

BOARD of SUPERVISORS



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MEMORANDUM

TO: Kanishka Karunaratne Cheng, Liaison to the Board of Supervisors,
Mayor's Office
Jon Givner, Deputy City Attorney, Office of the City Attorney
John Arntz, Director, Department of Elections
LeeAnn Pelham, Executive Director, Ethics Commission
Tom Hui, Director, Building Inspection Commission
Nadia Sesay, Executive Director, Office of Community Investment and
Infrastructure
Elaine Forbes, Executive Director, San Francisco Port Department
Naomi Kelly, City Administrator, Office of the City Administrator
Jonis Ionin, Historic Preservation Commission and Planning Commission
Robert Beck, Director, Treasure Island Development Authority
Julie Rosenberg, Executive Director, Board of Appeals

FROM: Victor Young, Assistant Clerk, Rules Committee
Board of Supervisors

DATE: March 13, 2019

SUBJECT: INITIATIVE ORDINANCE INTRODUCED
November 5, 2019 Election

The Board of Supervisors' Rules Committee has received the following Initiative Ordinance for the November 5, 2019, Election. This matter is being referred to you in accordance with Rules of Order 2.22.4.

File No. 190267

Hearing to consider the proposed initiative ordinance submitted by four or more Supervisors to the voters at the November 5, 2019, Election, entitled "Sunlight on Dark Money Initiative," an Ordinance amending the Campaign and Governmental Conduct Code to expand disclosure requirements for independent expenditure committee advertisements, prohibiting campaign contributions from limited liability corporations and limited liability partnerships, and prohibiting campaign contributions to candidates for certain offices from individuals associated with land use decisions that may be decided by those offices.

Please review and submit any reports or comments you wish to be included with the legislative file.

If you have any questions or concerns, please call me at (415) 554-7723 or email: victor.young@sfgov.org. To submit documentation, please forward to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Mawuli Tugbenyoh, Liaison to the Board of Supervisors
Rebecca Peacock, Mayor's Office
Andres Power, Mayor's Office
Patrick Ford, Ethics Commission
Lucinda Nguyen, Commission on Community Investment and Infrastructure
John Rahaim, Director, Planning Department
Dan Sider, Planning Department
Aaron Starr, Planning Department
AnMarie Rodgers, Planning Department
Scott Sanchez, Planning Department
Corey Teague, Planning Department
Lisa Gibson, Planning Department
Devyani Jain, Planning Department
Joy Navarrete, Planning Department
Laura Lynch, Planning Department
Tim Frye, Historic Preservation Commission
Andrea Ruiz-Esquide, Deputy City Attorney
Daley Dunham, Port Department
Amy Quesada, Port Department
Kate Austin, Treasure Island Development Authority
Nikki Ivey, Treasure Island Development Authority
Gary Cantara, Board of Appeals

1 [Initiative Ordinance – “Sunlight on Dark Money Initiative”]

2
3 **Ordinance amending the Campaign and Governmental Conduct Code to**
4 **expand disclosure requirements for independent expenditure committee**
5 **advertisements, prohibiting campaign contributions from limited liability**
6 **corporations and limited liability partnerships, and prohibiting campaign**
7 **contributions to candidates for certain offices from individuals associated**
8 **with land use decisions that may be decided by those offices.**
9

10 NOTE: Unchanged Code text and uncodified text are in plain font.
11 Additions to Codes are in *single-underline italics font*. Deletions to Codes
12 are in *strikethrough italics font*. Asterisks (* * * *) indicate the omission of
unchanged Code subsections or parts of tables.

13 Be it ordained by the People of the City and County of San Francisco:

14
15 **SECTION 1. Title**
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17 This Initiative shall be known and may be cited as the “Sunlight On Dark
18 Money Initiative.”
19

20 **SECTION 2. Findings and Declarations**
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22 The People of the City and County of San Francisco declare their findings and
23 purposes in enacting this Initiative to be as follows:
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25

1
2 (a) The San Francisco Campaign Finance Reform Ordinance (“CFRO”) was
3 enacted in order to enhance the integrity of the election process and help restore
4 public trust in governmental and electoral institutions in the City and County of San
5 Francisco. CFRO’s specific purposes include assisting voters in making informed
6 electoral decisions through increased disclosure, limiting contributions to candidates
7 and committees to eliminate or reduce the appearance or reality that campaign
8 contributions may lead to corruption or undue influence over elected officials, and
9 enforcement to ensure compliance with the law.

