Maryland that Chapter 6, "Elections", Section 6-33 "Penalties", of the City Code, be amended as follows:

Sec. 6-33. Penalties.

(a) UNLESS OTHERWISE SPECIFIED BY THIS CHAPTER OR THE CITY CHARTER, ANY PERSON WHO IS FOUND BY THE BOARD OF ELECTIONS TO HAVE WILLFULLY VIOLATED ANY PROVISION OF THIS CHAPTER SHALL BE GUILTY OF A MUNICIPAL INFRACTION PURSUANT TO SECTION 1-6 OF THIS CODE. [Except as provided in Subsection (C) of this Section, any] ANY person [who willfully fails to perform duties

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prescribed in this Chapter, or who shall willfully violate provisions thereof, or] who attempts to fraudulently influence the outcome of any election conducted under this Chapter shall be guilty of a misdemeanor and shall be subject to a fine not to exceed [five hundred dollars (\$500.00)] ONE THOUSAND DOLLARS (\$1,000.00) or imprisonment not to exceed [ninety (90) days] SIX (6) MONTHS, or both fine and imprisonment. THE FOLLOWING ACTIONS SHALL BE DEEMED ACTIONS DESIGNED TO FRAUDULENTLY INFLUENCE THE OUTCOME OF AN ELECTION UNDER THIS CHAPTER AND SHALL BE PUNISHED IN ACCORDANCE WITH THIS SUBSECTION:

1. OFFERING A BRIBE,
2. ACCEPTING OR SOLICITING A BRIBE,
3. ACTING ON A BRIBE,
4. MAKING A POLITICAL CONTRIBUTION UNDER A FALSE NAME,
5. COERCING A CITY EMPLOYEE TO SUPPORT ANY CANDIDATE FOR ELECTION OR TO CONTRIBUTE ANY MONEY OR OTHER THING OF VALUE TO THE CANDIDATE OR THE CANDIDATE’S CAMPAIGN.

(B) VIOLATIONS OF TWO (2) CUMULATIVE MUNICIPAL INFRACTIONS OF THIS CHAPTER OVER THE COURSE OF ONE CAMPAIGN AFTER ADJUDICATION BY THE DISTRICT COURT OR BY PAYMENT OF THE FINE TO THE CITY, FOLLOWED BY A THIRD VIOLATION OF SECTION 6-75 OF THIS CHAPTER.

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[(b)] (C) EXCEPT AS PROVIDED IN SUBSECTION A, [A]any person who violates the provisions of Section 6-75 of this Chapter shall be guilty of a [misdemeanor] MUNICIPAL INFRACTION and shall be subject to a fine OF FIVE HUNDRED DOLLARS (\$500). [not to exceed one thousand dollars (\$1,000.00) or imprisonment not to exceed six (6) months, or both fine and imprisonment.] VIOLATIONS ARE CONSIDERED CUMULATIVE OVER THE COURSE OF A CAMPAIGN FOR PURPOSES OF ENFORCEMENT.

(D) ANY ELECTED OFFICIAL OR CANDIDATE WHO IS FOUND GUILTY OF A MISDEMEANOR UNDER THE PROVISIONS OF THIS CHAPTER SHALL IMMEDIATELY CEASE TO HOLD SUCH OFFICE, AND SHALL BE DISQUALIFIED AS A CANDIDATE.

(E) THE CITY MAY INSTITUTE INJUNCTIVE, MANDAMUS OR ANY OTHER APPROPRIATE ACTION OR PROCEEDINGS AT LAW OR EQUITY FOR THE ENFORCEMENT OF THIS CHAPTER OR TO CORRECT VIOLATIONS OF THIS CHAPTER. ANY COURT OF COMPETENT JURISDICTION SHALL HAVE THE RIGHT TO ISSUE RESTRAINING ORDERS, INJUNCTIONS, MANDAMUS, OR ANY OTHER APPROPRIATE FORM OF RELIEF OR REMEDY.

Section 3. BE IT FURTHER ORDAINED AND ENACTED, by the Council of the City of Bowie, Maryland that Chapter 6, “Elections”, Section 6-71 “Books, records and receipts of treasurer”, of the City Code, be amended as follows:

Sec. 6-71. Books, records and receipts of treasurer.

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(d) Disposition of surplus funds. Any surplus funds remaining after payment of all campaign expenditures shall be returned to contributors OR TO A SECTION 501(C)(3) CORPORATION OF THE CANDIDATE’S CHOICE by the treasurers prior to the time of filing the final report required by section 6-76. IN ANY EVENT, THERE MUST BE A ZERO (\$0.00) SUM BALANCE AT THE TIME OF THE FINAL REPORT.

Section 4. BE IT FURTHER ORDAINED AND ENACTED, by the Council of the City of Bowie, Maryland that Chapter 6, “Elections”, Section 6-72 “Contributions of candidate”, of the City Code, be amended as follows:

Sec. 6-72. Contributions of candidate.

* * *

(b) Expenses. Any person who is a candidate for public office may pay that candidate’s own personal expenses for filing fees, telegrams, telephoning, travel and board. The payment of such personal expenses shall not be subject to the limitations provided in [subsection (c) of this section] SECTION 6-73.

[(c) Limits. No candidate for election to a municipal office shall contribute more than \$2,500 to the candidate’s own campaign, either directly by payment to the candidate’s campaign accounts, or indirectly by payment to the candidate’s campaign accounts, or indirectly by payment or other expenditure to any third party where such payment or expenditure is designed

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or intended to be use to further the campaign of such candidate, from that candidate’s personal funds, in any election.]