10 (b) In recent years, exacerbated by the United States Supreme Court decision in
11 *Citizens United v. FEC (2010)*, corporations, lobbyists, and other wealthy interests
12 have exploited loopholes in current law to evade the reasonable contribution limits
13 enacted by voters while hiding disclosure of their donations from voters.

14 (c) In 2015, the Board of Supervisors approved Ordinance No. 102-15 repealing
15 certain disclosure requirements for independent expenditure committees, also known
16 as “Super PACs,” which has resulted in diminished information available for San
17 Francisco voters to make informed choices.

18
19 (d) In April 2018, the Board of Supervisors by a 6-5 vote rejected a proposal to
20 limit “pay to play” corruption or the appearance of “pay to play” corruption in land use
21 decisions by prohibiting campaign contributions by persons with land use matters
22 before a decision-making body while those decisions are pending until 12 months after
23 those decisions are made or resolved.

24 (e) The corrosion of the integrity of San Francisco’s elections caused by the
25 evasion of campaign contribution limits, lack of “pay to play” safeguards, and
inadequate disclosure requirements is an urgent problem that requires action by the
people of San Francisco through the initiative process.

1 **SECTION 3.** The San Francisco Campaign and Governmental Conduct Code,
2 Article I, Chapter 1, is hereby amended by revising Section 1.114 to read as follows:

3 **SEC. 1.114. CONTRIBUTIONS – LIMITS AND PROHIBITIONS.**

4 (a) **LIMITS ON CONTRIBUTIONS TO CANDIDATES.** No person other than
5 a candidate shall make, and no campaign treasurer for a candidate committee shall
6 solicit or accept, any contribution which will cause the total amount contributed by
7 such person to such candidate committee in an election to exceed \$500.
8

9 (b) **PROHIBITION ON CONTRIBUTIONS FROM CORPORATIONS.** No
10 corporation, *limited liability corporation, or limited liability partnership* organized
11 pursuant to the laws of the State of California, the United States, or any other state,
12 territory, or foreign country, whether for profit or not, shall make a contribution to a
13 candidate committee, provided that nothing in this subsection (b) shall prohibit such a
14 corporation from establishing, administering, and soliciting contributions to a separate
15 segregated fund to be utilized for political purposes by the corporation, provided that
16 the separate segregated fund complies with the requirements of Federal law including
17 Sections 432(e) and 441b of Title 2 of the United States Code and any subsequent
18 amendments to those Sections.
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1 SECTION 4. The San Francisco Campaign and Governmental Conduct
2 Code, Article I, Chapter 1, is hereby amended by adding Section 1.127 to read as
3 follows:

4 SEC. 1.127. CONTRIBUTION LIMITS – PERSONS WITH LAND USE
5 MATTERS BEFORE A DECISION-MAKING BODY.
6

7 (a) Definitions. For purposes of this Section 1.127, the following phrases shall
8 mean:
9

10 “Affiliated entities” means business entities directed and controlled by a majority
11 of the same persons, or majority-owned by the same person.

12 “Financial interest” shall mean (a) an ownership interest of at least 10% or
13 \$1,000,000 in the project or property that is the subject of the land use matter; (b)
14 holding the position of director or principal officer, including President, vice-President,
15 Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Executive
16 Director, Deputy Director, or member of the Board of Directors, in an entity with at
17 least 10% ownership interest in that project or property; or (c) being the developer of
18 that project or property.
19

20 “Land use matter” shall mean (a) any request to a City elective officer for a
21 Planning Code or Zoning Map amendment, or (b) any application for an entitlement
22 that requires a discretionary determination at a public hearing before a board or
23 commission under the San Francisco Building Code, the Planning Code, or the
24 California Environmental Quality Act (California Public Resources Code Section 21000
25

1 et seq). "Land use matter" shall not include discretionary review hearings before the
2 Planning Commission.

3 "Prohibited contribution" is a contribution to (1) a member of the Board of
4 Supervisors, (2) a candidate for member of the Board of Supervisors, (3) the Mayor, (4)
5 a candidate for Mayor, (5) the City Attorney, or (6) a candidate for City Attorney.

7 (b) Prohibition on Pay-To-Play Contributions. No person, or the person's
8 affiliated entities, with a financial interest in a land use matter before the Board of
9 Appeals, Board of Supervisors, Building Inspection Commission, Commission on
10 Community Investment and Infrastructure, Historic Preservation Commission,
11 Planning Commission, Port Commission, or the Treasure Island Development
12 Authority Board of Directors shall make any prohibited contribution at any time from a
13 request or application regarding a land use matter until 12 months have elapsed from
14 the date that the board or commission renders a final decision or ruling or any appeals
15 from that decision or ruling have been finally resolved.

18 (c) Prohibition on Soliciting or Accepting Pay-to-Play Contributions. No member
19 of the Board of Supervisors, candidate for member of the Board of Supervisors, the
20 Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or
21 controlled committees of such officers and candidates shall:

23 (1) accept any contribution prohibited by subsection (b); or
24
25

1 (2) solicit any contribution prohibited by subsection (b) from a person who
2 the individual knows or has reason to know has a financial interest in a land use
3 matter:

4 (d) Exception for primary residence. The prohibitions set forth in subsections (b)
5 and (c) shall not apply if the land use matter concerns only the person's primary
6 residence.

7 (e) Forfeiture of Prohibited Contributions. In addition to any other penalty, each
8 member of the Board of Supervisors, candidate for member of the Board of Supervisors,
9 the Mayor, candidate for Mayor, the City Attorney, candidate for City Attorney, or
10 controlled committees of such officers and candidates, who solicits or accepts any
11 contribution prohibited by subsection (b) shall pay promptly the amount received or
12 deposited to the City and County of San Francisco by delivering the payment to the
13 Ethics Commission for deposit in the General Fund of the City and County; provided,
14 that the Commission may provide for the waiver or reduction of the forfeiture.

15 (f) Notification of Prospective Parties to Land Use Matters. The agency
16 responsible for the initial review of any land use matter shall inform any person with a
17 financial interest in a land use matter before the Board of Appeals, Board of
18 Supervisors, Building Inspection Commission, Commission on Community Investment
19 and Infrastructure, Historic Preservation Commission, Planning Commission, Port
20 Commission, or the Treasure Island Development Authority Board of Directors, of the
21 prohibition in subsection (b).

1 SECTION 5. The San Francisco Campaign and Governmental Conduct Code,
2 Article I, Chapter 1, is hereby amended by revising Section 1.161 to read as follows:
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4
5 SEC. 1.161. CAMPAIGN ADVERTISEMENTS.

6 (a) DISCLAIMERS. In addition to complying with the disclaimer requirements
7 set forth in Chapter 4 of the California Political Reform Act, California Government
8 section 84100 *et seq.*, and its enabling regulations, all committees making
9 expenditures which support or oppose any candidate for City elective office or any City
10 measure shall also comply with the following additional requirements:
11

12 (1) TOP ~~THREE~~ FIVE CONTRIBUTORS. The disclaimer requirements
13 for primarily formed independent expenditure committees and primarily formed ballot
14 measure committees set forth in the Political Reform Act with respect to a committee's
15 top ~~three~~ five major contributors shall apply to contributors of ~~\$10,000~~ \$5,000 or more.
16 Such disclaimers shall include both the name of and the dollar amount contributed by
17 each of the top five major contributors of \$5,000 or more to such committees. If any of
18 the top five major contributors is a committee, the disclaimer must also disclose both
19 the name of and the dollar amount contributed by each of the top three major
20 contributors of \$5,000 or more to that committee. The Ethics Commission may adjust
21 this monetary threshold to reflect any increases or decreases in the Consumer Price
22 Index. Such adjustments shall be rounded off to the nearest five thousand dollars.
23
24
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 (2) WEBSITE REFERRAL. Each disclaimer required by the Political
Reform Act or its enabling regulations and by this section shall be followed in the

1 same required format, size and speed by the following phrase: "Financial disclosures
2 are available at sfethics.org." A substantially similar statement that specifies the web
3 site may be used as an alternative in audio communications.