Section 5. BE IT FURTHER ORDAINED AND ENACTED, by the Council of the City of Bowie, Maryland that Chapter 6, “Elections”, Section 6-73 “Limits of contributions by non-candidates”, of the City Code, be amended as follows:

Sec. 6-73. Limits of contributions by non-candidates.

[Except as provided in Section 6-72 of this Chapter with respect to contributions by a candidate to the candidate’s own campaign, it] IT shall be unlawful for any individual, either directly or indirectly, to contribute any money or thing of value greater than one thousand dollars \$1,000.00[] in any city election. THE LIMIT OF CONTRIBUTION SHALL BE CONSIDERED FOR ADJUSTMENT AFTER EACH GENERAL ELECTION. It shall be unlawful for any PARTISAN POLITICAL ORGANIZATION, NON-PROFIT OR PROFIT-MAKING corporation OR OTHER BUSINESS ENTITY to contribute any money or other thing of value to any candidate in any city election.

Section 6. BE IT FURTHER ORDAINED AND ENACTED, by the Council of the City of Bowie, Maryland that Chapter 6, “Elections”, Section 6-75 “Election reports to be filed by treasurer”, of the City Code, be amended as follows:

Sec. 6-75. Election reports to be filed by treasurer.

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(a) The treasurer designated by a candidate PRIOR TO AN election shall file [a] reportS or statementS of contributions and expenditures as prescribed in THIS SECTION AND section 6-76 with the [b]Board in accordance with the following schedule:

(1) No later than noon on the [fourteenth] FIFTEENTH day [preceding any election and this] OF EACH MONTH A report shall BE FILED containING all contributions received and expenditures made in furtherance of the candidate's election, including those made by the candidate, or with the knowledge of the candidate, and those made by any other person or groups of persons since the date of the last preceding election to fill the office for which he is a candidate. WITHIN FORTY-EIGHT (48) HOURS OF ITS SUBMISSION, EXCLUDING SATURDAYS AND SUNDAYS, THE BOARD OR ITS DESIGNEE SHALL REVIEW EACH REPORT AND RETURN ANY SUCH REPORT THAT DOES NOT MEET THE REQUIREMENTS OF THIS ARTICLE. A COPY OF ALL MONTHLY AND FINAL CAMPAIGN FINANCIAL REPORTS SHALL BE POSTED ON THE CITY’S WEBSITE BY CLOSE OF BUSINESS WITHIN THREE BUSINESS DAYS AFTER REVIEW AND ACCEPTANCE BY THE BOARD.

(2) [Whether the] A SUCCESSFUL candidate [is successful or unsuccessful,] SHALL FILE a FINAL CAMPAIGN FINANCIAL REPORT THAT IS ACCEPTED AND APPROVED AS SUFFICIENTLY ITEMIZED AND COMPLETE BY THE ELECTION BOARD OR ITS DESIGNEE no later than noon on the day prior to the date on which the successful candidate

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takes office. [This report shall contain all contributions received and expenditures made since the filing of the initial report.]

(3) [In the event that the report filed on the day prior to a successful candidate taking office must be amended or is not in final form, no later than the close of business thirty (30) days after the election.] UNSUCCESSFUL CANDIDATES SHALL FILE A FINAL CAMPAIGN REPORT THAT IS ACCEPTED AND APPROVED AS SUFFICIENTLY ITEMIZED AND COMPLETE BY THE ELECTION BOARD OR ITS DESIGNEE WITHIN THIRTY (30) DAYS OF THE ELECTION.

(b) Before filing a final campaign report, the treasurer shall pay all outstanding obligations and dispose of all of its remaining assets in accordance with Subsection (f) below. It shall be the responsibility of each candidate to advise the candidate’s creditors that invoices must be received by the candidate within fourteen (14) days of the election. ANY UNPAID DEBTS REFLECTED IN THE FINAL CAMPAIGN REPORT SHALL BE DEEMED A CONTRIBUTION AND THEREFORE SUBJECT TO THE LIMITATIONS OF CONTRIBUTIONS PRESCRIBED IN SECTION 6-73.

(c) It is the responsibility of the treasurer to file [the] ALL reportS and such reportS shall be in full and accurate detail. EACH REPORT SHALL CONTAIN ALL CONTRIBUTIONS RECEIVED AND EXPENDITURES MADE SINCE FILING OF THE INITIAL REPORT. ANY CAMPAIGN FINANCIAL REPORT WHICH SIMPLY DISPLAYS LUMP SUM FUNDS SPENT OR OBLIGATED TO CAMPAIGN CONSULTANTS, PUBLIC

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RELATIONS FIRMS OR OTHER ENTITIES WITHOUT REASONABLE ITEMIZATION OF SERVICES PROVIDED SHALL BE REJECTED AND RETURNED TO THE TREASURER AS FAILING TO MEET CAMPAIGN REPORTING GUIDELINES.

* * *

Section 7. BE IT FURTHER ORDAINED that this Ordinance shall become effective thirty (30) days after the enactment of this Ordinance by the Council of the City of Bowie, Maryland and further provided that a fair summary of this Ordinance is published at least once prior to the date of passage and at least once within ten (10) days after the date of passage in a newspaper having general circulation in the City.

INTRODUCED by the Council of the City of Bowie, Maryland at a regular meeting on the ____ day of _____, 2008.

PASSED by the Council of the City of Bowie, Maryland at a regular meeting on the ____ day of _____, 2008.

ATTEST:

THE CITY OF BOWIE, MARYLAND

Pamela A. Fleming, City Clerk

By: _____
G. Frederick Robinson, Mayor

APPROVED AS TO FORM AND SUFFICIENCY:

Robert H. Levan, City Attorney

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