4 (3) MASS MAILINGS AND SMALLER WRITTEN

5 ADVERTISEMENTS. Any disclaimer required by the Political Reform Act and by this
6 section on a mass mailing, door hanger, flyer, poster, oversized campaign button or
7 bumper sticker, or print advertisement shall be printed on every page where
8 advertising appears on such mass mailings and written advertisements and shall be
9 printed in at least ~~12 point~~ 14 point, bold font.

11 (4) CANDIDATE ADVERTISEMENTS. Advertisements by candidate

12 committees shall include the following disclaimer statements: "Paid for by _____
13 (insert the name of the candidate committee)." and "Financial disclosures are available
14 at sfethics.org." Except as provided in subsections (a)(3) and (a)(5), the statements'
15 format, size and speed shall comply with the disclaimer requirements for independent
16 expenditures for or against a candidate set forth in the Political Reform Act and its
17 enabling regulations.
18

20 (5) AUDIO AND VIDEO ADVERTISEMENTS. For audio

21 advertisements, the disclaimers required by this Section 1.161 shall be spoken at the
22 end beginning of such advertisements. For video advertisements, the disclaimers
23 required by this Section 1.161 shall be spoken at the end beginning of such
24 advertisements and appear in writing during the entirety of the advertisements.
25

1 (b) FILING REQUIREMENTS.

2 (1) INDEPENDENT EXPENDITURES ADVERTISEMENTS.

3 Committees required by state law to file late independent expenditure reports
4 disclosing expenditures that support or oppose a candidate for City elective office shall
5 also file with the Ethics Commission on the same date a copy of the associated
6 advertisement(s), an itemized disclosure statement with the Ethics Commission for that
7 advertisement(s), and

8
9 (A) if the advertisement is a telephone call, a copy of the script
10 and, if the communication is recorded, the recording shall also be provided; or

11 (B) if the advertisement is audio or video, a copy of the script and
12 an audio or video file shall be provided.

13 (C) if the advertisement is an electronic or digital advertisement, a
14 copy of the advertisement as distributed shall be provided.

15 (D) if the advertisement is a door hanger, flyer, pamphlet, poster,
16 or print advertisement, a copy of the advertisement as distributed shall be provided.

17
18 (2) INDEPENDENT EXPENDITURE MASS MAILINGS.

19 (A) Each independent expenditure committee that pays for a mass
20 mailing shall, within five working days after the date of the mailing, file a copy of the
21 mailing and an itemized disclosure statement with the Ethics Commission for that
22 mailing.
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1 (B) Each independent expenditure committee that pays for a mass
2 mailing shall file a copy of the mailing and the itemized disclosure statement required
3 by subsection (b)(2) within 48 hours of the date of the mailing if the date of the mailing
4 occurs within the final 16 days before the election.

5 ~~(2)~~ (3) CANDIDATE MASS MAILINGS.

6 (A) Each candidate committee that pays for a mass mailing shall,
7 within five working days after the date of the mailing, file a copy of the mailing and an
8 itemized disclosure statement with the Ethics Commission for that mailing.
9

10 (B) Each candidate committee that pays for a mass mailing shall
11 file a copy of the mailing and the itemized disclosure statement required by subsection
12 ~~(b)(2)~~(3) within 48 hours of the date of the mailing if the date of the mailing occurs
13 within the final 16 days before the election.
14

15 ~~(3)~~ (4) The Ethics Commission shall specify the method for filing copies
16 of advertisements and mass mailings.
17

18 **SECTION 6.** The San Francisco Campaign and Governmental Conduct Code,
19 Article I, Chapter 1, is hereby amended by revising Section 1.162 to read as follows:
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21 **SEC. 1.162. ELECTIONEERING COMMUNICATIONS.**

22 (a) **DISCLAIMERS.**

23 (1) Every electioneering communication for which a statement is filed
24 pursuant to subsection (b) shall include the following disclaimer: "Paid for by
25

1 _____ (insert the name of the person who paid for the communication).” and
2 “Financial disclosures are available at sfethics.org.”

3 (2) Any disclaimer required by this Section shall be included in or on an
4 electioneering communication in a size, speed or format that complies with the
5 disclaimer requirements for independent expenditures supporting or opposing
6 candidates set forth in the Political Reform Act and its enabling regulations.
7

8 (3) Notwithstanding subsection (a)(2); any disclaimer required by this
9 Section:

10 (A) to appear on a mass mailing, door hanger, flyer, poster,
11 oversized campaign button or bumper sticker, or print advertisement shall be printed
12 in at least 14-point font;
13

14 (B) to be included in an audio advertisement, shall be spoken at
15 the *end beginning* of such advertisements; or

16 (C) to be included in a video advertisement, shall be spoken at the
17 *end beginning* of such advertisements and appear in writing during the entirety of the
18 advertisements.
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22 **SECTION 7.** The San Francisco Campaign and Governmental Conduct Code,
23 Article I, Chapter 1, is hereby amended by revising Section 1.170 to read as follows:
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1 SEC. 1.170. PENALTIES.

2 (a) CRIMINAL. Any person who knowingly or willfully violates any provision
3 of this Chapter 1 shall be guilty of a misdemeanor and upon conviction thereof shall be
4 punished by a fine of not more than \$5,000 for each violation or by imprisonment in
5 the County jail for a period of not more than six months or by both such fine and
6 imprisonment; provided, however, that any willful or knowing failure to report
7 contributions or expenditures done with intent to mislead or deceive or any willful or
8 knowing violation of the provisions of Sections 1.114, ~~or 1.126~~, or 1.127 of this Chapter
9 shall be punishable by a fine of not less than \$5,000 for each violation or three times
10 the amount not reported or the amount received in excess of the amount allowable
11 pursuant to Sections 1.114, ~~or 1.126~~, or 1.127 of this Chapter, or three times the
12 amount expended in excess of the amount allowable pursuant to Section 1.130 or
13 1.140, whichever is greater.

14 (b) CIVIL. Any person who intentionally or negligently violates any of the
15 provisions of this Chapter 1 shall be liable in a civil action brought by the City
16 Attorney for an amount up to \$5,000 for each violation or three times the amount not
17 reported or the amount received in excess of the amount allowable pursuant to
18 Sections 1.114, ~~or 1.126~~, or 1.127 or three times the amount expended in excess of the
19 amount allowable pursuant to Section 1.130 or 1.140, whichever is greater. In
20 determining the amount of liability, the court may take into account the seriousness of
21 the violation, the degree of culpability of the defendant, and the ability of the
22 defendant to pay.
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1 (c) ADMINISTRATIVE. Any person who violates any of the provisions of this
2 Chapter 1 shall be liable in an administrative proceeding before the Ethics
3 Commission held pursuant to the Charter for any penalties authorized therein.

4 * * * *

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7 **SECTION 8. Conflicting Measures**

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9 In the event that another measure or measures on the same ballot seeks to
10 affect the same subject matter as this Initiative, any provisions of the other measure
11 or measures shall be deemed to be in conflict with this Initiative. In the event that
12 this Initiative receives a greater number of affirmative votes, only this Initiative shall
13 take effect and the provisions of the other measure or measures shall be null and void.

14
15 **SECTION 9. Scope of Initiative**

16
17 In enacting this Initiative, the people intend to amend only those words,
18 phrases, paragraphs, subsections, sections, articles, numbers, punctuation marks,
19 charts, diagrams, or any other constituent parts of the Municipal Code that are
20 explicitly shown in this Initiative as additions or deletions in accordance with the
21 "NOTE" that appears above the official title of the Initiative.

22
23 **SECTION 10. Severability**

24
25 If any section, subsection, sentence, clause, phrase, or word of this ordinance, or
any application thereof to any person or circumstance, is held to be invalid or
unconstitutional by a decision of a court of competent jurisdiction, such decision shall

1 not affect the validity of the remaining portions or applications of the ordinance. The
2 voters hereby declare that they would have passed this ordinance and each and every
3 section, subsection, sentence, clause, phrase, and word not declared invalid or
4 unconstitutional without regard to whether any other portion of this ordinance or
5 application thereof would be subsequently declared invalid or unconstitutional.
6

7 **SECTION 11. Amendment or Repeal**

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9 Only the voters may amend or repeal any of the provisions of this Initiative.
10

11 **SECTION 12. Effective Date**

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13 In accordance with the provisions of California Elections Code section 9217, if a
14 majority of the voters vote in favor of this Initiative, the Initiative shall go into effect
15 10 days after the vote is declared by the Board of Supervisors.
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